

Laws 1995

First Regular Session, Forty-Second Legislature

CHAPTER 1

RELATING TO THE LEGISLATIVE BRANCH OF GOVERNMENT; APPROPRIATING FUNDS FOR THE EXPENSE OF THE FORTY-SECOND LEGISLATURE, FIRST SESSION, 1995 AND FOR LEGISLATIVE EXPENSES FOR THE LEGISLATIVE COUNCIL SERVICE, THE LEGISLATIVE FINANCE COMMITTEE, THE LEGISLATIVE EDUCATION STUDY COMMITTEE, THE SENATE RULES COMMITTEE, THE HOUSE CHIEF CLERK'S OFFICE AND THE SENATE CHIEF CLERK'S OFFICE; DECLARING AN EMERGENCY.

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

Section 1

Section 1. There is appropriated for the expense of the legislative department of the state of New Mexico for the forty-second legislature, first session, for per diem and mileage of the members, for salaries of employees and for other expenses of the legislature, the sum of five million three hundred seventeen thousand three hundred twenty dollars (\$5,317,320) or so much thereof as may be necessary for such purposes.

Section 2

Section 2. The expenditures referred to in Section 1 of this act are as follows:

A. per diem for senators ----- \$ 189,000;

B. per diem for members of the house of representatives -----
----- \$ 315,000;

C. mileage traveled by members of the senate going to and returning from the seat of government by the usually traveled route, one round trip ----- \$ 3,294;

D. mileage traveled by members of the house of representatives going to and returning from the seat of government by the usually traveled route, one round trip -
-----\$ 4,798;

E. salaries and employee benefits of senate employees-----
----- \$1,598,894;

F. salaries and employee benefits of house of representatives employees-
----- \$1,583,275;

G. for expense of the senate not itemized above, three hundred twenty-seven thousand four hundred dollars (\$327,400). No part of this item may be transferred to salaries or employee benefits;

H. for expense of the house of representatives not itemized above, three hundred forty-three thousand dollars (\$343,000). No part of this item may be transferred to salaries or employee benefits;

I. the expenditures for the house of representatives shall be disbursed on vouchers signed by the speaker and chief clerk of the house; the expenditures for the senate shall be disbursed on vouchers signed by the chairman of the committees' committee and the chief clerk of the senate; and

J. for session expenses of the legislative council service, the joint billroom and mailroom and joint legislative switchboard, nine hundred fifty-two thousand six hundred fifty-nine dollars (\$952,659) to be disbursed upon vouchers signed by the director of the legislative council service. Following adjournment of the session, expenditures authorized under Subsections E through H of this section shall be disbursed upon vouchers signed by the director of the legislative council service.

Section 3

Section 3. Typewriters and computers purchased by the legislature are to be placed in the custody of the legislative council service by the chief clerks of the respective houses as soon after the session as practicable. Typewriters and computers used for two consecutive regular sessions and not needed for legislative use may be offered for resale to state agencies, public officials, public institutions and local public bodies at the original price paid by the legislature less ninety dollars (\$90.00), and the proceeds shall be deposited in the legislative information system fund. Any typewriters and computers purchased by the legislature and held for a period of more than two consecutive regular sessions may be sold at a price found to be the fair market price by the New Mexico legislative council and the proceeds shall be deposited in the legislative information system fund.

Section 4

Section 4. Under the printing contracts entered into for the forty-second legislature, first session, the chairman of the committees' committee of the senate, subject to the approval of the committee, and the speaker of the house of representatives are authorized and directed to provide for the printing of all bills, resolutions, joint resolutions, memorials and joint memorials introduced in the senate or house, the printing of the weekly bill locator and the printing of all necessary stationery required for use in the respective houses. They are further directed to provide for the purchase of all

supplies necessary for use in the respective houses within the appropriation provided. The orders for printing, stationery and supplies shall be approved by the chairman of the committees' committee in the senate or by the speaker for the house.

Section 5

Section 5. For the first session of the forty-second legislature, bills, resolutions, joint resolutions, memorials and joint memorials delivered to the printer shall be returned by the printer to the joint billroom within forty-two hours after they are ordered to be printed. The billroom personnel shall supply a complete file of bills, resolutions, joint resolutions, memorials, joint memorials and other printed distribution materials to the following:

- A. two copies to each member of the house of representatives and senate;
- B. one copy to each county clerk, district judge, radio or television station and newspaper and to the general library of each state-supported institution of higher learning;
- C. upon written request therefor, one copy to each state department, commission, board, institution or agency, each elected state official, each incorporated municipality, each district attorney, each ex-governor, each member of the New Mexico congressional delegation and each public school district in the state; and
- D. one copy to two other addresses specified by each individual member of the legislature.

Section 6

Section 6. Any person not enumerated in Section 5 of this act may secure a complete file of the bills, resolutions, joint resolutions, memorials and joint memorials of the legislature by depositing with the legislative council service the amount of five hundred dollars (\$500), which deposit shall be paid to the state treasurer to the credit of the legislative expense fund. Additional single copies of items of legislation shall be sold for fifty cents (\$.50) unless the director of the legislative council service shall, because of its length, assign a higher price not to exceed ten cents (\$.10) per page. Copies of a daily bill locator, other than those copies furnished each member of the respective houses, shall be supplied by the legislative council service at a charge of one hundred dollars (\$100) for the entire session.

Section 7

Section 7. There is appropriated from the general fund to the legislative council service for fiscal year 1996 unless otherwise indicated, to be disbursed on vouchers signed by the director of the legislative council service, the following:

A. Personal Services	\$1,808,400
Employee Benefits	573,900
Travel	62,500
Maintenance & Repairs	48,500
Supplies & Materials	41,200
Contractual Services	202,900
Operating Costs	253,600
Other Operating Costs	100,000
Capital Outlay	77,500
Out-of-State Travel	58,000

Total \$3,226,500;

B. for travel expenses of legislators other than New Mexico legislative council members, on legislative council business, for committee travel, staff and other necessary expenses for other interim committees and for other necessary legislative expenses for fiscal year 1996, the sum of four hundred forty-one thousand two hundred dollars (\$441,200); provided that the New Mexico legislative council may transfer amounts from the appropriation in this subsection, during the fiscal year for which appropriated, to any other legislative appropriation where they may be needed;

C. for pre-session expenditures and for necessary contracts, supplies and personnel for interim session preparation, the sum of three hundred fifty-two thousand three hundred dollars (\$352,300); and

D. for the annual meeting of the western legislative conference to be held in Santa Fe in 1996 to perform such functions as necessary to prepare for the meeting, the sum of fifty thousand dollars (\$50,000).

Section 8

Section 8. There is appropriated from the general fund to the legislative finance committee for fiscal year 1996, to be disbursed on vouchers signed by the chairman of the committee or his designated representative, the following:

Personal Services	\$1,308,500
Employee Benefits	365,100
Travel	101,900
Maintenance & Repairs	11,200
Supplies & Materials	25,200
Contractual Services	268,000
Operating Costs	107,700
Capital Outlay	17,400

Out-of-State Travel	67,600
Total	\$ 2,272,600.

Section 9

Section 9. There is appropriated from the general fund to the legislative education study committee for fiscal year 1996, to be disbursed on vouchers signed by the chairman of the committee or his designated representative, the following:

Personal Services	\$ 407,600
Employee Benefits	115,000
Travel	37,500
Maintenance & Repairs	15,000
Supplies & Materials	11,500
Contractual Services	11,500
Operating Costs	15,000
Capital Outlay	17,700
Out-of-State Travel	11,500
Total	\$ 642,300.

Section 10

Section 10. There is appropriated from the general fund to the legislative council service for the interim duties of the senate rules committee the sum of forty-six thousand six hundred dollars (\$46,600) for fiscal year 1996.

Section 11

Section 11. There is appropriated from the general fund to the legislative council service for expenditure in fiscal year 1996 for the operation of the house chief clerk's office, to be disbursed on vouchers signed by the director of the legislative council service, the following:

Personal Services	\$ 175,548
Employee Benefits	53,591
Travel	2,100
Maintenance & Repairs	45
Supplies	1,000
Contractual Services	1,500
Operating Costs	3,724
Out-of-State Travel	16,500
Total	\$ 254,008.

Section 12

Section 12. There is appropriated from the general fund to the legislative council service for expenditure in fiscal year 1996 for the operation of the senate chief clerk's office, to be disbursed on vouchers signed by the director of the legislative council service, the following:

Personal Services	\$ 170,217
Employee Benefits	53,157
Travel	2,100
Maintenance & Repairs	100
Supplies	1,000
Contractual Services	1,500
Operating Costs	3,900
Out-of-State Travel	11,472
Total	\$ 243,446.

Section 13

Section 13. There is appropriated from the general fund to the legislative council service for expenditure in fiscal years 1995 through 1997 for work on the census block boundary suggestion program two hundred fifty thousand dollars (\$250,000).

Section 14

Section 14. CATEGORY TRANSFER.--Amounts set out in Sections 7, 8 and 9 of this act are provided for informational purposes only and may be freely transferred among categories.

Section 15

Section 15. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

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HOUSE BILL 1 WITH EMERGENCY CLAUSE
SIGNED JANUARY 26, 1995

CHAPTER 2

WITH LINE-ITEM VETOES

RELATING TO CAPITAL EXPENDITURES; MAKING AN APPROPRIATION TO THE STATE DEPARTMENT OF PUBLIC EDUCATION FOR CAPITAL OUTLAY NEEDS AND CAPITAL IMPROVEMENTS IN GADSDEN INDEPENDENT SCHOOL DISTRICT IN DONA ANA COUNTY; ~~MAKING AN APPROPRIATION FOR A RECREATION, SWIMMING POOL AND CONVENTION CENTER FACILITY IN THE CITY OF LAS VEGAS IN SAN MIGUEL COUNTY; DECLARING AN EMERGENCY.~~

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

Section 1

Section 1. APPROPRIATION--STATE DEPARTMENT OF PUBLIC EDUCATION.--Five million dollars (\$5,000,000) is appropriated from the general fund to the state department of public education for expenditure in fiscal years 1995 through 1998 for the purpose of meeting the capital outlay needs and making capital improvements in the Gadsden independent school district in Dona Ana county. Any unexpended or unencumbered balance remaining at the end of fiscal year 1998 shall revert to the general fund.

Section 2

~~Section 2. APPROPRIATION--LOCAL GOVERNMENT DIVISION OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION.--Two hundred fifty thousand dollars (\$250,000) is appropriated from the general fund to the local government division of the department of finance and administration for expenditure in fiscal years 1995 through 1998 to design, construct or equip a recreation, swimming pool and convention center facility in the city of Las Vegas in San Miguel county. Any unexpended or unencumbered balance remaining at the end of fiscal year 1998 shall revert to the general fund.~~

Section 3

Section 3. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE BILL 1 WITH EMERGENCY CLAUSE
SIGNED FEBRUARY 6, 1995

CHAPTER 3

EXPANDING THE PURPOSE FOR WHICH PROCEEDS FROM SEVERANCE TAX BONDS WERE APPROPRIATED FOR A DENTAL CLINIC IN LOVING IN EDDY COUNTY TO INCLUDE CLINIC RENOVATION AND CONSTRUCTION; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1

Section 1. SEVERANCE TAX BONDS--LOCAL GOVERNMENT DIVISION OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION--EXPANSION OF PURPOSE--APPROPRIATION.--One hundred forty thousand dollars (\$140,000) from the proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration in Subsection PPPP of Section 9 of Chapter 148 of Laws 1994 to furnish and equip a dental clinic in Loving in Eddy county may also be used to renovate and construct an expansion of that clinic and the proceeds are appropriated for that expanded purpose.

Section 2

Section 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE BILL 17 WITH EMERGENCY CLAUSE
SIGNED FEBRUARY 6, 1995

CHAPTER 4

RELATING TO VETERANS; MAKING AN APPROPRIATION TO HELP MARK THE FIFTIETH YEAR ANNIVERSARY OF THE END OF WORLD WAR II; DECLARING AN EMERGENCY.

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

Section 1

Section 1. APPROPRIATION--COMMEMORATION.--Thirty-five thousand dollars (\$35,000) is appropriated from the general fund to the New Mexico veterans' service commission for expenditure in fiscal years 1995 and 1996 for the purpose of assisting the New Mexico World War II commemorative committee to develop appropriate events marking the fiftieth anniversary of the end of World War II. Any unexpended or unencumbered balance remaining at the end of fiscal year 1996 shall revert to the general fund.

Section 2

Section 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 99 WITH EMERGENCY CLAUSE
SIGNED FEBRUARY 17, 1995

CHAPTER 5

MAKING AN APPROPRIATION FOR ORGANIZATIONAL AND PROMOTIONAL ACTIVITIES ASSOCIATED WITH AMERICA JAPAN WEEK 1995; DECLARING AN EMERGENCY.

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

Section 1

Section 1. APPROPRIATION.--One hundred fifty thousand dollars (\$150,000) is appropriated from the general fund to the tourism department for expenditure in fiscal years 1995 and 1996 for the purpose of conducting organizational and promotional activities associated with "America Japan Week 1995", a cultural exchange program occurring in Albuquerque, Santa Fe, Rio Rancho and Los Alamos in May and June of 1995. Any unexpended or unencumbered balance remaining at the end of fiscal year 1996 shall revert to the general fund.

Section 2

Section 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE BILL 100 WITH EMERGENCY CLAUSE
SIGNED FEBRUARY 22, 1995

CHAPTER 6

RELATING TO TAXATION; DECREASING THE RATE OF THE GASOLINE TAX; PROVIDING FOR DISTRIBUTION OF REVENUES; AMENDING CERTAIN PROVISIONS OF THE GROUND WATER PROTECTION ACT; AMENDING A SECTION OF LAWS 1994 AND AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. That version of Section 7-1-6.7 NMSA 1978 (being Laws 1994, Chapter 5, Section 2) that is to become effective on August 1, 1995 is amended to read:

"7-1-6.7. DISTRIBUTIONS--STATE AVIATION FUND.--

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state aviation fund in an amount equal to two and fifteen hundredths percent of the gross receipts attributable to the sale of fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state aviation fund in an amount equal to twenty-six hundredths of one percent of gasoline taxes, exclusive of penalties and interest, collected pursuant to the Gasoline Tax Act."

Section 2

Section 2. Section 7-1-6.8 NMSA 1978 (being Laws 1983, Chapter 211, Section 13, as amended) is amended to read:

"7-1-6.8. DISTRIBUTION--MOTORBOAT FUEL TAX FUND.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the motorboat fuel tax fund in an amount equal to thirteen hundredths of one percent of the net receipts attributable to the gasoline tax."

Section 3

Section 3. Section 7-1-6.9 NMSA 1978 (being Laws 1991, Chapter 9, Section 11, as amended) is amended to read:

"7-1-6.9. DISTRIBUTION OF GASOLINE TAXES TO MUNICIPALITIES AND COUNTIES.--

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made in an amount equal to ten and thirty-eight hundredths percent of the net receipts attributable to the taxes, exclusive of penalties and interest, imposed by the Gasoline Tax Act.

B. The amount determined in Subsection A of this section shall be distributed as follows:

(1) ninety percent of the amount shall be paid to the treasurers of municipalities and H class counties in the proportion that the taxable motor fuel sales in each of the municipalities and H class counties bears to the aggregate taxable motor fuel sales in all of these municipalities and H class counties; and

(2) ten percent of the amount shall be paid to the treasurers of the counties, including H class counties, in the proportion that the taxable motor fuel sales outside of incorporated municipalities in each of the counties bears to the aggregate taxable motor fuel sales outside of incorporated municipalities in all of the counties.

C. This distribution shall be paid into the municipal treasury or county general fund for general purposes or for any special purposes designated by the governing body of the municipality or county. Any municipality or H class county that has created or that creates a "street improvement fund" to which gasoline tax revenues or distributions are irrevocably pledged under Sections 3-34-1 through 3-34-4 NMSA 1978 or that has pledged all or a portion of gasoline tax revenues or distributions to the payment of bonds shall receive its proportion of the distribution of revenues under this section impressed with and subject to these pledges."

Section 4

Section 4. Section 7-1-6.10 NMSA 1978 (being Laws 1983, Chapter 211, Section 15, as amended) is amended to read:

"7-1-6.10. DISTRIBUTIONS--STATE ROAD FUND.--

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state road fund in an amount equal to the net receipts attributable to the taxes, surcharges, penalties and interest imposed pursuant to the Gasoline Tax Act and to the taxes, surtaxes, fees, penalties and interest imposed pursuant to the Special Fuels Tax Act and the Special Fuels Supplier Tax Act less:

(1) the amount distributed to the state aviation fund pursuant to Subsection B of Section 7-1-6.7 NMSA 1978;

(2) the amount distributed to the motorboat fuel tax fund pursuant to Section 7-1-6.8 NMSA 1978;

(3) the amount distributed to municipalities and counties pursuant to Subsection A of Section 7-1-6.9 NMSA 1978;

(4) the amount distributed to the county government road fund pursuant to Section 7-1-6.19 NMSA 1978;

(5) the amounts distributed to the corrective action fund and the local governments road fund pursuant to Section 7-1-6.25 NMSA 1978;

(6) the amount distributed to the municipalities pursuant to Section 7-1-6.27 NMSA 1978;

(7) the amount distributed to the municipal arterial program of the local governments road fund pursuant to Section 7-1-6.28 NMSA 1978; and

(8) the amount distributed to the local governments road fund pursuant to Section 7-1-6.39 NMSA 1978.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state road fund in an amount equal to the net receipts attributable to the taxes, fees, interest and penalties from the Weight Distance Tax Act."

Section 5

Section 5. Section 7-1-6.19 NMSA 1978 (being Laws 1991, Chapter 9, Section 15, as amended) is amended to read:

"7-1-6.19. DISTRIBUTION--COUNTY GOVERNMENT ROAD FUND CREATED.-

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A. There is created in the state treasury the "county government road fund".

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the county government road fund in an amount equal to five and seventy-six hundredths percent of the net receipts attributable to the gasoline tax."

Section 6

Section 6. Section 7-1-6.25 NMSA 1978 (being Laws 1988, Chapter 70, Section 9, as amended) is amended to read:

"7-1-6.25. DISTRIBUTION OF PETROLEUM PRODUCTS LOADING FEE--CORRECTIVE ACTION FUND--LOCAL GOVERNMENTS ROAD FUND.--

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 of the net receipts attributable to the petroleum products loading fee shall be made to each of the following funds in the following amounts:

(1) to the corrective action fund an amount equal to fifty percent of the net receipts; and

(2) to the local governments road fund an amount equal to fifty percent of the net receipts.

B. Imposition of the petroleum products loading fee shall cease on the first day of the month following the expiration of ninety days from the end of the month for which the unencumbered balance of the corrective action fund is certified to equal or

exceed fifty million dollars (\$50,000,000) and for every month thereafter until the unencumbered balance is certified by the secretary of environment to be less than or equal to twelve million dollars (\$12,000,000) as of the end of any month, in which event the imposition of the petroleum products loading fee shall be reinstated on the first day of the month following the expiration of ninety days after the end of the month for which the certification was made and the distribution of the fee shall be returned to the corrective action fund."

Section 7

Section 7. Section 7-1-6.27 NMSA 1978 (being Laws 1991, Chapter 9, Section 20, as amended) is amended to read:

"7-1-6.27. DISTRIBUTION--MUNICIPAL ROADS.--

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to municipalities for the purposes and amounts specified in this section in an aggregate amount equal to five and seventy-six hundredths percent of the net receipts attributable to the gasoline tax.

B. The distribution authorized in this section shall be used for the following purposes:

(1) reconstructing, resurfacing, maintaining, repairing or otherwise improving existing alleys, streets, roads or bridges, or any combination of the foregoing; or laying off, opening, constructing or otherwise acquiring new alleys, streets, roads or bridges, or any combination of the foregoing; provided that any of the foregoing improvements may include, but are not limited to, the acquisition of rights of way; and

(2) for expenses of purchasing, maintaining and operating transit operations and facilities, for the operation of a transit authority established by the municipal transit law and for the operation of a vehicle emission inspection program. A municipality may engage in the business of the transportation of passengers and property within the political subdivision by whatever means the municipality may decide and may acquire cars, trucks, motor buses and other equipment necessary for operating the business. A municipality may acquire land, erect buildings and equip the buildings with all the necessary machinery and facilities for the operation, maintenance, modification, repair and storage of the cars, trucks, motor buses and other equipment needed. A municipality may do all things necessary for the acquisition and the conduct of the business of public transportation.

C. For the purposes of this section:

(1) "computed distribution amount" means the distribution amount calculated for a municipality for a month pursuant to Paragraph (2) of Subsection D of

this section prior to any adjustments to the amount due to the provisions of Subsections E and F of this section;

(2) "floor amount" means four hundred seventeen dollars (\$417);

(3) "floor municipality" means a municipality whose computed distribution amount is less than the floor amount; and

(4) "full distribution municipality" means a municipality whose population at the last federal decennial census was at least two hundred thousand.

D. Subject to the provisions of Subsections E and F of this section, each municipality shall be distributed a portion of the aggregate amount distributable under this section in an amount equal to the greater of:

(1) the floor amount; or

(2) eighty-five percent of the aggregate amount distributable under this section times a fraction, the numerator of which is the municipality's reported taxable gallons of gasoline for the immediately preceding state fiscal year and the denominator of which is the reported total taxable gallons for all municipalities for the same period.

E. Fifteen percent of the aggregate amount distributable under this section shall be referred to as the "redistribution amount". Beginning in August 1990, and each month thereafter, from the redistribution amount there shall be taken an amount sufficient to increase the computed distribution amount of every floor municipality to the floor amount. In the event that the redistribution amount is insufficient for this purpose, the computed distribution amount for each floor municipality shall be increased by an amount equal to the redistribution amount times a fraction, the numerator of which is the difference between the floor amount and the municipality's computed distribution amount and the denominator of which is the difference between the product of the floor amount multiplied by the number of floor municipalities and the total of the computed distribution amounts for all floor municipalities.

F. If a balance remains after the redistribution amount has been reduced pursuant to Subsection E of this section, there shall be added to the computed distribution amount of each municipality that is neither a full distribution municipality nor a floor municipality an amount that equals the balance of the redistribution amount times a fraction, the numerator of which is the computed distribution amount of the municipality and the denominator of which is the sum of the computed distribution amounts of all municipalities that are neither full distribution municipalities nor floor municipalities."

Section 8

Section 8. Section 7-1-6.28 NMSA 1978 (being Laws 1991, Chapter 9, Section 22, as amended) is amended to read:

"7-1-6.28. DISTRIBUTION--MUNICIPAL ARTERIAL PROGRAM OF LOCAL GOVERNMENTS ROAD FUND.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the municipal arterial program of the local governments road fund created in Section 67-3-28.2 NMSA 1978 in an amount equal to one and forty-four hundredths percent of the net receipts attributable to the gasoline tax."

Section 9

Section 9. A new section of the Tax Administration Act, Section 7-1-6.39 NMSA 1978, is enacted to read:

"7-1-6.39. DISTRIBUTION OF SPECIAL FUEL EXCISE TAX TO LOCAL GOVERNMENTS ROAD FUND.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the local governments road fund in an amount equal to eleven and eleven hundredths percent of the net receipts attributable to the taxes, exclusive of penalties and interest, from the special fuel excise tax imposed by the Special Fuels Supplier Tax Act."

Section 10

Section 10. Section 7-13-3 NMSA 1978 (being Laws 1971, Chapter 207, Section 3, as amended) is amended to read:

"7-13-3. IMPOSITION AND RATE OF TAX--DENOMINATION AS "GASOLINE TAX".--

A. For the privilege of receiving gasoline in this state, there is imposed an excise tax at a rate provided in Subsection B of this section on each gallon of gasoline received in New Mexico.

B. The tax imposed by Subsection A of this section shall be seventeen cents (\$.17) per gallon received in New Mexico.

C. The tax imposed by this section may be called the "gasoline tax".

Section 11

Section 11. Section 7-13-3 NMSA 1978 (being Laws 1971, Chapter 207, Section 3, as amended) is repealed and a new Section 7-13-3 NMSA 1978 is enacted to read:

"7-13-3. IMPOSITION AND RATE OF TAX--DENOMINATION AS "GASOLINE TAX".--

A. For the privilege of receiving gasoline in this state, there is imposed an excise tax at a rate provided in Subsection B of this section on each gallon of gasoline received in New Mexico.

B. The tax imposed by Subsection A of this section shall be sixteen cents (\$.16) per gallon received in New Mexico.

C. The tax imposed by this section may be called the "gasoline tax".

Section 12

Section 12. Section 66-5-33.1 NMSA 1978 (being Laws 1985, Chapter 47, Section 1, as amended) is amended to read:

"66-5-33.1. REINSTATEMENT OF DRIVER'S LICENSE OR REGISTRATION--FEE.--Whenever a driver's license or registration is suspended or revoked and an application has been made for its reinstatement, compliance with all appropriate provisions of the Motor Vehicle Code and the payment of a fee of twenty-five dollars (\$25.00) is a prerequisite to the reinstatement of any license or registration; except that, if a driver's license was suspended or revoked for driving while under the influence of intoxicating liquor or drugs or for a violation of the Implied Consent Act, an additional fee of seventy-five dollars (\$75.00) is required to be paid to reinstate the driver's license. The division shall deposit the additional fee in the local governments road fund. The division shall maintain an accounting of the additional fees deposited in the local governments road fund pursuant to this section and shall report that amount annually and upon request to the legislature."

Section 13

Section 13. Section 66-6-23 NMSA 1978 (being Laws 1978, Chapter 35, Section 358, as amended by Laws 1994, Chapter 117, Section 23 and also by Laws 1994, Chapter 126, Section 23) is amended to read:

"66-6-23. DISPOSITION OF FEES.--

A. After the necessary disbursements for refunds and other purposes have been made, the money remaining, except for remittances received within the previous two months that are unidentified as to source or disposition, shall be distributed as follows:

(1) to each municipality, county or fee agent operating a motor vehicle field office, an amount equal to six dollars (\$6.00) per driver's license and three dollars (\$3.00) per identification card, registration or title transaction performed;

(2) to each municipality or county, other than a class A county with a population in excess of three hundred thousand or a municipality with a population in

excess of three hundred thousand within a class A county, operating a motor vehicle field office, an amount equal to fifty cents (\$.50) for each administrative service fee remitted by that county or municipality to the department pursuant to the provisions of Section 66-2-16 NMSA 1978;

(3) to the state road fund:

(a) an amount equal to one-half of each fee received from motorcycle endorsements; and

(b) the remainder of each driver's license fee collected by the department employees from an applicant to whom a license is granted after deducting from the driver's license fee the amount of the distribution authorized in Paragraph (1) of this subsection with respect to that collected driver's license fee;

(4) to the local governments road fund, the amount of the fees provided for in Subsection A of Section 66-5-408 NMSA 1978;

(5) to the division:

(a) an amount equal to one-half of each fee received from motorcycle endorsements;

(b) an amount equal to two dollars (\$2.00) of each motorcycle registration fee collected pursuant to Section 66-6-1 NMSA 1978; and

(c) an amount equal to the fees provided for in Subsection C of Section 66-5-44 NMSA 1978 and Subsection B of Section 66-5-408 NMSA 1978;

(6) to the state equalization guarantee distribution made annually pursuant to the general appropriation act, an amount equal to one hundred percent of the driver safety fee collected pursuant to Section 66-5-44 NMSA 1978;

(7) to the rubberized asphalt fund, forty-five percent of all tire recycling fees collected pursuant to the provisions of Sections 66-6-1, 66-6-2, 66-6-4, 66-6-5 and 66-6-8 NMSA 1978; and

(8) to the tire recycling fund, the amount remaining after distributions pursuant to Paragraph (7) of this subsection have been made to the rubberized asphalt fund, annual tire recycling fees collected pursuant to the provisions of Sections 66-6-1, 66-6-2, 66-6-4, 66-6-5 and 66-6-8 NMSA 1978.

B. The balance, exclusive of unidentified remittances, after having been reduced by the distributions required by Subsection A of this section, shall be further reduced by a distribution of forty-three percent of the balance to the state road fund, and the remainder of the

balance shall be transferred or distributed by the state treasurer on or before the last day of the month next after its receipt, as follows:

(1) forty-one and three-tenths percent shall be distributed to the state road fund;

(2) seventeen and six-tenths percent shall be transferred to each county in the proportion, determined by the department in accordance with Subsection C of this section, that the registration fees for vehicles in that county are to the total registration fees for vehicles in all counties;

(3) seventeen and six-tenths percent shall be transferred to the counties, each county receiving an amount equal to the proportion, determined by the secretary of highway and transportation in accordance with Subsection E of this section, that the mileage of public roads maintained by the county is to the total mileage of public roads maintained by all counties of the state. Amounts distributed to each county in accordance with this paragraph shall be credited to the respective county road fund and be used for the improvement and maintenance of the public roads in the county and to pay for the acquisition of rights of way and material pits. For this purpose, the board of county commissioners of each of the respective counties shall certify by April 1 of each year to the secretary of highway and transportation the total mileage as of April 1 of that year; provided that in their report, the boards of county commissioners shall identify each of the public roads maintained by them by name, route and location. By agreement and in cooperation with the state highway and transportation department, the boards of county commissioners of the various counties may use or designate any of the funds provided in this paragraph for any federal aid program;

(4) nine and four-tenths percent shall be allocated among the counties in the proportion, determined by the department in accordance with Subsection C of this section, that the registration fees for vehicles in that county are to the total registration fees for vehicles in all counties. The amount allocated to each county shall be transferred to the incorporated municipalities within the county in the proportion, determined by the department of finance and administration in accordance with Subsection C of this section, that the sum of net taxable value, as that term is defined in the Property Tax Code, plus the assessed value, as that term is used in the Oil and Gas Ad Valorem Production Tax Act and in the Oil and Gas Production Equipment Ad Valorem Tax Act, determined for the incorporated municipality is to the sum of net taxable value plus assessed value determined for all incorporated municipalities within the county. Amounts transferred to incorporated municipalities under the provisions of this paragraph shall be used for the construction, maintenance and repair of streets within the municipality and for payment of paving assessments against property owned by federal, county or municipal governments. In any county in which there are no incorporated municipalities, the amount allocated under this paragraph shall be transferred to the county road fund and used in accordance with the provisions of Paragraph (3) of this subsection; and

(5) fourteen and one-tenth percent shall be allocated among the counties in the proportion, determined by the department in accordance with Subsection C of this section, that the registration fees for vehicles in that county are to the total registration fees for vehicles in all counties. The amount allocated to each county shall be transferred to the county and incorporated municipalities within the county in the proportion, determined by the department of finance and administration in accordance with Subsection C of this section, that the computed taxes due for the county and each incorporated municipality within the county bear to the total computed taxes due for the county and incorporated municipalities within the county; for the purposes of this paragraph, the term "computed taxes due" for any jurisdiction means the sum of the net taxable value, as that term is defined in the Property Tax Code, plus the assessed value, as that term is used in the Oil and Gas Ad Valorem Production Tax Act and in the Oil and Gas Production Equipment Ad Valorem Tax Act, for that jurisdiction multiplied by an average of the rates for residential and nonresidential property imposed for that jurisdiction pursuant to Subsection B of Section 7-37-7 NMSA 1978.

C. To carry out the provisions of this section, during the month of June of each year:

(1) the department shall determine and certify to the department of finance and administration the proportions which the department is required to determine by Subsection B of this section using information for the preceding calendar year on the number of vehicles registered in each county based on the address of the owner or place where the vehicle is principally located, the registration fees for the vehicles registered in each county, the total number of vehicles registered in the state and the total registration fees for all vehicles registered in the state; and

(2) the department of finance and administration shall determine the proportions that the department of finance and administration is required to determine by Subsection B of this section based upon the net taxable value, as that term is defined in the Property Tax Code, and assessed value, as that term is used in the Oil and Gas Ad Valorem Production Tax Act and the Oil and Gas Production Equipment Ad Valorem Tax Act, for the preceding tax year and the tax rates imposed pursuant to Subsection B of Section 7-37-7 NMSA 1978 in the preceding September.

D. By June 30 of each year, the department of finance and administration shall determine the appropriate percentage of money to be transferred to each county and municipality for each purpose in accordance with Subsection A of this section based upon the proportions determined by or certified to the department of finance and administration. The percentages determined shall be used to compute the amounts to be transferred to the counties and municipalities during the succeeding fiscal year.

E. The board of county commissioners of each of the respective counties shall, by April 1 of every year, certify reports to the secretary of highway and transportation of the total mileage of public roads maintained by each county as of April 1 of every year; provided that in their reports, the boards of county commissioners shall

identify each of the public roads maintained by them by name, route and location. By July 1 of every year, the secretary of highway and transportation shall verify the reports of the counties and revise, if necessary, the total mileage of public roads maintained by each county and the mileage verified by the secretary of highway and transportation shall be the official mileage of public roads maintained by each county. Distribution of amounts to any county for road purposes shall be made in accordance with this section.

F. If a county has not made the required mileage certification pursuant to Section 67-3-28.3 NMSA 1978 by April 1 of any year, the secretary of highway and transportation shall estimate the mileage maintained by those counties for the purpose of making distribution to all counties, and the amount calculated to be distributed each month to those counties not certifying mileage shall be reduced by one-third each month for that fiscal year and that amount not distributed to those counties shall be distributed equally to all counties that have certified mileages.

G. The secretary shall review, at the end of each fiscal year, the aggregate total of motor vehicle transactions performed by each municipality, county or fee agent operating a motor vehicle field office, and for each office exceeding ten thousand aggregate transactions per year, that municipality, county or fee agent shall be paid an additional one dollar (\$1.00) per identification card, driver's license, registration or title transaction performed during the next fiscal year."

Section 14

Section 14. Section 67-3-28.2 NMSA 1978 (being Laws 1986, Chapter 20, Section 125, as amended by Laws 1993, Chapter 277, Section 2 and also by Laws 1993, Chapter 312, Section 1) is amended to read:

"67-3-28.2. LOCAL GOVERNMENTS ROAD FUND CREATED--USES.--

A. There is created in the state treasury the "local governments road fund" to be administered by the department. All income received from investment of the fund shall be credited to the fund. No money in the fund shall be used by the department to administer any program, and no entity receiving a distribution pursuant to a program requiring matching funds shall use another distribution made pursuant to this section to meet the match required.

B. No more than five hundred thousand dollars (\$500,000) annually from the local governments road fund shall be used by the department to purchase at fair market value, for municipalities and counties that can demonstrate financial hardship as determined by the department, automotive, major road and miscellaneous equipment that would otherwise be sold at auction by the department as unusable for department purposes. The department shall adopt rules setting the procedure to carry out the purposes of this subsection.

C. Except for the amount in Subsection B of this section, money in the local governments road fund shall be distributed in the following amounts for the specified purposes:

(1) forty-two percent for the cooperative agreements program, to be used solely for the cooperative agreements entered into pursuant to Section 67-3-28 NMSA 1978 and in accordance with the match authorized pursuant to Section 67-3-32 NMSA 1978; provided, however, that distribution amounts made pursuant to this paragraph in each year shall be based on the following allocations:

(a) thirty-three percent for agreements entered into with counties;

(b) forty-nine percent for agreements entered into with municipalities;

(c) fourteen percent for agreements entered into with school districts; and

(d) four percent for agreements entered into with other entities;

(2) sixteen percent for the municipal arterial program, to be used solely for the necessary project development, construction, reconstruction, improvement, maintenance, repair and right-of-way and material acquisition of and for those streets that are principal extensions of rural state highways and of other streets not on the state highway system but that qualify under the designated criteria established by the department. In entering into agreements with municipalities to provide funds for any project qualifying for the municipal arterial program, the department shall give preference to municipalities that contribute an amount equal to at least twenty-five percent of the project cost;

(3) sixteen percent for school bus routes, to be used solely for cooperative agreements entered into pursuant to Section 67-3-28 NMSA 1978 and in accordance with the match authorized pursuant to Section 67-3-32 NMSA 1978 for acquiring rights of way and constructing, maintaining, repairing, improving and paving school bus routes and public school parking lots; and

(4) twenty-six percent for the county arterial program, to be used for project development, construction, reconstruction, improvement, maintenance, repair and right-of-way and material acquisition of and for county roads for which individual counties have prioritized road projects. Prior to entering into any agreements for projects with the counties for the following fiscal year, in June of each year the department shall determine and certify the amount to which each county is entitled pursuant to the following schedule:

Road Mileage Category Based on
Number of Miles Maintained

By a County:

Entitlement to County:

400 miles or under

\$250 for each mile

401 to 800 miles

\$100,000 plus \$200 for each

801 to 1,200 miles

mile over 400 miles

\$180,000 plus \$150 for each

mile over 800 miles

1,201 to 1,600 miles

\$240,000 plus \$100 for each

mile over 1,200 miles

Over 1,600 miles

\$300,000 plus \$50 for each

mile over 1,600 miles.

If in any year there is an insufficient amount in the fund of the county arterial program to certify the total amount to which all counties are entitled, the department shall decrease the entitlement amount due to each county in the same proportion as the insufficiency is to the total entitlements to all counties. Distribution of an entitlement amount and an agreement entered into with a county for any of the purposes for which the money may be spent requires an amount from the county equal to at least twenty-five percent of the entitlement. Any uncommitted or unencumbered balance remaining in the county arterial program fund at the end of a fiscal year shall be transferred to the cooperative agreement program specified in Paragraph (1) of this subsection for additional funding of that program in the next fiscal year.

D. The department may transfer funds from the state road fund to the local governments road fund to facilitate cash flow for the funding of these local governments road projects. The administrator of the local governments road fund shall reimburse the state road fund in a timely manner for any such transfers."

Section 15

Section 15. Section 74-6B-2 NMSA 1978 (being Laws 1990, Chapter 124, Section 2) is amended to read:

"74-6B-2. FINDINGS--PURPOSE OF ACT.--

A. The legislature recognizes the threat to the public health and safety and the environment resulting from pollution of ground water resources as a result of leaking underground storage tanks. The legislature also recognizes that some owners and operators of facilities containing underground storage tanks cannot take corrective action without placing their businesses in serious financial jeopardy.

B. The legislature finds that, because New Mexico is large in area and sparsely populated in some regions, it is in the public interest to take corrective action at contaminated sites so that fuel will continue to be readily available.

C. The purpose of the Ground Water Protection Act is to provide substantive provisions and funding mechanisms to the extent that funds are available to enable the state to take corrective action at sites contaminated by leakage from underground storage tanks."

Section 16

Section 16. Section 74-6B-7 NMSA 1978 (being Laws 1990, Chapter 124, Section 7, as amended) is amended to read:

"74-6B-7. CORRECTIVE ACTION FUND CREATED--AUTHORIZATION FOR EXPENDITURES.--

A. There is created the "corrective action fund". This fund is intended to provide for financial assurance coverage required by federal law and shall be used by the department to the extent that revenues are available to take corrective action in response to a release, to pay for the costs of a minimum site assessment in excess of ten thousand dollars (\$10,000), to pay the state's share of federal leaking underground storage tank trust fund cleanup costs as required by the federal Resource Conservation and Recovery Act and to make payments to or on behalf of owners and operators in accordance with Section 74-6B-13 NMSA 1978. The owner or operator of a site shall not use the corrective action fund as evidence of financial assurance to satisfy claims of third parties.

B. The board, after recommendations from the underground storage tank committee, shall adopt regulations for establishing priorities for corrective action at sites contaminated by underground storage tanks. The priorities for corrective action shall be based on public health, safety and welfare and environmental concerns. In adopting regulations pursuant to this subsection, the board shall follow the procedures of Section 74-4-5 NMSA 1978. The provisions of that section relating to all other matters in connection with the adoption of regulations shall apply. The department shall establish priority lists of sites in accordance with the regulations adopted by the board.

C. The department shall make expenditures from the corrective action fund in accordance with regulations adopted by the board or the secretary for corrective action at sites contaminated by underground storage tanks; provided that the secretary shall adopt regulations by October 1, 1995 that require payments made pursuant to the Ground Water Protection Act to be based on a competitive bid procedure based on technical merit and cost-effectiveness. Payments may be made only for corrective action conducted by firms qualified by the department to perform such work pursuant to regulations adopted by the board. No expenditures from the corrective action fund shall

be paid to or on behalf of tank owners or operators for corrective action, other than a minimum site assessment or sampling, where the corrective action was conducted by firms or entities that are subsidiaries, parents or otherwise affiliate firms or entities of the owner or operators. These expenditures shall be made by the department to perform corrective action, to pay for the costs of a minimum site assessment in excess of ten thousand dollars (\$10,000) and to make payments to or on behalf of owners and operators in accordance with Section 74-6B-13 NMSA 1978. The department shall take corrective action at sites in the order of priority appearing on the priority lists, except when an emergency threat to public health, safety and welfare or to the environment exists. When available revenues are limited and the fund can no longer be approved as a financial responsibility mechanism, priorities for expenditures from the corrective action fund shall also be based on financial need as determined by regulations adopted by the department no later than October 1, 1995.

D. No expenditure from the corrective action fund shall be authorized for corrective action at sites owned or operated by the United States or any agency or instrumentality thereof.

E. Nothing in this section authorizes payments for the repair or replacement of any underground storage tank or equipment.

F. Nothing in this section authorizes payments or commitments for payments in excess of the funds available.

G. Within sixty days after receipt of notification that the corrective action fund has become incapable of paying for assured corrective actions, the owner or operator shall obtain alternative financial assurance acceptable to the department."

Section 17

Section 17. Section 74-6B-13 NMSA 1978 (being Laws 1992, Chapter 64, Section 10, as amended) is amended to read:

"74-6B-13. PAYMENT PROGRAM.--

A. Unless provided otherwise in this section, all costs in excess of ten thousand dollars (\$10,000) that are necessary to perform a minimum site assessment in accordance with the regulations of the board shall be paid from the corrective action fund. In the event that an owner or operator has performed a minimum site assessment after March 7, 1990 but prior to March 9, 1992 and has expended more than ten thousand dollars (\$10,000), the owner or operator may apply to the department for reimbursement of the costs of the minimum site assessment in excess of ten thousand dollars (\$10,000) and shall be entitled to reimbursement of those costs to the extent that money is available.

B. An owner or operator who has performed or who has made arrangements to perform corrective action after March 7, 1990 and in accordance with applicable environmental laws and regulations may apply to the department for payment of the costs of corrective action, other than a minimum site assessment, and shall be entitled to payment of those costs from the corrective action fund, if he has proven to the department that he has complied with the requirements of Section 74-6B-8 NMSA 1978 and if money is available in the fund.

C. Payment of the cost of corrective action, including the cost of a minimum site assessment, shall be made by the department following application and proper documentation of the costs and in accordance with regulations adopted by the secretary establishing eligible and ineligible costs. Eligible costs for payment are those reasonable and necessary costs actually incurred after March 7, 1990 in the performance of a site assessment and for corrective action that are consistent with the department's fee schedule. Ineligible costs include attorneys' fees, repair or upgrade of tanks, loss of revenue and costs of monitoring a contractor.

D. The department shall adopt regulations to provide for payments from the corrective action fund, to the extent that money is available in the fund, to persons who cannot afford to pay all or a portion of the initial ten thousand dollar (\$10,000) cost of a minimum site assessment otherwise required in this section. The department shall develop a financial assistance means test, including a sliding scale of financial relief as the department deems appropriate, that allows some or all of the minimum site assessment costs to be paid from the corrective action fund. This financial assistance relief shall be available to owners or operators who performed or made arrangements to perform corrective action after March 7, 1990.

E. All department determinations concerning the manner of payment, compliance and cost eligibility shall be made in accordance with department regulations.

F. If the owner or operator is in compliance with the requirements of Subsection B of Section 74-6B-8 NMSA 1978, payment of costs from the corrective action fund shall occur not later than ninety days after the submission of the application and proper documentation of costs by the owner or operator, except as provided in Section 74-6B-14 NMSA 1978.

G. The department shall reserve not less than twenty-five percent of the unexpended, unencumbered balance of the corrective action fund on July 1 of each year for the payment of claims made on the fund."

Section 18

Section 18. Laws 1994, Chapter 5, Section 29 is amended to read:

"Section 29. EFFECTIVE DATE.--

A. The effective date of the provisions of Section 22 of this act is July 1, 1994.

B. The effective date of the provisions of Sections 1, 4, 6, 8, 9, 11, 13, 15 and 25 of this act is August 1, 1994.

C. The effective date of the provisions of Section 19 of this act is January 1, 1995.

D. The effective date of the provisions of Section 2 of this act is August 1, 1995.

E. The effective date of the provisions of Section 20 of this act is January 1, 1996."

Section 19

Section 19. TEMPORARY PROVISION--CORRECTIVE ACTION FUND --
CERTIFICATION OF EMERGENCY.--When the department of environment certifies to the state board of finance that there is a balance of less than one million dollars (\$1,000,000) in the corrective action fund and that an emergency exists and funds are needed to respond to a release or to make payments to or on behalf of owners and operators in accordance with Section 74-6B-13 NMSA 1978, the state board of finance shall comply with the provisions of the General Appropriation Act of 1995 to meet those emergency needs.

Section 20

Section 20. REPEAL.--

A. Those versions of Sections 7-1-6.7 through 7-1-6.9, 7-1-6.19, 7-1-6.27, 7-1-6.28 and 7-1-6.37 NMSA 1978 (being Laws 1994, Chapter 5, Sections 3, 5, 7, 10, 12, 14 and 16) that are to become effective August 1, 1997 are repealed.

B. That version of Section 7-13-3 NMSA 1978 (being Laws 1994, Chapter 5, Section 23) that is to become effective July 1, 1997 is repealed.

Section 21

Section 21. REPEAL.--Section 7-1-6.37 NMSA 1978 (being Laws 1993, Chapter 357, Section 8, as amended) is repealed.

Section 22

Section 22. APPLICABILITY.--The provisions of Sections 1 through 9 and 21 of this act apply to receipts received by the taxation and revenue department on or after August 1, 1995.

Section 23

Section 23. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 10 and 12 through 14 of this act is July 1, 1995.

B. The effective date of the provisions of Sections 1 through 9 and 21 of this act is August 1, 1995.

C. The effective date of the provisions of Section 11 of this act is July 1, 2003 or the July 1 or January 1 immediately following any earlier date on which the obligations for payment of principal and interest on the series 1993 state highway debentures have been defeased.

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 11

CHAPTER 7

RELATING TO STATE SONGS;DECLARING "NEW MEXICO/MI LINDO NUEVO MEXICO" AS THE NEW MEXICO STATE BILINGUAL SONG.

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

Section 1

Section 1. STATE BILINGUAL SONG.--

A. The words and music of "New Mexico--Mi Lindo Nuevo Mexico", written by Pablo Mares, are declared to be the state bilingual song. The words are:

I'm singing a song of my homeland
Most wonderful place that I've seen.
My song cannot fully describe it
I call it land of my dreams.
New Mexico,
Land of the sun
Where yucca blooms
The sunset sighs.
New Mexico,

Your starry nights,
Your music sweet as daylight dies.
My heart returns
It ever yearns
To hear the desert breezes blow,
Your snow, your rain, your rainbows' blend,
I'm proud of my New Mexico.

(Translation)

Yo canto de un pais lindo
Mas bello no he visto yo,
Mi cancion no puede decirlo,
Como mi corazon.
Nuevo Mexico,
Pais del sol
Palmillas floreciendo alli.
Nuevo Mexico,
Tus noches lindas
Traen recuerdos para mi.
Mi corazon
Llora por ti me dice a mi
Te quiero yo.
Tus sierras y tus valles
Son mi lindo Nuevo Mexico.

B. A copy of the state bilingual song exhibited with this bill shall be filed with the secretary of state to be lodged in the archives of his office.

SENATE BILL 273

CHAPTER 8

RELATING TO MOTOR VEHICLES; PROVIDING FOR THE CONTINUED ISSUANCE OF SPECIAL REGISTRATION PLATES FOR ARMED FORCES VETERANS; AMENDING SECTIONS OF THE MOTOR VEHICLE CODE.

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

Section 1

Section 1. Section 66-3-409 NMSA 1978 (being Laws 1978, Chapter 199, Section 1, as amended) is amended to read:

"66-3-409. SPECIAL REGISTRATION PLATES--MEDAL OF HONOR RECIPIENTS.--

A. The division shall issue distinctive pale blue, white and gold registration plates to any person who has been awarded the medal of honor and who so requests

and submits proof satisfactory to the division that he has been awarded that medal. The plates shall each bear the inscription "Medal of Honor Recipient". No fee, including the regular registration fee applicable to the passenger motor vehicle, if any, shall be collected for the issuance of a special registration plate pursuant to this section.

B. No person shall falsely represent himself to be a medal of honor recipient in order to be eligible to be issued special registration plates pursuant to this section when he is in fact not such a recipient. Any person who violates the provisions of this subsection is guilty of a petty misdemeanor."

Section 2

Section 2. Section 66-3-411 NMSA 1978 (being Laws 1978, Chapter 99, Section 2, as amended) is amended to read:

"66-3-411. SPECIAL REGISTRATION PLATES--PRISONERS OF WAR AND SURVIVING SPOUSES--SUBMISSION OF PROOF--PENALTY.--

A. The division shall issue distinctive registration plates to any person, or to the surviving spouse of any deceased person, who was held as a prisoner of war by an enemy of the United States during any armed conflict, upon the submission by the person or surviving spouse of proof satisfactory to the division that he was held as a prisoner of war by an enemy of the United States during a period of armed conflict or that he is the surviving spouse of such a person. No fee, including the regular registration fee applicable to the passenger motor vehicle, if any, shall be collected for issuance of a special registration plate pursuant to this section.

B. No person shall falsely represent himself to have been held as a prisoner of war or to be the surviving spouse of a prisoner of war so as to be eligible to be issued special registration plates pursuant to this section when he in fact was not held as a prisoner of war or when he in fact is not the surviving spouse of a prisoner of war.

C. Any person who violates the provisions of Subsection B of this section is guilty of a misdemeanor."

Section 3

Section 3. Section 66-3-412 NMSA 1978 (being Laws 1979, Chapter 299, Section 2, as amended) is amended to read:

"66-3-412. SPECIAL REGISTRATION PLATES--ONE HUNDRED PERCENT DISABLED VETERANS--SUBMISSION OF PROOF--PENALTY.--

A. The division shall issue distinctive registration plates to any person who is a veteran of the armed forces of the United States, as defined in Section 28-13-7

NMSA 1978, and was one hundred percent disabled while serving in the armed forces of the United States, upon the submission by the person of proof satisfactory to the division that he was one hundred percent disabled while serving in the armed forces of the United States. No fee, including the regular registration fee applicable to the passenger motor vehicle, if any, shall be collected for issuance of a special registration plate pursuant to this section. Any person eligible for a special registration plate pursuant to this section and also eligible for one or more special registration plates pursuant to Sections 66-3-406, 66-3-409 and 66-3-411 NMSA 1978 shall be issued only one special registration plate of his choice.

B. No person shall falsely represent himself to have been one hundred percent disabled while serving in the armed forces of the United States so as to be eligible to be issued special registration plates pursuant to this section when he in fact was not one hundred percent disabled while serving in the armed forces of the United States.

C. Any person eligible for a special registration plate under this section shall only be eligible for one such plate.

D. Any person who violates the provisions of Subsection B of this section is guilty of a misdemeanor."

Section 4

Section 4. Section 66-3-414 NMSA 1978 (being Laws 1987, Chapter 23, Section 1, as amended) is amended to read:

"66-3-414. SPECIAL REGISTRATION PLATES FOR PURPLE HEART VETERANS.--

A. The division shall issue special registration plates to any person who is a veteran and a bona fide purple heart medal recipient and who submits proof satisfactory to the division that he has been awarded that medal. No fee, including the regular registration fee applicable to the passenger motor vehicle, if any, shall be collected for the issuance of the special registration plates pursuant to this section. Any person eligible for a special registration plate pursuant to this section and also eligible for one or more special registration plates pursuant to Sections 66-3-406, 66-3-409, 66-3-411 and 66-3-412 NMSA 1978 shall be issued only one special registration plate of his choice.

B. No person shall falsely represent himself to be a purple heart veteran so as to be eligible to be issued special plates pursuant to this section when he in fact is not a purple heart veteran.

C. Any person who violates the provisions of Subsection B of this section is guilty of a misdemeanor."

Section 5

Section 5. Section 66-3-415 NMSA 1978 (being Laws 1989, Chapter 162, Section 1, as amended) is amended to read:

"66-3-415. SPECIAL REGISTRATION PLATES FOR PEARL HARBOR SURVIVORS.--

A. The division shall issue distinctive registration plates indicating that the recipient is a survivor of the attack on Pearl Harbor if that person submits satisfactory proof to the division indicating that the person:

(1) was a member of the United States armed forces on December 7, 1941;

(2) received an honorable discharge from the United States armed forces; and

(3) was on station on December 7, 1941 during the hours of 7:55 a.m. to 9:45 a.m. Hawaii time at Pearl Harbor, the island of Oahu, or offshore at a distance not exceeding three miles.

B. The division shall confirm satisfactory proof with the New Mexico chapter of the Pearl Harbor survivors association.

C. No fee other than the registration fee applicable to the passenger motor vehicle, if any, shall be collected for the issuance of the distinctive registration plate pursuant to this section.

D. The recipient of a distinctive plate issued pursuant to this section shall be issued replacement plates upon request and without charge if the plate is lost, stolen or mutilated.

E. Any person eligible for a distinctive registration plate pursuant to this section and also eligible for one or more special or distinctive registration plates pursuant to Sections 66-3-406, 66-3-409, 66-3-411, 66-3-412 and 66-3-414 NMSA 1978 shall be issued only one special or distinctive registration plate of the person's choice.

F. No person shall falsely represent himself to be a survivor of the attack on Pearl Harbor so as to be eligible to be issued distinctive plates pursuant to this section when that person in fact is not a survivor of the attack on Pearl Harbor.

G. Any person who violates the provisions of Subsection F of this section is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) or by imprisonment for a definite term less than one year or both."

CHAPTER 9

RELATING TO MORTGAGE FINANCE; AMENDING AND REPEALING CERTAIN SECTIONS OF THE MORTGAGE FINANCE AUTHORITY ACT.

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

Section 1

Section 1. Section 58-18-2 NMSA 1978 (being Laws 1975, Chapter 303, Section 2) is amended to read:

"58-18-2. LEGISLATIVE FINDINGS--DECLARATION OF PURPOSE.--

A. The legislature finds and declares that there exists in the state of New Mexico a serious shortage of decent, safe and sanitary residential housing available at prices and rentals within the financial means of persons and families of low or moderate income. This shortage is severe in certain urban areas of the state, is especially critical in the rural areas and is inimical to the health, safety, welfare and prosperity of all residents of the state.

B. The legislature finds and determines that the shortage of residential housing causes overcrowding and congestion and exacerbates existing slum conditions, which, in turn, contribute substantially and increasingly to the spread of disease and crime, impair economic values, necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health, welfare and safety programs, fire and accident protection and other services, substantially impair or arrest the growth of municipalities, aggravate traffic problems and promote juvenile delinquency and other social ills.

C. The legislature finds and declares further that private enterprise unaided has not been able to produce the needed construction of decent, safe and sanitary residential housing at prices and rentals that persons and families of low or moderate income can afford or to achieve the urgently needed rehabilitation of much of their present housing. It is imperative that the supply of residential housing for persons and families of low or moderate income be increased substantially and that private enterprise and investment be encouraged to sponsor, build and rehabilitate residential housing for such persons and families.

D. It is found and declared that a major cause of this housing shortage is the lack of funds in private banking channels available for affordable residential mortgages. This lack of funds has contributed to drastic reductions in construction starts

of new residential housing and has frustrated the sale and purchase of existing residential housing in the state.

E. It is further found and declared that the drastic reduction in residential construction starts and in residential rehabilitation projects associated with housing shortages has caused a condition of substantial unemployment and underemployment in the construction industry, which results in hardships to many individuals and families, wastes vital human resources, increases the public assistance burdens of the state and its municipalities, impairs the security of family life, impedes the economic and physical development of municipalities and adversely affects the welfare and prosperity of all the people of the state. A stable supply of adequate funds for affordable residential mortgages is required to spur new housing starts and the rehabilitation of existing units in an orderly and sustained manner and thereby to reduce the hazards of unemployment and underemployment in the construction industry. The unaided operations of private enterprise have not met and cannot meet the need for a stable supply of adequate funds for affordable residential mortgage financing.

F. The legislature further finds and determines that for the purposes of remedying these conditions, helping to alleviate the shortage of adequate housing and encouraging and providing the financing for the acquisition, construction, rehabilitation and improvement of residential housing for persons and families of low or moderate income within the state, a public body politic and corporate, separate and apart from the state, constituting a governmental instrumentality to be known as the New Mexico mortgage finance authority should be created with power to raise funds from private and public investors, to make funds available for such purposes, to create and implement programs from time to time as may be necessary or appropriate to accomplish its purposes and to assist, administer, finance or service housing programs for or through private and nonprofit organizations and local, state, federal and tribal agencies or their instrumentalities. The legislature finds and declares further that in accomplishing these purposes, the New Mexico mortgage finance authority is acting in all respects for the benefit of the people of the state in the performance of essential public functions and is serving a valid public purpose in improving and otherwise promoting their health, welfare and prosperity, and that the enactment of the provisions set forth in the Mortgage Finance Authority Act is for a valid public purpose and is declared to be such as a matter of express legislative determination."

Section 2

Section 2. Section 58-18-2.1 NMSA 1978 (being Laws 1982, Chapter 86, Section 2) is amended to read:

"58-18-2.1. MULTIPLE-FAMILY, TRANSITIONAL AND CONGREGATE DWELLINGS--SUPPLEMENTAL LEGISLATIVE FINDINGS AND PURPOSE.--The legislature finds and declares that there is a critical shortage of multiple-family, transitional and congregate dwellings that provide decent, safe and sanitary residential housing at rentals that persons and families of low or moderate income can afford. It is

further found and declared that private individuals, organizations and entities willing to undertake the construction of multiple-family, transitional and congregate dwellings are unable to obtain loans at sufficiently low interest rates to finance multiple-family, transitional and congregate dwelling projects for persons and families of low or moderate income. Providing mortgage loans at below-market interest rates for multiple-family, transitional and congregate dwellings would increase substantially the availability of multiple-family, transitional and congregate dwellings for occupancy by persons and families of low or moderate income and is expressly declared to be a valid public purpose and a corporate purpose that may be exercised by the authority."

Section 3

Section 3. Section 58-18-3 NMSA 1978 (being Laws 1975, Chapter 303, Section 3, as amended) is amended to read:

"58-18-3. DEFINITIONS.--As used in the Mortgage Finance Authority Act:

- A. "authority" means the New Mexico mortgage finance authority;
- B. "bonds" or "notes" means the bonds or bond anticipation notes, respectively, issued by the authority pursuant to the Mortgage Finance Authority Act;
- C. "federal government" means the United States of America and any agency or instrumentality, corporate or otherwise, of the United States of America;
- D. "FHA" means the federal housing administration;
- E. "FHLMC" means the federal home loan mortgage corporation;
- F. "FNMA" means the federal national mortgage association;
- G. "home improvement loan" means a mortgage loan to finance such alterations, repairs and improvements on or in connection with an existing residence as the authority may determine will substantially protect or improve the basic livability or energy efficiency of the residence, including without limitation the acquisition and installation of energy conservation building materials and solar energy equipment;
- H. "mobile home" means a movable or portable housing structure, constructed to be towed on its own chassis and designed so as to be installed with or without a permanent foundation for human occupancy as a residence that may include one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity, or two or more units separately towable but designed to be joined into one integral unit, as well as a single unit, except that the definition does not include recreational vehicles or modular or premanufactured homes, built to Uniform Building Code standards, designed to be permanently affixed to real property;

I. "mortgage" means a mortgage, mortgage deed, deed of trust or other instrument creating a lien, subject only to title exceptions as may be acceptable to the authority, on a fee interest in real property located within the state or on a leasehold interest that has a remaining term at the time of computation that exceeds or is renewable at the option of the lessee until after the maturity day of the mortgage loan or an instrument creating a lien on a mobile home;

J. "mortgage lender" means any bank, bank or trust company, trust company, mortgage company, mortgage banker, national banking association, savings bank, savings and loan association, credit union building and loan association and any other lending institution; provided that the principal office of the mortgage lender is in New Mexico and the mortgage lender is authorized to make mortgage loans in the state and that the mortgage lender is approved by the authority and either the FHA, VA, FNMA or FHLMC;

K. "mortgage loan" means a financial obligation secured by a mortgage, including a project mortgage loan;

L. "municipality" means any county, city, town or village of the state;

M. "new mortgage loan" means a mortgage loan, including a home improvement loan, made by a mortgage lender to a person of low or moderate income to finance project costs and containing such terms and conditions as the authority may require by regulation;

N. "persons of low or moderate income" means persons and families within the state who are determined by the authority to lack sufficient income to pay enough to cause private enterprise to build an adequate supply of decent, safe and sanitary residential housing in their locality or in an area reasonably accessible to their locality and whose incomes are below the income levels established by the authority to be in need of the assistance made available by the Mortgage Finance Authority Act, taking into consideration, without limitation, such factors as the following:

(1) the amount of the total income of those persons and families available for housing needs;

(2) the size of the family units;

(3) the cost and condition of housing facilities available;

(4) the ability of those persons and families to compete successfully in the normal private housing market and to pay the amounts at which private enterprise is providing sanitary, decent and safe housing; and

(5) standards established by various programs of the federal government for determining eligibility based on income of those persons and families;

O. "project" means any work or undertaking, whether new construction, acquisition of existing residential housing, remodeling, improvement or rehabilitation approved by the authority for the primary purpose of providing sanitary, decent, safe and affordable residential housing within the state for one or more persons of low or moderate income;

P. "project costs" means the sum total of all costs incurred in the development of a project that are approved by the authority as reasonable and necessary. Such costs may include, but are not necessarily limited to:

(1) the cost of acquiring real property and any buildings thereon, including payments for options, deposits or contracts to purchase properties;

(2) cost of site preparation, demolition and development;

(3) fees in connection with the planning, execution and financing of a project, such as those to the architects, engineers, attorneys, accountants and the authority;

(4) cost of studies, surveys, plans and permits, insurance, interest, financing, tax and assessment costs and other operating and carrying costs during construction;

(5) cost of construction, remodeling, rehabilitation, reconstruction, home improvements, fixtures, furnishings and equipment for the project;

(6) cost of land improvements, including, without limitation, landscaping and off-site improvements;

(7) expenses in connection with initial occupancy of a project;

(8) a reasonable profit and risk fee in addition to job overhead to the general contractor and, if applicable, the developer;

(9) an allowance established by the authority for working capital and contingency reserves and reserves for any anticipated operating deficits during the first two years of occupancy; and

(10) the cost of such other items, including tenant relocation if tenant relocation costs are not otherwise being provided for, indemnity and surety bonds, premiums on insurance and fees and expenses of trustees, depositories and paying agents of the bonds and notes as the authority shall determine to be reasonable and necessary for the development of a project;

Q. "real property" means all lands and franchises, including interests in land, space rights and air rights, and any and all interests in such property less than full

title, such as easements, incorporeal hereditaments and every estate, interest or rights, legal or equitable, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by the liens;

R. "rehabilitation loan" means a qualified rehabilitation loan within the meaning of Section 143(k)(5) of the Internal Revenue Code of 1986, as amended or renumbered or any successor provision;

S. "residential housing" means a specific work or improvement undertaken primarily to provide one or more dwelling accommodations, including, without limitation, mobile homes, single-family, multiple-family, transitional and congregate dwellings for persons of low or moderate income, including the acquisition, construction or rehabilitation of real property, buildings and improvements;

T. "state" means New Mexico;

U. "state, local, federal or tribal agency" means any board, authority, agency, department, commission, public corporation, body politic or instrumentality of the state or of such local, federal or tribal government; and

V. "VA" means the veterans affairs department."

Section 4

Section 4. Section 58-18-3.1 NMSA 1978 (being Laws 1982, Chapter 86, Section 3, as amended) is amended to read:

"58-18-3.1. ADDITIONAL DEFINITIONS--MULTIPLE--FAMILY DWELLINGS, TRANSITIONAL AND CONGREGATE HOUSING FACILITIES.--

As used in the Mortgage Finance Authority Act:

A. "multiple-family dwelling project" means residential housing that is designed for occupancy by more than four persons or families living independently of each other or living in a congregate housing facility, at least sixty percent of whom are persons and families of low or moderate income, including without limitation persons of low or moderate income who are elderly and handicapped as determined by the authority, provided that the percentage of low-income persons and families shall be at least the minimum required by federal tax law;

B. "transitional housing facility" means residential housing that is designed for temporary or transitional occupancy by persons or families of low or moderate income or special needs;

C. "congregate housing facility" means residential housing designed for occupancy by more than four persons or families of low or moderate income living

independently of each other. The facility may contain group dining, recreational, health care or other communal facilities and each unit in a congregate housing facility shall contain at least its own living, sleeping and bathing facilities;

D. "project mortgage loan" means a mortgage loan made to a sponsor to finance project costs of a multiple-family dwelling, transitional or congregate housing project; and

E. "sponsor" means an individual, association, corporation, joint venture, partnership, limited partnership, trust or any combination thereof that has been approved by the authority as qualified to own and maintain a multiple-family dwelling, transitional or congregate housing project, maintains its principal office or a branch office in New Mexico and has agreed to subject itself to the regulatory powers of the authority and the jurisdiction of the courts of the state."

Section 5

Section 5. Section 58-18-3.2 NMSA 1978 (being Laws 1983, Chapter 285, Section 1) is amended to read:

"58-18-3.2. SECONDARY MORTGAGE FUNDS--ADDITIONAL DEFINITIONS.--
As used in the Mortgage Finance Authority Act:

A. "pass-through securities" means securities representing undivided ownership interests in a pool of mortgage loans; and

B. "secondary market facility" means a corporation, trust or other form of legal entity established by the authority for the purpose of the purchase, with private or public funds legally available therefor, of mortgage loans, mortgage-backed obligations, pass-through securities or interests therein."

Section 6

Section 6. Section 58-18-4 NMSA 1978 (being Laws 1975, Chapter 303, Section 4, as amended) is amended to read:

"58-18-4. AUTHORITY CREATED.--

A. There is created a public body politic and corporate, separate and apart from the state, constituting a governmental instrumentality, to be known as the "New Mexico mortgage finance authority", for the performance of essential public functions. The authority shall be composed of seven members. The director of the financial institutions division of the regulation and licensing department, state treasurer and attorney general shall be ex-officio members of the authority with voting privileges. The governor, with the advice and consent of the senate, shall appoint the other four members of the authority, who shall be residents of the state and shall not hold other

public office. The four members of the authority appointed by the governor shall be appointed for terms of four years or less staggered so that the term of one member expires on January 1 of each year. Vacancies shall be filled by the governor for the remainder of the unexpired term. Any member of the authority shall be eligible for reappointment. Each member of the authority appointed by the governor may be removed by the governor for misfeasance, malfeasance or willful neglect of duty after reasonable notice and a public hearing, unless the notice and hearing are, in writing, expressly waived. Each member of the authority appointed by the governor, before entering upon his duty, shall take an oath of office to administer the duties of his office faithfully and impartially, and a record of the oath shall be filed in the office of the secretary of state. The governor shall designate a member of the authority to serve as chairman for a term that shall be coterminous with his then current term as a member of the authority. The authority shall annually elect one of its members as vice chairman. The authority shall also elect or appoint and prescribe the duties of such other officers, who need not be members, as the authority deems necessary or advisable, including an executive director and a secretary, who may be the same person, and the authority shall fix the compensation of officers. Officers and employees of the authority are not subject to the Personnel Act. The authority may delegate to one or more of its members, officers, employees or agents such powers and duties as it may deem proper.

B. All members, officers, employees or agents exercising any voting power or discretionary authority shall be required to have a fiduciary bond in the amount of one million dollars (\$1,000,000) for the faithful performance of their duties, the cost of which shall be proper expense of the authority.

C. The executive director shall administer, manage and direct the affairs and business of the authority, subject to the policies, control and direction of the members of the authority. The secretary of the authority shall keep a record of the proceedings of the authority and shall be custodian of all books, documents and papers filed with the authority, the minute book or journal of the authority and its official seal. He shall have authority to cause copies to be made of all minutes and other records and documents of the authority and to give certificates under the official seal of the authority to the effect that the copies are true copies and all persons dealing with the authority may rely upon the certificates.

D. Meetings of the authority shall be held at the call of the chairman or whenever three members so request in writing. A majority of members then in office shall constitute a quorum for the transaction of any business and for the exercise of any power or function of the authority. No vacancy in the membership of the authority shall impair the rights of a quorum to exercise all the rights and to perform all the duties of the authority. An ex-officio member from time to time may designate in writing another person to attend meetings of the authority and, to the same extent and with the same effect, act in his stead.

E. The authority is not created or organized, and its operations shall not be conducted, for the purpose of making a profit. No part of the revenues or assets of the authority shall inure to the benefit of or be distributable to its members or officers or other private persons. The members of the authority shall receive no compensation for their services, but the members of the authority, its officers and employees shall be paid allowed expenses if approved by the authority in accordance with policies adopted by the authority and approved by the Mortgage Finance Authority Act oversight committee.

F. The authority shall be separate and apart from the state and shall not be subject to the supervision or control of any board, bureau, department or agency of the state except as specifically provided in the Mortgage Finance Authority Act. In order to effectuate the separation of the state from the authority, no use of the terms "state agency" or "instrumentality" in any other law of the state shall be deemed to refer to the authority unless the authority is specifically referred to therein."

Section 7

Section 7. Section 58-18-5 NMSA 1978 (being Laws 1975, Chapter 303, Section 5, as amended) is amended to read:

"58-18-5. POWERS OF THE AUTHORITY.--The authority shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the Mortgage Finance Authority Act, including but without limiting the generality of the foregoing, the power:

- A. to sue and be sued;
- B. to have a seal and alter it at pleasure;
- C. to make and alter bylaws for its organization and internal management;
- D. to appoint other officers, agents and employees, prescribe their duties and qualifications and fix their compensation;
- E. to acquire, hold, improve, mortgage, lease and dispose of real and personal property for its public purposes;
- F. subject to the provisions of Section 58-18-6 NMSA 1978, to make loans, and contract to make loans, to mortgage lenders;
- G. subject to the provisions of Section 58-18-7 NMSA 1978, to purchase, and contract to purchase, mortgage loans from mortgage lenders;
- H. to procure or require the procurement of a policy of group or individual life insurance or disability insurance or both to insure repayment of mortgage loans in event of the death or disability of the borrower and to pay any premiums therefor;

I. to procure insurance against any loss in connection with its operations, including without limitation the repayment of any mortgage loan, in such amounts and from such insurers, including the federal government, as it may deem necessary or desirable; to procure liability insurance covering its members, officers and employees for acts performed within the scope of their authority as members, officers or employees; and to pay any premiums therefor;

J. subject to any agreement with bondholders or noteholders:

(1) to renegotiate any mortgage loan or any loan to a mortgage lender in default;

(2) to waive any default or consent to the modification of the terms of any mortgage loan or any loan to a mortgage lender and otherwise exercise all powers with respect to its mortgage loans and loans to mortgage lenders that any private creditor may exercise under applicable law; and

(3) to commence, prosecute and enforce a judgment in any action or proceeding, including without limitation a foreclosure proceeding, to protect or enforce any right conferred upon it by law, mortgage loan agreement, contract or other agreement; and in connection with any such proceeding, to bid for and purchase the property or acquire or take possession of it and, in such event, complete, administer, pay the principal of and interest on any obligations incurred in connection with the property and operate or dispose of and otherwise deal with the property in such manner as the authority may deem advisable to protect its interests therein;

K. to make and execute contracts for the administration, servicing or collection of any mortgage loan and pay the reasonable value of services rendered to the authority pursuant to such contracts;

L. to fix, revise from time to time, charge and collect fees and other charges in connection with the making of mortgage loans, the purchasing of mortgage loans and any other services rendered by the authority;

M. subject to any agreement with bondholders or noteholders, to sell any mortgage loans at public or private sale at such prices and on such terms as the authority shall determine;

N. to borrow money and to issue bonds and notes that may be negotiable and to provide for the rights of the holders thereof;

O. to arrange for guarantees or other security, liquidity or credit enhancements in connection with its bonds, notes or other obligations by the federal government or by any private insurer or other provider and to pay any premiums therefor;

P. subject to any agreement with bondholders or noteholders, to invest money of the authority not required for immediate use, including proceeds from the sale of any bonds or notes:

(1) in obligations of any municipality or the state or the United States of America;

(2) in obligations the principal and interest of which are guaranteed by the state or the United States of America;

(3) in obligations of any corporation wholly owned by the United States of America;

(4) in obligations of any corporation sponsored by the United States of America that are or may become eligible as collateral for advances to member banks as determined by the board of governors of the federal reserve system;

(5) in certificates of deposit or time deposits in banks qualified to do business in New Mexico, secured in the manner, if any, as the authority shall determine;

(6) in contracts for the purchase and sale of obligations of the types specified in this subsection; or

(7) as otherwise provided in any trust indenture or a resolution authorizing the issuance of the bonds or notes;

Q. subject to any agreement with bondholders or noteholders, to purchase bonds or notes of the authority at the price as may be determined by the authority or to authorize third persons to purchase bonds or notes of the authority; bonds or notes so purchased shall be canceled or resold, as determined by the authority;

R. to make surveys and to monitor on a continuing basis the adequacy of the supply of:

(1) funds available in the private banking system in the state for affordable residential mortgages; and

(2) adequate, safe and sanitary housing available to persons of low or moderate income in the state and various sections of the state;

S. to make and execute agreements, contracts and other instruments necessary or convenient in the exercise of the powers and functions of the authority under the Mortgage Finance Authority Act;

T. to employ architects, engineers, attorneys (other than and in addition to the attorney general of the state), accountants, housing, construction and financial

experts and such other advisors, consultants and agents as may be necessary in its judgment and to fix and pay their compensation;

U. to contract for and to accept any gifts or grants or loans of funds or property or financial or other aid in any form from the federal government or from any other source and to comply, subject to the provisions of the Mortgage Finance Authority Act, with the terms and conditions thereof;

V. to maintain an office at such place in the state as it may determine;

W. subject to any agreement with bondholders and noteholders, to make, alter or repeal, subject to prior approval by the Mortgage Finance Authority Act oversight committee, hereby created, to be composed of four members appointed by the president pro tempore of the senate and four members appointed by the speaker of the house of representatives, such rules and regulations with respect to its operations, properties and facilities as are necessary to carry out its functions and duties in the administration of the Mortgage Finance Authority Act;

X. to make, purchase, guarantee, service and administer mortgage loans for residential housing for the purposes set forth in the Mortgage Finance Authority Act where private banking channels and private enterprise, unaided, have not, cannot or are unwilling to make, purchase, guarantee, service or administer the loans; and

Y. to do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in the Mortgage Finance Authority Act."

Section 8

Section 8. Section 58-18-5.2 NMSA 1978 (being Laws 1981, Chapter 173, Section 2) is amended to read:

"58-18-5.2. AUTHORITY DUTIES.--The authority shall make available to the Mortgage Finance Authority Act oversight committee all of its records and facilities upon written request."

Section 9

Section 9. Section 58-18-5.3 NMSA 1978 (being Laws 1982, Chapter 86, Section 4, as amended) is amended to read:

"58-18-5.3. AUTHORITY--MULTIPLE-FAMILY DWELLINGS, TRANSITIONAL AND CONGREGATE HOUSING FACILITIES.--In addition to the specific powers of the authority set forth in Section 58-18-5 NMSA 1978, the authority shall have the power to:

A. subject to the limitations of Subsection X of Section 58-18-5 NMSA 1978, make project mortgage loans or purchase or contract to purchase project mortgage loans from mortgage lenders or participate with mortgage lenders in project mortgage loans at prices and upon terms and conditions as the authority determines. Each project mortgage loan made or purchased by the authority shall:

(1) be evidenced by a properly executed note or other evidence of indebtedness and be secured by a properly recorded mortgage;

(2) provide for payments sufficient to pay the project mortgage loan in full not later than the expiration of the useful life of the multiple-family dwelling project or transitional or congregate housing facility as determined by the authority; and

(3) not exceed such percentage of such project costs as the authority may determine;

B. make and contract to make loans to mortgage lenders on such terms and conditions as the authority determines, including without limitation requirements relating to collateral for such loans; provided the authority shall require as a condition of any such loan that the mortgage lender make a project mortgage loan or loans to sponsors in an aggregate principal amount at least equal to the amount of the loan received from the authority; and

C. otherwise provide funding for project mortgage loans, including the issuance of bonds or notes in private placements or public offerings. Any bonds or notes issued in a public offering for any purpose authorized by this section shall, at the time of issuance, be rated in at least the third highest rating category by an independent nationally recognized bond rating service."

Section 10

Section 10. Section 58-18-5.4 NMSA 1978 (being Laws 1982, Chapter 86, Section 5, as amended) is amended to read:

"58-18-5.4. DUTIES OF AUTHORITY--MULTIPLE-FAMILY DWELLINGS, TRANSITIONAL AND CONGREGATE HOUSING FACILITIES.--

A. The authority shall require, as a condition of making or purchasing a project mortgage loan, that the sponsor agree to comply with the requirements and to make the representations and warranties as the authority deems reasonably necessary to protect its interests in the project mortgage loan and the multiple-family dwelling project or transitional or congregate housing facility, including the following:

(1) the multiple-family dwelling project or transitional or congregate housing facility and surrounding area shall be maintained in good repair;

(2) a reserve fund for repairs and replacements on the multiple-family dwelling project or transitional or congregate housing facility shall be established and maintained for the life of the project mortgage loan;

(3) the sponsor shall make all records and documents relating to the multiple-family dwelling project or transitional or congregate housing facility available to the authority and its agents at all reasonable times;

(4) the sponsor shall maintain its books and accounts in a manner satisfactory to the authority;

(5) the sponsor shall provide access to the authority and its agents at all reasonable times for the purpose of inspecting the multiple-family dwelling project or transitional or congregate housing facility;

(6) the sponsor shall file with the authority a copy of each report and schedule required to be filed with any provider of mortgage insurance or other security or liquidity enhancement for the mortgage loan or the authority's bonds or notes, the proceeds of which were used in whole or in part to acquire the project mortgage loan; annual financial and operating reports; and any other reports the authority may determine to be necessary;

(7) the sponsor shall purchase and maintain an insurance policy insuring the project against loss or damage by fire, windstorm, hail, smoke, explosion, riot or civil commotion in an amount not less than eighty percent of the replacement costs of the project, and the authority or its designee shall be named in the insurance policy as an additional named insured;

(8) the sponsor shall provide the authority with a market feasibility study, market-value appraisal, architectural design and outline specifications, tenant selection plans and any other documents the authority requires in determining whether to purchase the project mortgage loan;

(9) unless otherwise exempt under any other law of the state or any political subdivision of the state, all ad valorem, gross receipts and any other taxes imposed on the land or improvements for which a multiple-family dwelling project mortgage loan is being provided shall apply;

(10) the sponsor shall maintain the project as a multiple-family dwelling project or transitional or congregate housing facility throughout the life of the project mortgage loan; and

(11) the sponsor shall comply with any other reasonable requirements the authority deems necessary to impose in the future.

B. The authority shall distribute available funds to qualified sponsors and mortgage lenders on an equitable basis using guidelines that take into consideration geographic allocation and economic feasibility of affordable housing throughout the state, including the need for new housing to attract a new industry or plant or to provide housing in an economically depressed or low-income area."

Section 11

Section 11. Section 58-18-6 NMSA 1978 (being Laws 1975, Chapter 303, Section 6, as amended) is amended to read:

"58-18-6. LOANS TO MORTGAGE LENDERS.--

A. The authority may make and contract to make loans to mortgage lenders on terms and conditions as it determines, and all mortgage lenders are authorized to borrow from the authority in accordance with the provisions of this section and the rules and regulations of the authority.

B. The authority shall require that each mortgage lender receiving a loan pursuant to this section shall issue and deliver to the authority an evidence of its indebtedness to the authority that shall constitute either a general or limited obligation of the mortgage lender, as determined by the authority, and shall bear such date or dates, shall mature at such time or times, shall be subject to prepayment and shall contain such other provisions consistent with this section as the authority determines.

C. Notwithstanding any other provision of this section to the contrary, the interest rate or rates and other terms of loans to mortgage lenders made from the proceeds of any issue of bonds or notes of the authority shall be at least sufficient to assure the payment of the bonds or notes and the interest thereon as they become due.

D. The authority shall require that loans to mortgage lenders made pursuant to this section shall be secured as to payment of both principal and interest by a pledge of collateral security in such amounts as the authority determines to be necessary to assure the payment of the loans and the interest thereon as they become due.

E. The authority may require that collateral for loans be deposited with a bank, trust company or other financial institution acceptable to the authority and designated by the authority as custodian. In the absence of this requirement, each mortgage lender shall enter into an agreement with the authority containing such provisions as the authority deems necessary to:

(1) adequately identify and maintain the collateral;

(2) service the collateral; and

(3) require the mortgage lender to hold the collateral as an agent for the authority and be accountable to the authority as the trustee of an express trust for the application and disposition thereof and the income therefrom.

The authority may also establish such additional requirements as it deems necessary with respect to the pledging, assigning, setting aside or holding of collateral and the making of substitutions therefor or additions thereto and the disposition of income and receipts therefrom.

F. The authority shall require as a condition of each single-family loan to a mortgage lender that the mortgage lender, within a period that the authority may prescribe, shall have entered into written commitments to make and, within a period that the authority may prescribe, shall have disbursed the loan proceeds in new single-family mortgage loans to persons of low or moderate income in an aggregate principal amount equal to the amount of the loan. The new single-family mortgage loans shall have terms and conditions as the authority may prescribe.

G. The authority shall require the submission to it by each mortgage lender to which the authority has made a single-family mortgage loan evidence satisfactory to the authority of the making of new single-family mortgage loans to persons of low or moderate income as required by this section and in connection therewith may, through its members, employees or agents, inspect the books and records of any such mortgage lender.

H. The authority may require as a condition of any loans to mortgage lenders such representations and warranties as it determines to be necessary to secure the loans and carry out the purposes of this section.

I. Compliance by any mortgage lender with the terms of its agreement with or undertaking to the authority with respect to the making or servicing of any new mortgage loans may be enforced by decree of any court of competent jurisdiction. The authority may require as a condition of any loan to any national banking association the consent of the association to the jurisdiction of courts of the state over any such proceeding. The authority may also require, as a condition of any loan to a mortgage lender, agreement by the mortgage lender to the payment of penalties to the authority for violation by the mortgage lender of its undertakings to the authority.

J. To the extent that any provisions of this section may be inconsistent with any provision of law of the state governing the affairs of mortgage lenders, which other provision of law does not by its terms expressly amend the Mortgage Finance Authority Act, the provisions of this section shall control."

Section 12

Section 12. Section 58-18-7 NMSA 1978 (being Laws 1975, Chapter 303, Section 7, as amended) is amended to read:

"58-18-7. PURCHASE OF MORTGAGE LOANS.--

A. The authority may purchase and contract to purchase mortgage loans at the prices and upon the terms and conditions as it determines. All mortgage lenders are authorized to sell mortgage loans to the authority in accordance with the provisions of this section and the rules and regulations of the authority.

B. The authority shall require as a condition of purchase of single-family mortgage loans from mortgage lenders either:

(1) that the single-family mortgage loans be existing mortgage loans owned by the mortgage lenders and that the mortgage lenders, within the period after receipt of the purchase price as the authority may prescribe shall enter into written commitments to loan and, within such period thereafter as the authority may prescribe, shall loan an amount equal to the entire purchase price of the mortgage loans on new mortgage loans to persons of low or moderate income, which new mortgage loans shall have such terms and conditions as the authority may prescribe; or

(2) that the single-family mortgage loans qualify as new mortgage loans to persons of low or moderate income and were originated by the mortgage lenders for the purpose of selling them to the authority.

C. The authority shall require the submission to it by each mortgage lender from which the authority has purchased a single-family mortgage loan evidence satisfactory to the authority of the making of new mortgage loans to persons of low or moderate income as required by this section and in connection therewith may, through its members, employees or agents, inspect the books and records of any such mortgage lender.

D. Compliance by any mortgage lender with the terms of its agreement with or undertaking to the authority with respect to the making or servicing of any mortgage loans may be enforced by decree of any court of competent jurisdiction. The authority may require as a condition of purchase of mortgage loans from any national banking association the consent of the association to the jurisdiction of courts of the state over any proceeding. The authority may also require, as a condition of the authority's purchase of mortgage loans from, or servicing of mortgages by a mortgage lender, agreement by any mortgage lender to the payment of penalties to the authority for violation by the mortgage lender of its undertakings to the authority.

E. The authority may require as a condition of purchase of any mortgage loan from a mortgage lender that the mortgage lender represent and warrant to the authority that:

(1) the unpaid principal balance of the mortgage loan and the interest rate thereon have been accurately stated to the authority;

(2) the amount of the unpaid principal balance is justly due and owing;

(3) the mortgage lender has no notice of the existence of any counterclaim, offset or defense asserted by the mortgagor or his successor in interest;

(4) the mortgage loan is evidenced by a bond or promissory note and a mortgage that has been properly recorded with the appropriate public official;

(5) the mortgage constitutes a valid lien on the real property or mobile home described to the authority subject only to taxes not yet due, installments of assessments not yet due and easements and restrictions of record that do not adversely affect, to a material degree, the use or value of the real property or improvements thereon;

(6) the mortgagor is not now in default in the payment of any installment of principal or interest, escrow funds, taxes or otherwise in the performance of his obligations under the mortgage documents and has not to the knowledge of the mortgage lender been in default in the performance of any such obligation for a period of longer than sixty days during the life of the mortgage;

(7) the improvements to mortgaged real property are covered by a valid and subsisting policy of insurance issued by a company authorized to issue such policies in the state and providing fire and extended coverage in such amounts as the authority may prescribe by regulation; and

(8) the mortgage loan meets the prevailing investment quality standards for mortgage loans of that type in the state.

F. Each mortgage lender is liable to the authority for any damages suffered by the authority by reason of the untruth of any representation or the breach of any warranty and, in the event that any representation proves to be untrue when made or in the event of any breach of warranty, the mortgage lender shall, at the option of the authority, repurchase the mortgage loan for the original purchase price adjusted for amounts subsequently paid thereon, as the authority may determine. The authority may also require, as a condition of the authority's purchase of mortgage loans from the mortgage lender, agreement by the mortgage lender to the payment of penalties to the authority for any misrepresentation or breach of warranty.

G. The authority shall require the recording of an assignment of any mortgage loan purchased by it from a mortgage lender. The authority is not required to inspect or take possession of the mortgage documents if the mortgage lender from which the mortgage loan is purchased by the authority enters, or the mortgage lender's approved designee enters, a contract to service the mortgage loan and account to the authority therefor.

H. In the event of the foreclosure of any mortgage purchased under the provisions of this section, the foreclosure shall not be made in the name of the state. The authority is empowered to make appropriate arrangements for the foreclosure of such mortgages in the name of the authority or another party.

I. To the extent that any provisions of this section may be inconsistent with any provision of law of the state governing the affairs of mortgage lenders, which other provision of law does not by its terms expressly amend the Mortgage Finance Authority Act, the provisions of this section shall control."

Section 13

Section 13. Section 58-18-7.1 NMSA 1978 (being Laws 1982, Chapter 86, Section 6) is amended to read:

"58-18-7.1. SALE OF PROJECT MORTGAGE LOANS.--All mortgage lenders are authorized to sell project mortgage loans to and to accept loans from the authority in accordance with the provisions of the Mortgage Finance Authority Act and the rules and regulations of the authority. To the extent that any provisions of this section may be inconsistent with any provision of law of the state governing the affairs of mortgage lenders, which other provision of law does not by its terms expressly amend the Mortgage Finance Authority Act, the provisions of this section shall control."

Section 14

Section 14. Section 58-18-7.2 NMSA 1978 (being Laws 1983, Chapter 285, Section 2) is amended to read:

"58-18-7.2. SECONDARY MARKET FACILITY--FINDINGS AND PURPOSES--ESTABLISHMENT.--

A. The legislature finds and declares that it is necessary and in the public interest that the authority be authorized to create, operate, fund, administer and maintain a secondary market facility for mortgage loans and to otherwise act as a conduit for public and private funds to provide an increased degree of liquidity for mortgage investments, thereby improving the distribution and availability of investment capital for use in mortgage investments in this state and promoting the economic well-being of the state through increased opportunity for employment, all of which are expressly declared to be valid public purposes and corporate purposes that may be exercised by the authority.

B. In connection with the establishment and implementation of a secondary market facility, the authority may issue pass-through securities and may purchase and contract to purchase mortgage loans, pass-through securities, obligations secured by mortgage loans, or revenues therefrom or interests therein, at the prices and upon the terms and conditions as the authority shall determine. All mortgage lenders

are authorized to sell mortgage loans, pass-through securities and such obligations to the secondary market facility in accordance with the provisions of this section and the rules and regulations of the authority.

C. To provide funding for the secondary market facility, the authority or the secondary market facility may enter into agreements to administer funds made available to the secondary market facility, at such prices and upon such terms and conditions as the authority shall determine, and may issue its bonds, notes, other obligations, pass-through securities and guarantees in the same manner and on the same terms and conditions as the authority may issue its bonds and notes pursuant to Section 58-18-11 NMSA 1978 or on such other terms and conditions as the authority shall determine. In no event shall any bonds, notes, other obligations, pass-through securities or guarantees constitute an obligation, either general or special, of the state or any political subdivision thereof or constitute pecuniary liability of the state or any political subdivision thereof.

D. Notwithstanding any other provisions of the Mortgage Finance Authority Act, the state shall have the power, out of funds legally available therefor, to purchase and to contract to purchase from the authority pass-through securities or participations therein and mortgage loans or participations therein."

Section 15

Section 15. Section 58-18-7.3 NMSA 1978 (being Laws 1984, Chapter 62, Section 2, as amended) is amended to read:

"58-18-7.3. REHABILITATION LOANS AND HOME IMPROVEMENT LOANS.--

The authority may develop a tax-exempt bond, a taxable bond or an authority-funded program for the financing of home improvement or rehabilitation loans. Such a home improvement or rehabilitation loan program may be conducted in concert with any appropriation provided by the legislature for the purpose of developing and conducting a program of subsidizing the interest rates on home improvement or rehabilitation loans to persons of low or moderate income."

Section 16

Section 16. Section 58-18-8 NMSA 1978 (being Laws 1975, Chapter 303, Section 8, as amended) is amended to read:

"58-18-8. RULES AND REGULATIONS OF THE AUTHORITY.--

A. The authority shall adopt and may from time to time modify or repeal, subject to prior approval by the Mortgage Finance Authority Act oversight committee, rules and regulations:

(1) for determining income levels for the classification of persons of low or moderate income, which may vary between different areas in the state and in accordance with the size of family unit; and

(2) for governing:

(a) the making of loans to mortgage lenders; and

(b) the purchase of mortgage loans, to implement the powers authorized and to achieve the purposes set forth in the Mortgage Finance Authority Act.

B. The rules and regulations of the authority relating to the making of loans to mortgage lenders pursuant to Section 58-18-6 NMSA 1978 or the purchase of mortgage loans pursuant to Section 58-18-7 NMSA 1978 shall provide at least for the following:

(1) procedures for the submission by mortgage lenders to the authority of:

(a) requests for loans; and

(b) offers to sell mortgage loans;

(2) standards for allocating bond proceeds among mortgage lenders requesting loans from or offering to sell mortgage loans to the authority;

(3) standards for determining the principal amount to be loaned to each mortgage lender and the interest rate thereon;

(4) standards for determining the aggregate principal amount of mortgage loans to be purchased from each mortgage lender and the purchase price thereof;

(5) qualifications or characteristics of:

(a) residential housing; and

(b) the purchasers of residential housing to be financed by new mortgage loans made in satisfaction of the requirements of Subsection F of Section 58-18-6 NMSA 1978 or Subsection B of Section 58-18-7 NMSA 1978, as the case may be;

(6) restrictions as to the interest rates to be allowed on new mortgage loans and the return to be realized therefrom by mortgage lenders;

(7) requirements as to commitments and disbursements by mortgage lenders with respect to new mortgage loans; and

(8) standards for mobile homes eligible for use as security.

C. The rules and regulations of the authority shall also provide for:

(1) schedules of any fees and charges to be imposed by the authority; and

(2) any other matters related to the duties and the exercise of the powers of the authority under the Mortgage Finance Authority Act."

Section 17

Section 17. Section 58-18-8.1 NMSA 1978 (being Laws 1982, Chapter 86, Section 7) is amended to read:

"58-18-8.1. RULES AND REGULATIONS OF THE AUTHORITY--MULTIPLE-FAMILY DWELLINGS, TRANSITIONAL AND CONGREGATE HOUSING FACILITIES.-- Prior to financing a multiple-family dwelling project or transitional or congregate housing facility, the authority shall adopt, subject to prior approval by the Mortgage Finance Authority Act oversight committee, rules and regulations governing the purchase of project mortgage loans and the making of loans to finance project mortgage loans, which shall provide at least for the following:

A. procedures for the submission by mortgage lenders to the authority of:

(1) offers to sell project mortgage loans; or

(2) requests for loans;

B. standards for approving qualifications of sponsors and mortgage lenders;

C. standards for determining minimum equity requirements for sponsors and acceptable debt-to-equity ratios for sponsors;

D. methods for establishing uniform accounting systems for sponsors;

E. standards for approving costs of such projects; and

F. guidelines establishing reasonable geographic allocation procedures for project mortgage loans."

Section 18

Section 18. Section 58-18-8.3 NMSA 1978 (being Laws 1984, Chapter 62, Section 3, as amended) is amended to read:

"58-18-8.3. RULES AND REGULATIONS OF THE AUTHORITY --HOME IMPROVEMENT LOAN PROGRAM.--Prior to implementing the home improvement loan program referred to in Subsection B of Section 58-18-7.3 NMSA 1978, the authority shall adopt, subject to prior approval by the Mortgage Finance Authority Act oversight committee, rules and regulations governing the purchase of home improvement loans or loans to mortgage lenders to fund home improvement loans under the program, which shall provide at least for the following:

A. procedures for submission by mortgage lenders to the authority of offers to sell home improvement loans;

B. standards for approving qualifications of mortgage lenders;

C. standards for allocating bond proceeds or other authority funds among mortgage lenders offering to sell home improvement loans to the authority and among mortgage lenders receiving loans from the authority to fund home improvement loans;

D. qualifications or characteristics of:

(1) residential housing upon which a home improvement loan may be made;

(2) the types of home improvements that may be made with the proceeds of home improvement loans, except that the authority shall not permit the proceeds to be used for landscaping, lawn sprinkling systems, swimming pools, tennis courts, saunas or other recreational facilities; and

(3) the persons of low or moderate income who may apply for home improvement loans;

E. restrictions as to the interest rates to be allowed on home improvement loans and the fees and other profit to be realized by mortgage lenders; and

F. procedures for determining eligibility for any subsidies to be provided to persons of low or moderate income."

Section 19

Section 19. Section 58-18-9 NMSA 1978 (being Laws 1975, Chapter 303, Section 9) is amended to read:

"58-18-9. REQUIRED DETERMINATIONS OF THE AUTHORITY.-- The authority shall not make loans to mortgage lenders pursuant to Section 58-18-6 NMSA 1978 or

purchase mortgage loans pursuant to Section 58-18-7 NMSA 1978 until the authority has determined:

A. that the supply of funds available in the private banking system in the state for residential mortgages is inadequate to meet the demand of persons of low or moderate income for residential mortgage financing; and

B. that the purchase of mortgages or making of loans by the authority will alleviate the inadequate supply of residential mortgage money in the state's banking system."

Section 20

Section 20. Section 58-18-10 NMSA 1978 (being Laws 1975, Chapter 303, Section 10, as amended) is amended to read:

"58-18-10. PLANNING, ZONING AND BUILDING LAWS.--

A. All multiple-family dwelling projects and transitional and congregate housing facilities shall be subject to any applicable master plan, official map, zoning regulation, building code, housing ordinance and other laws and regulations governing land use or planning or construction of the municipality in which the project is or is to be located.

B. The authority shall provide a description of any multiple-family dwelling project or transitional or congregate housing facility for which it proposes to finance a project mortgage loan to the local governing body of the municipality in which the multiple-family dwelling project or transitional or congregate housing facility is or is to be located. The description shall include the proposed number and type of dwelling units and the location of the project. Unless the local governing body, by majority vote, disapproves the multiple-family dwelling project or transitional or congregate housing facility within thirty days after receipt of the description, the authority may finance a project mortgage loan on the project."

Section 21

Section 21. Section 58-18-11 NMSA 1978 (being Laws 1975, Chapter 303, Section 11) is amended to read:

"58-18-11. BONDS AND NOTES OF THE AUTHORITY.--

A. The authority may from time to time issue its bonds and notes in the principal amounts as, in the opinion of the authority, are necessary to provide sufficient funds for achieving its corporate purposes, the payment of principal and of premium, if any, and interest on bonds and notes of the authority, establishment of reserves to

secure the bonds and notes and all other expenditures of the authority incident to and necessary or convenient to carry out its corporate purposes and powers.

B. Except as may otherwise be expressly provided by the authority, all bonds and notes issued by the authority shall be general obligations of the authority, secured by the full faith and credit of the authority and payable out of any money, assets or revenues of the authority, subject only to any agreement with bondholders or noteholders pledging any particular money, assets or revenues. In no event shall any bonds or notes constitute an obligation, either general or special, of the state or any political subdivision of the state or constitute or give rise to a pecuniary liability of the state or any political subdivision of the state; nor shall the authority have the power to pledge the general credit or taxing power of the state or any political subdivision of the state or to make its debts payable out of any money except that of the authority.

C. Bonds and notes shall be authorized by resolutions of the authority adopted as provided by the Mortgage Finance Authority Act; provided that any such resolution authorizing the issuance of bonds or notes may delegate to an officer of the authority the power to issue such bonds or notes from time to time and to fix or specify the manner of fixing the details of any such issues of bonds or notes by an appropriate certificate of the authorized officer.

D. The bonds shall:

(1) state on their face that they:

(a) are payable both as to principal and interest solely out of the assets of the authority; and

(b) do not constitute an obligation, either general or special, of the state or any political subdivision of the state; and

(2) be:

(a) either registered, registered as to principal only or in coupon form;

(b) issued in such denominations as the authority may prescribe;

(c) fully negotiable instruments under the laws of the state unless otherwise determined by the authority;

(d) signed on behalf of the authority with the manual or facsimile signature of the chairman or vice chairman attested by the manual or facsimile signature of the secretary, shall have impressed or imprinted on them the seal of the

authority or a facsimile of the seal, and any coupons attached to them shall be signed with the facsimile signature of the chairman or vice chairman;

(e) payable as to interest at such rate or rates and at such time or times as the authority may determine or provide;

(f) payable as to principal at such times over a period not to exceed forty-five years from the date of issuance, at such place or places and with such reserved rights of prior redemption as the authority may prescribe;

(g) sold at such price or prices, at public or private sale, and in such manner as the authority may prescribe; and the authority may pay all expenses, premiums and commissions that it deems necessary or advantageous in connection with the issuance and sale of the bonds; and

(h) issued under and subject to such terms, conditions and covenants providing for the payment of the principal, redemption premiums, if any, and interest and such other terms, conditions, covenants and protective provisions safeguarding the payment, not inconsistent with the Mortgage Finance Authority Act, as may be found to be necessary by the authority for the most advantageous sale of the bonds, which may include but not be limited to covenants with the holders of the bonds as to: 1) pledging or creating a lien, to the extent provided by a resolution on all or any part of any money or property of the authority or of any money held in trust or otherwise by others to secure the payment of the bonds; 2) otherwise providing for the custody, collection, securing, investment and payment of any money of or due to the authority; 3) the setting aside of reserves or sinking funds and the regulation or disposition thereof; 4) limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied; 5) limitations on the issuance of additional bonds and on the refunding of outstanding or other bonds; 6) the procedure, if any, by which the terms of any contract with the holders of bonds may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given; 7) the creation of special funds into which any money of the authority may be deposited; 8) vesting in a trustee the properties, rights, powers and duties in trust as the authority may determine that may include any or all of the rights, powers and duties of the trustee appointed pursuant to Section 58-18-14 NMSA 1978 for the holders of any bonds issued by the authority in which event the provisions of that section authorizing appointment of a trustee by the holders of bonds shall not apply; or limiting or abrogating the right of the holders of bonds to appoint a trustee under Section 58-18-14 NMSA 1978 or limiting the rights, duties and powers of the trustee; 9) defining the acts or omissions to act that constitute a default in the obligations and duties of the authority and providing for the rights and remedies of the holders of bonds in the event of default, provided that the rights and remedies shall not be inconsistent with the general laws of the state and other provisions of the Mortgage Finance Authority Act; and 10) any other matters of like or different character that in any way affect the security and protection of the bonds and the rights of the holders of bonds.

E. The authority is authorized to issue its bonds or notes for the purpose of refunding any bonds or notes of the authority or of any issuer under the Municipal Mortgage Finance Act or under any other authorizing act then outstanding, including the payment of any redemption premiums thereon and any interest accrued to or to accrue to the date of redemption of the outstanding bonds or notes. Until the proceeds of any bonds or notes issued for the purpose of refunding outstanding bonds or notes are applied to the purchase or retirement of the outstanding bonds or notes or the redemption of the outstanding bonds or notes, the proceeds may be placed in escrow and be invested and reinvested in accordance with the provisions of Subsection P of Section 58-18-5 NMSA 1978. The interest, income and profits, if any, earned or realized on any such investment may, in the discretion of the authority, also be applied to the payment of the outstanding bonds or notes to be refunded by purchase, retirement or redemption, as the case may be. After the terms of the escrow have been fully satisfied and carried out, any balance of the proceeds and interest, if any, earned or realized on the investments thereof may be returned to the authority for use by it in any lawful manner. All bonds or notes shall be issued and secured and shall be subject to the provisions of the Mortgage Finance Authority Act in the same manner and to the same extent as any other bonds or notes issued pursuant to the Mortgage Finance Authority Act.

F. The authority is authorized to issue bond anticipation notes and may renew them from time to time, but the maximum maturity of the notes, including renewals, shall not exceed ten years from the date of issue of the original notes. The notes may be payable from any money of the authority available therefor and not otherwise pledged or from the proceeds of sale of the bonds of the authority in anticipation of which the notes were issued. The notes may be issued for any corporate purpose of the authority. The notes shall be issued in the same manner as the bonds, and the notes and the resolution authorizing them may contain any provisions, conditions or limitations, not inconsistent with the provisions of this subsection, that the bonds or a bond resolution of the authority may contain. The notes may be sold at public or private sale. In case of default on its notes or violation of any obligations of the authority to the noteholders, the noteholders shall have all the remedies provided for bondholders in the Mortgage Finance Authority Act. The notes shall be as fully negotiable as the bonds of the authority.

G. It is the intention of the legislature that any pledge of earnings, revenues or other assets made by the authority shall be valid and binding from the time when the pledge is made; that the earnings, revenues or other assets so pledged and thereafter received by the authority shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether the parties have notice of the claims. The resolution or any other instrument by which a pledge is created need not be filed or recorded.

H. Neither the members of the authority nor any person executing the bonds, notes or other obligations shall be liable personally on the bonds, notes or other obligations or be subject to any personal liability or accountability by reason of the issuance thereof while acting in the scope of their authority."

Section 22

Section 22. Section 58-18-12 NMSA 1978 (being Laws 1975, Chapter 303, Section 12) is amended to read:

"58-18-12. RESERVE FUNDS.--

A. The authority may create and establish one or more reserve funds.

B. The authority may create and establish other reserve funds as it deems advisable and necessary."

Section 23

Section 23. Section 58-18-13 NMSA 1978 (being Laws 1975, Chapter 303, Section 13) is amended to read:

"58-18-13. NOTICE OR PUBLICATION NOT REQUIRED.--No notice, consent or approval by any governmental body or public officer shall be required as a prerequisite to the issuance, sale or delivery of any bonds, notes or other obligations of the authority pursuant to the provisions of the Mortgage Finance Authority Act, except as specifically provided in that act."

Section 24

Section 24. Section 58-18-14 NMSA 1978 (being Laws 1975, Chapter 303, Section 14) is amended to read:

"58-18-14. REMEDIES OF BONDHOLDERS AND NOTEHOLDERS.--
Except to the extent this section conflicts with a term or condition of any trust indenture or note, bondholders and noteholders shall have the following remedies:

A. in the event that the authority defaults in the payment of principal or interest on any issue of bonds or notes after it becomes due, whether at maturity or upon call for redemption, and the default continues for a period of thirty days, or in the event that the authority fails or refuses to comply with the provisions of the Mortgage Finance Authority Act or defaults in any agreement made with the holders of any issue of bonds or notes, the holders of twenty-five percent in aggregate principal amount of the bonds or notes of the issue then outstanding, by one or more instruments filed in the office of the clerk of the county in which the principal office of the authority is located

and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of the bonds or notes for the purposes provided in this section;

B. a trustee may, and upon written request of the holders of twenty-five percent in aggregate principal amount of the issue of bonds or notes then outstanding shall, in his or its own name:

(1) enforce all rights of the bondholders or noteholders, including the right to require the authority to carry out its agreements with the holders of the bonds or notes and to perform its duties under the Mortgage Finance Authority Act;

(2) bring suit upon the bonds or notes;

(3) by action or suit, require the authority to account as if it were the trustee of an express trust for the holders of the bonds or notes;

(4) by action or suit, enjoin any acts or things that may be unlawful or in violation of the rights of the holders of the bonds or notes; and

(5) declare all such bonds or notes due and payable and, if all defaults are made good, then with the consent of the holders of twenty-five percent of the aggregate principal amount of the issue of bonds or notes then outstanding, annul the declaration and its consequences;

C. a trustee shall, in addition to the provisions of Subsection B of this section, have and possess all the powers necessary or appropriate for the exercise of any functions specifically set forth in this section or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights;

D. before declaring the principal of bonds or notes due and payable, the trustee shall first give thirty days' notice in writing to the governor, to the authority and to the attorney general of the state; and

E. the district court shall have jurisdiction of any suit, action or proceeding by the trustee on behalf of bondholders or noteholders. The venue of any such suit, action or proceeding shall be laid in the county in which the principal office of the authority is located."

Section 25

Section 25. Section 58-18-14.1 NMSA 1978 (being Laws 1982, Chapter 86, Section 11) is amended to read:

"58-18-14.1. PROJECT MORTGAGE LOANS--ENFORCEMENT OF AGREEMENT.--

A. Compliance by any mortgage lender with the terms of its agreement with or undertaking to the authority with respect to the making of any project mortgage loans to sponsors may be enforced by decree of any court of competent jurisdiction. The authority shall require as a condition of purchasing project mortgage loans from or making a loan to any national banking or federal savings and loan association the consent of the association to the jurisdiction of courts of the state over any such proceeding. The authority shall also require as a condition of the authority's purchasing project mortgage loans from or making a loan to any mortgage lender agreement by the mortgage lender to the payment of penalties to the authority for violation by the mortgage lender of its undertakings to the authority.

B. Each mortgage lender shall be liable to the authority for any damages suffered by the authority by reason of the untruth of any representation or the breach of any warranty, and, in the event that any representation proves to be untrue when made or in the event of any breach of warranty, the mortgage lender shall, at the option of the authority:

(1) repurchase the project mortgage loan for the original purchase price adjusted for amounts subsequently paid thereon, as the authority may determine; or

(2) repay the then unpaid principal balance of the loan, together with interest accrued thereon and the penalties owed pursuant to Subsection A of this section."

Section 26

Section 26. Section 58-18-16 NMSA 1978 (being Laws 1975, Chapter 303, Section 16) is amended to read:

"58-18-16. AGREEMENT OF THE STATE.--The state does hereby pledge to and agree with the holders of any bonds, notes, other obligations, pass-through securities or guarantees issued under the Mortgage Finance Authority Act that the state will not limit or alter the rights vested in the authority or any secondary market facility to fulfill the terms of any agreements made with the holders of the bonds, notes, other obligations, pass-through securities or guarantees or in any way impair the rights and remedies of the holders of the bonds, notes, other obligations, pass-through securities or guarantees until the bonds, notes, other obligations, pass-through securities or guarantees together with the interest thereon, with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceedings by or on behalf of the holders of the bonds, notes, other obligations, pass-through securities or guarantees, are fully met and discharged. The authority or any secondary market facility is

authorized to include this pledge and agreement of the state in any agreement with the holders of the bonds, notes, other obligations, pass-through securities or guarantees."

Section 27

Section 27. Section 58-18-17 NMSA 1978 (being Laws 1975, Chapter 303, Section 17) is amended to read:

"58-18-17. BONDS, NOTES AND OTHER OBLIGATIONS --LEGAL INVESTMENTS FOR PUBLIC OFFICERS AND FIDUCIARIES.--The bonds, notes, other obligations, pass-through securities and guarantees of the authority or any secondary market facility are securities in which all insurance companies and associations and other persons carrying on insurance business, all banks, bank and trust companies, trust companies, private banks, savings banks, savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries and all other persons who are or may be authorized to invest in bonds or other obligations of the state may properly and legally invest funds including capital in their control or belonging to them."

Section 28

Section 28. Section 58-18-18 NMSA 1978 (being Laws 1975, Chapter 303, Section 18, as amended) is amended to read:

"58-18-18. TAX EXEMPTION.--

A. It is determined that the creation of the authority is in all respects for the benefit of the people of the state, for the improvement of their health and welfare and for the promotion of the economy and that those purposes are public purposes. The authority will be performing an essential governmental function in the exercise of the powers conferred upon it by the Mortgage Finance Authority Act, and the state covenants with the purchasers and all subsequent holders and transferees of bonds and notes issued by the authority, in consideration of the acceptance of and payment for the bonds and notes, that the bonds and notes of the authority issued pursuant to that act and the income therefrom shall at all times be free from taxation, except for estate or gift taxes and taxes on transfers.

B. The income and operations of the authority and any secondary market facility shall be exempt from taxation of every kind and nature, provided that the authority shall be obligated to pay all ad valorem taxes and special assessments. The authority and any secondary market facility shall pay any recording fee for instruments recorded by it or on its behalf but shall not be required to pay any transfer tax of any kind on account of instruments recorded by it or on its behalf."

Section 29

Section 29. Section 58-18-19 NMSA 1978 (being Laws 1975, Chapter 303, Section 19) is amended to read:

"58-18-19. NO CONTRIBUTION BY STATE OR MUNICIPALITY.--Neither the state nor any municipality shall have the power to pay out of its general funds or otherwise contribute its money to the authority, nor may the state or any state agency purchase any bonds or notes of the authority, nor shall the state or any municipality have the power to make or participate in the making of loans to mortgage lenders or to purchase or participate in the purchase of mortgage loans pursuant to the Mortgage Finance Authority Act. Notwithstanding the foregoing, neither the state nor any municipality shall be prohibited from appropriating its money to or in aid of the authority's programs or the beneficiaries of any program to the extent otherwise permitted by law."

Section 30

Section 30. Section 58-18-20 NMSA 1978 (being Laws 1975, Chapter 303, Section 20, as amended) is amended to read:

"58-18-20. MONEY OF THE AUTHORITY.--

A. All money of the authority from whatever source derived, except as otherwise authorized or provided in the Mortgage Finance Authority Act, shall be paid to the treasurer of the authority and shall be deposited forthwith in a bank designated by the authority. The money in such accounts shall be withdrawn on the order of persons whom the authority may authorize. All deposits of such money shall, if required by the authority, be secured in such manner as the authority may determine. The state auditor and his legally authorized representatives are authorized and empowered from time to time to examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other records and papers relating to its financial standing. The authority shall pay a reasonable fee for such examination as determined by the state auditor.

B. The authority and any secondary market facility shall have power to contract with holders of any of its bonds, notes, other obligations, pass-through securities or guarantees as to the custody, collection, securing, investment and payment of any money of the authority or any secondary market facility of any money held in trust or otherwise for the payment of bonds, notes, other obligations, pass-through securities or guarantees and to carry out the contract. Money held in trust or otherwise for the payment of bonds, notes, other obligations, pass-through securities or guarantees or in any way to secure bonds, notes, other obligations, pass-through securities or guarantees and deposits of such money may be secured in the same manner as money of the authority, and all banks and trust companies are authorized to give security for deposits.

C. Subject to the provisions of any contract with bondholders, noteholders, or holders of other obligations, pass-through securities or guarantees, the authority and any secondary market facility shall prescribe a system of accounts.

D. The authority shall submit to the governor, the state auditor and the legislative finance committee, within thirty days of the receipt thereof by the authority, a copy of the report of every external examination of the books and accounts of the authority.

E. Money of the authority and any secondary market facility, including money held in trust or otherwise for the payment of bonds, notes, other obligations, pass-through securities or guarantees is not public money or state funds within the meaning of any law of the state relating to investment, deposit, security or expenditure of public money and, subject to any agreement with bondholders and any limitations imposed by the Mortgage Finance Authority Act, may be used by the authority in any manner necessary or appropriate in carrying out the powers given in the Mortgage Finance Authority Act."

Section 31

Section 31. Section 58-18-21 NMSA1978 (being Laws 1975, Chapter 303, Section 21) is amended to read:

"58-18-21. LIMITATION OF LIABILITY.--Neither the members of the authority nor any person acting in its behalf, while acting within the scope of their authority, shall be subject to any personal liability for any action taken or omitted within that scope of authority."

Section 32

Section 32. Section 58-18-23 NMSA 1978 (being Laws 1975, Chapter 303, Section 23) is amended to read:

"58-18-23. COURT PROCEEDINGS--PREFERENCE--VENUE.--Any action or proceeding to which the authority or the people of the state may be a party in which any question arises as to the validity of the Mortgage Finance Authority Act shall be preferred over all other civil causes in all courts of the state and shall be heard and determined in preference to all other civil business pending in the courts irrespective of position on the calendar. The same preference shall be granted upon application of counsel to the authority in any action or proceeding questioning the validity of that act in which he may be allowed to intervene. The venue of any action or proceeding to which the authority or the people of the state are a party shall be laid in the county in which the principal office of the authority is located."

Section 33

Section 33. Section 58-18-24 NMSA 1978 (being Laws 1975, Chapter 303, Section 24) is amended to read:

"58-18-24. CORPORATE EXISTENCE.--The authority and its corporate existence shall continue until terminated by law, provided that no such law shall take effect so long as the authority has bonds, notes, other obligations or pass-through securities or guarantees outstanding unless adequate provision has been made for the satisfaction or payment thereof. Upon termination of the existence of the authority, all its rights and properties in excess of its obligations shall pass to and be vested in the state."

Section 34

Section 34. Section 58-18-25 NMSA 1978 (being Laws 1975, Chapter 303, Section 25, as amended) is amended to read:

"58-18-25. CONFLICTS OF INTEREST--PENALTY.--

A. If any member, officer or employee of the authority has an interest, either direct or indirect, in any contract to which the authority or any secondary market facility is or is to be a party or in any mortgage lender requesting a loan from or offering to sell mortgage loans to the authority or any secondary market facility or in any sponsor requesting a project mortgage loan, the interest shall be disclosed to the authority in writing and shall be set forth in the minutes of the authority. The member, officer or employee having the interest shall not participate in any action by the authority or any secondary market facility with respect to the contract, mortgage lender or sponsor.

B. Nothing in this section shall be deemed or construed to limit the right of any member, officer or employee of the authority to:

(1) acquire an interest in bonds, notes, other obligations, pass-through securities or guarantees of the authority or any secondary market facility; or

(2) have an interest in any banking institution in which the funds of the authority are or are to be deposited or that is or is to be acting as trustee or paying agent under any trust instrument to which the authority is a party.

C. Any person having a conflict of interest as defined in this section and participating in any transaction involving the conflict of interest or failing to notify the authority of the conflict is guilty of a misdemeanor."

Section 35

Section 35. Section 58-18-26 NMSA 1978 (being Laws 1975, Chapter 303, Section 26) is amended to read:

"58-18-26. CUMULATIVE AUTHORITY.--The Mortgage Finance Authority Act shall be deemed to provide an additional and alternative method for the doing of the things authorized by that act, shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as in derogation of any powers now existing; provided that the issuance of bonds, notes, other obligations, pass-through securities or guarantees under the provisions of the Mortgage Finance Authority Act need not comply with the requirements of any other law applicable to the issuance of bonds, notes, other obligations, pass-through securities or guarantees."

Section 36

Section 36. Section 58-18-27 NMSA 1978 (being Laws 1975, Chapter 303, Section 27) is amended to read:

"58-18-27. LIBERAL INTERPRETATION.--The Mortgage Finance Authority Act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect its purposes."

Section 37

Section 37. REPEAL.--Sections 58-18-9.1 and 58-18-11.2 NMSA 1978 (being Laws 1982, Chapter 86, Sections 8 and 10, as amended) are repealed.

HOUSE BILL 154

CHAPTER 10

RELATING TO MOTOR VEHICLES; THE MAD MAX REPAIR; CHANGING CERTAIN DISCLOSURE REQUIREMENTS.

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

Section 1

Section 1. Section 57-12-6 NMSA 1978 (being Laws 1971, Chapter 274, Section 1, as amended) is amended to read:

"57-12-6. MISREPRESENTATION OF MOTOR VEHICLES--
PENALTY.--

A. The willful misrepresentation of the age or condition of a motor vehicle by any person, including regrooving tires or performing chassis repair, without informing the purchaser of the vehicle that the regrooving or chassis repair has been performed, is an unlawful practice within the meaning of the Unfair Practices Act, unless the alleged misrepresentation is based wholly on repair of damage, the disclosure of which was not

required pursuant to Subsection C of this section. The failure to provide an affidavit pursuant to Subsection B of this section when there has been repair for which disclosure is required shall constitute prima facie evidence of willful misrepresentation.

B. Except as provided in Subsections C and D of this section, a seller of a motor vehicle shall furnish at the time of sale of a motor vehicle an affidavit that:

(1) describes the vehicle; and

(2) states to the best of the seller's knowledge whether there has been an alteration or chassis repair due to wreck damage.

C. No affidavit shall be required pursuant to this section if the flat rate manual cost of the alteration or chassis repair is less than six percent of the sales price of the vehicle.

D. In the case of a private-party sale of a vehicle, an affidavit shall be furnished only upon the request of the purchasing party.

E. Notwithstanding the provisions of Subsection D of Section 57-12-10 NMSA 1978, the award of three times actual damages as provided for in that section shall be in lieu of any award of punitive damages based only on those facts constituting the unfair or deceptive trade practice or unconscionable trade practice.

F. Any person who violates this section is guilty of a misdemeanor."

HOUSE BILL 31

CHAPTER 11

RELATING TO TAXATION; AMENDING CERTAIN SECTIONS OF THE INCOME TAX ACT, THE WITHHOLDING TAX ACT AND THE CORPORATE INCOME AND FRANCHISE TAX ACT.

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

Section 1

Section 1. Section 7-2-5.4 NMSA 1978 (being Laws 1988, Chapter 59, Section 1) is amended to read:

"7-2-5.4. EXEMPTION--ADOPTED SPECIAL NEEDS CHILD.--

A. Any individual who has adopted a special needs child on or after January 1, 1988 may claim an exemption for each such child in an amount specified in

Subsection B of this section not to exceed two thousand five hundred dollars (\$2,500) of income includable, except for this exemption, in net income until the taxable year in which the special needs child may no longer be claimed as a dependent for federal income tax purposes. Individuals having income both within and without this state shall apportion this exemption in accordance with regulations of the secretary.

B. For single individuals, heads of household and married individuals filing joint returns, for any taxable year beginning on or after January 1, 1988, the amount of the exemption under this section shall be two thousand five hundred dollars (\$2,500). For married individuals filing separate returns, for any taxable year beginning on or after January 1, 1988, the amount of the exemption under this section shall be one thousand two hundred fifty dollars (\$1,250).

C. As used in this section, "special needs child" means an individual under eighteen years of age who is certified by the human services department or a licensed child placement agency as meeting the definition of a "difficult to place child" in Subsection B of Section 32A-5-44 NMSA 1978; provided, however, that no such classification shall be based upon physical or mental handicap or emotional disturbance that is less than moderately disabling."

Section 2

Section 2. Section 7-2-7.1 NMSA 1978 (being Laws 1980, Chapter 102, Section 1, as amended) is amended to read:

"7-2-7.1. TAX TABLES.--In lieu of the tax rate computations required in Section 7-2-7 NMSA 1978, the secretary may adopt regulations requiring taxpayers to pay taxes in accordance with tax rate tables. The tax tables may be established either by regulation or by instruction but shall be computed substantially on the basis of the rates prescribed in Section 7-2-7 NMSA 1978. The secretary may by regulation or instruction exclude from the application of this section taxpayers having net incomes in excess of an amount to be determined by the secretary and may exclude taxpayers in any net-income class having more exemptions than the number of exemptions specified by the secretary for that category."

Section 3

Section 3. Section 7-2-11 NMSA 1978 (being Laws 1965, Chapter 202, Section 9, as amended) is amended to read:

"7-2-11. TAX CREDIT--INCOME ALLOCATION AND APPORTIONMENT.--

A. Net income of any individual having income that is taxable both within and without this state shall be apportioned and allocated as follows:

(1) during the first taxable year in which an individual incurs tax liability as a resident, only income earned on or after the date the individual became a resident and, in addition, income earned in New Mexico while a nonresident of New Mexico shall be allocated to New Mexico;

(2) except as provided otherwise in Paragraph (1) of this subsection, income other than compensation shall be allocated and apportioned as provided in the Uniform Division of Income for Tax Purposes Act;

(3) except as provided otherwise in Paragraph (1) of this subsection, compensation of a resident taxpayer shall be allocated to this state;

(4) compensation of a nonresident taxpayer shall be allocated to this state to the extent that such compensation is for activities, labor or personal services within this state; provided, if the activities, labor or services are performed in this state for fifteen or fewer days during the taxpayer's taxable year, the compensation may be allocated to the taxpayer's state of residence;

(5) except as provided otherwise in Paragraph (1) of this subsection, nonbusiness income as defined in the Uniform Division of Income for Tax Purposes Act not otherwise allocated or apportioned in the Uniform Division of Income for Tax Purposes Act shall be equitably apportioned in accordance with regulations of the secretary; and

(6) other deductions and exemptions allowable in computing net income and not specifically allocated in the Uniform Division of Income for Tax Purposes Act shall be equitably apportioned in accordance with regulations of the secretary.

B. For the purposes of this section, "non-New Mexico percentage" means the percentage determined by dividing the difference between the taxpayer's net income and the sum of the amounts allocated or apportioned to New Mexico by that net income.

C. A taxpayer may claim a credit in an amount equal to the amount of tax determined to be due under Section 7-2-7 or 7-2-7.1 NMSA 1978 multiplied by the non-New Mexico percentage."

Section 4

Section 4. Section 7-2-18.1 NMSA 1978 (being Laws 1981, Chapter 170, Section 1, as amended) is amended to read:

"7-2-18.1. CREDIT FOR EXPENSES FOR DEPENDENT CHILD DAYCARE NECESSARY TO ENABLE GAINFUL EMPLOYMENT TO PREVENT INDIGENCY.--

A. As used in this section:

(1) "caregiver" means a corporation or an individual eighteen years of age or over who receives compensation from the resident for providing direct care, supervision and guidance to a qualifying dependent of the resident for less than twenty-four hours daily and includes related individuals of the resident but does not include a dependent of the resident;

(2) "cost of maintaining a household" means the expenses incurred for the mutual benefit of the occupants thereof by reason of its operation as the principal place of abode of such occupants, including property taxes, mortgage interest, rent, utility charges, upkeep and repairs, property insurance and food consumed on the premises. Cost of maintaining a household shall not include expenses otherwise incurred, including cost of clothing, education, medical treatment, vacations, life insurance, transportation and mortgages;

(3) "dependent" means "dependent" as defined by Section 152 of the Internal Revenue Code, as that section may be amended or renumbered, but also includes any minor child or stepchild of the resident who would be a dependent for federal income tax purposes if the public assistance contributing to the support of the child or stepchild was considered to have been contributed by the resident;

(4) "disabled person" means a person who has a medically determinable physical or mental impairment, as certified by a licensed physician, that renders such person unable to engage in gainful employment;

(5) "gainfully employed" means working for remuneration for others, either full time or part time, or self-employment in a business or partnership; and

(6) "qualifying dependent" means a dependent under the age of fifteen at the end of the taxable year who receives the services of a caregiver.

B. Any resident who files an individual New Mexico income tax return and who is not a dependent of another taxpayer may claim a credit for child daycare expenses incurred and paid to a caregiver in New Mexico during the taxable year by such resident if the resident:

(1) singly or together with a spouse furnishes over half the cost of maintaining the household for one or more qualifying dependents for any period in the taxable year for which the credit is claimed;

(2) is gainfully employed for any period for which the credit is claimed or, if a joint return is filed, both spouses are gainfully employed or one is disabled for any period for which the credit is claimed;

(3) compensates a caregiver for child daycare for a qualifying dependent to enable such resident together with his spouse, if any and if not disabled, to be gainfully employed;

(4) is not a recipient of public assistance under a program of aid to families with dependent children during any period for which the credit provided by this section is claimed; and

(5) has a modified gross income, including child support payments, if any, of not more than the annual income that would be derived from earnings at double the federal minimum wage.

C. The credit provided for in this section shall be forty percent of the actual compensation paid to a caregiver by the resident for a qualifying dependent not to exceed four hundred eighty dollars (\$480) for each qualifying dependent or a total of one thousand two hundred dollars (\$1,200) for all qualifying dependents for a taxable year. For the purposes of computing the credit, actual compensation shall not exceed eight dollars (\$8.00) per day for each qualifying dependent.

D. The caregiver shall furnish the resident with a signed statement of compensation paid by the resident to the caregiver for daycare services. Such statements shall specify the dates and the total number of days for which payment has been made.

E. If the resident taxpayer has a federal tax liability, the taxpayer shall claim from the state not more than the difference between the amount of the state child care credit for which the taxpayer is eligible and the federal credit for child and dependent care expenses the taxpayer is able to deduct from federal tax liability for the same taxable year; provided, for first year residents only, the amount of the federal credit for child and dependent care expenses may be reduced to an amount equal to the amount of federal credit for child and dependent care expenses the resident is able to deduct from federal tax liability multiplied by the ratio of the number of days of residence in New Mexico during the resident's taxable year to the total number of days in the resident's taxable year.

F. The credit provided for in this section may be deducted from the taxpayer's New Mexico income tax liability for the taxable year. If the credit exceeds the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

G. A husband and wife maintaining a household for one or more qualifying dependents and filing separate returns for a taxable year for which they could have filed a joint return:

(1) may each claim only one-half of the credit that would have been claimed on a joint return; and

(2) are eligible for the credit provided in this section only if their joint modified gross income, including child support payments, if any, is not more than the annual income that would be derived from earnings at double the federal minimum wage."

Section 5

Section 5. Section 7-2A-2 NMSA 1978 (being Laws 1986, Chapter 20, Section 33, as amended by Laws 1993, Chapter 307, Section 3 and also by Laws 1993, Chapter 309, Section 1) is amended to read:

"7-2A-2. DEFINITIONS.--For the purpose of the Corporate Income and Franchise Tax Act and unless the context requires otherwise:

A. "affiliated group" means that term as it is used in the Internal Revenue Code;

B. "bank" means any national bank, national banking association, state bank or bank holding company;

C. "base income" means that part of the taxpayer's income defined as taxable income and upon which the federal income tax is calculated in the Internal Revenue Code for income tax purposes plus, for taxable years beginning on or after January 1, 1991, the amount of the net operating loss deduction allowed by Section 172(a) of the Internal Revenue Code, as that section may be amended or renumbered, and claimed by the taxpayer for that year; "base income" also includes interest received on a state or local bond;

D. "corporation" means corporations, joint stock companies, real estate trusts organized and operated under the Real Estate Trust Act, financial corporations and banks, other business associations and, for corporate income tax purposes, partnerships and limited liability companies taxed as corporations under the Internal Revenue Code;

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

F. "financial corporation" means any savings or building and loan association or any incorporated savings and loan company, trust company, mortgage banking company, consumer finance company or other financial corporation;

G. "fiscal year" means any accounting period of twelve months ending on the last day of any month other than December;

H. "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended;

I. "net income" means base income adjusted to exclude:

(1) amounts that have been taxed as income under the Banking and Financial Corporations Tax Act;

(2) income from obligations of the United States less expenses incurred to earn that income;

(3) other amounts that the state is prohibited from taxing because of the laws or constitution of this state or the United States;

(4) for taxable years that began prior to January 1, 1991, an amount equal to the sum of:

(a) net operating loss carryback deductions to that year from taxable years beginning prior to January 1, 1991 claimed and allowed, as provided by the Internal Revenue Code; and

(b) net operating loss carryover deductions to that year claimed and allowed; and

(5) for taxable years beginning on or after January 1, 1991, an amount equal to the sum of any net operating loss carryover deductions to that year claimed and allowed, provided that the amount of any net operating loss carryover from a taxable year beginning on or after January 1, 1991 may be excluded only as follows:

(a) in the case of a timely filed return, in the taxable year immediately following the taxable year for which the return is filed; or

(b) in the case of amended returns or original returns not timely filed, in the first taxable year beginning after the date on which the return or amended return establishing the net operating loss is filed; and

(c) in either case, if the net operating loss carryover exceeds the amount of net income exclusive of the net operating loss carryover for the taxable year to which the exclusion first applies, in the next four succeeding taxable years in turn until the net operating loss carryover is exhausted; in no event may a net operating loss carryover be excluded in any taxable year after the fourth taxable year beginning after the taxable year to which the exclusion first applies;

J. "net operating loss" means any net operating loss, as defined by Section 172(c) of the Internal Revenue Code, as that section may be amended or renumbered, for a taxable year as further increased by the income, if any, from obligations of the United States for that year less related expenses;

K. "net operating loss carryover" means the amount, or any portion of the amount, of a net operating loss for any taxable year that, pursuant to Paragraph (4) or (5) of Subsection I of this section, may be excluded from base income;

L. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, joint venture, syndicate or other association; "person" also means, to the extent permitted by law, any federal, state or other governmental unit or subdivision or agency, department or instrumentality thereof;

M. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

N. "state" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, any territory or possession of the United States or political subdivision thereof or any political subdivision of a foreign country;

O. "state or local bond" means a bond issued by a state other than New Mexico or by a local government other than one of New Mexico's political subdivisions, the interest from which is excluded from income for federal income tax purposes under Section 103 of the Internal Revenue Code, as that section may be amended or renumbered;

P. "taxable year" means the calendar year or fiscal year upon the basis of which the net income is computed under the Corporate Income and Franchise Tax Act and includes, in the case of the return made for a fractional part of a year under the provisions of that act, the period for which the return is made;

Q. "taxpayer" means any corporation subject to the taxes imposed by the Corporate Income and Franchise Tax Act; and

R. "unitary corporations" means two or more integrated corporations, other than any foreign corporation incorporated in a foreign country and not engaged in trade or business in the United States during the taxable year, that are owned in the amount of more than fifty percent and controlled by the same person and for which at least one of the following conditions exists:

(1) there is a unity of operations evidenced by central purchasing, advertising, accounting or other centralized services;

(2) there is a centralized management or executive force and centralized system of operation; or

(3) the operations of the corporations are dependent upon or contribute property or services to one another individually or as a group."

Section 6

Section 6. Section 7-2A-8 NMSA 1978 (being Laws 1981, Chapter 37, Section 41, as amended) is amended to read:

"7-2A-8. CREDIT--INCOME ALLOCATION AND APPORTIONMENT.--

A. Net income of any taxpayer having income that is taxable both within and without this state shall be apportioned and allocated as follows:

(1) except as otherwise provided in Paragraphs (2) and (3) of this subsection, income shall be allocated and apportioned as provided in the Uniform Division of Income for Tax Purposes Act;

(2) nonbusiness income as defined in the Uniform Division of Income for Tax Purposes Act not otherwise allocated or apportioned under the Uniform Division of Income for Tax Purposes Act shall be equitably apportioned in accordance with regulations of the secretary; and

(3) other deductions and exemptions allowable in computing federal taxable income and not specifically allocated in the Uniform Division of Income for Tax Purposes Act shall be equitably apportioned in accordance with regulations of the secretary.

B. For the purposes of this section, "non-New Mexico percentage" means the percentage determined by dividing the difference between the taxpayer's net income and the sum of the amounts allocated or apportioned to New Mexico by that net income.

C. A taxpayer may claim a credit in an amount equal to the amount of tax determined to be due under Section 7-2A-5 NMSA 1978 multiplied by the non-New Mexico percentage."

Section 7

Section 7. Section 7-2A-9.1 NMSA 1978 (being Laws 1986, Chapter 5, Section 1, as amended) is amended to read:

"7-2A-9.1. ESTIMATED TAX DUE--PAYMENT OF ESTIMATED TAX-- PENALTY--EXEMPTION.--

A. Every taxpayer shall pay estimated corporate income tax to the state of New Mexico during its taxable year if its tax after applicable credits for such taxable year can reasonably be expected to be five thousand dollars (\$5,000) or more. A taxpayer to which this section applies shall calculate estimated tax by either of the following methods:

(1) estimating the amount of tax due, net of any credits, for the current taxable year, provided that the estimated amount is at least eighty percent of the amount determined to be due for the taxable year; or

(2) using the greater of five thousand dollars (\$5,000) or one hundred percent of the tax due for the previous taxable year, if the previous taxable year was a full twelve-month year.

B. If Subsection A of this section applies, the amount of estimated tax shall be paid in installments as follows: twenty-five percent of the estimated tax is due on or before the fifteenth day of the fourth month of the taxable year, another twenty-five percent is due on or before the fifteenth day of the sixth month of the taxable year, another twenty-five percent is due on or before the fifteenth day of the ninth month of the taxable year and the final twenty-five percent is due on or before the fifteenth day of the twelfth month of the taxable year. Application of this subsection to a taxable year that is a fractional part of a year shall be determined by regulation of the secretary.

C. Every taxpayer to which Subsection A of this section applies that fails to pay the estimated tax when due or that makes estimated tax payments during the taxable year that are less than the lesser of eighty percent of the income tax imposed on the taxpayer under the Corporate Income and Franchise Tax Act or the amount required by Paragraph (2) of Subsection A of this section shall be subject to the interest and penalty provisions of Sections 7-1-67 and 7-1-69 NMSA 1978 on the underpayment.

D. For purposes of this section, the amount of underpayment shall be the excess of the amount of the installment that would be required to be paid if the estimated tax were equal to eighty percent of the tax shown on the return for the taxable year or the amount required by Paragraph (2) of Subsection A of this section or, if no return was filed, eighty percent of the tax for the taxable year for which the estimated tax is due less the amount, if any, of the installment paid on or before the last date prescribed for payment.

E. For purposes of this section, the period of underpayment shall run from the date the installment was required to be paid to whichever of the following dates is earlier:

(1) the fifteenth day of the third month following the end of the taxable year; or

(2) with respect to any portion of the underpayment, the date on which such portion is paid. For the purposes of this paragraph, a payment of estimated tax on any installment date shall be applied as a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under Subsection D of this section due on such installment date."

Section 8

Section 8. Section 7-2A-14 NMSA 1978 (being Laws 1983, Chapter 218, Section 1, as amended) is amended to read:

"7-2A-14. CORPORATE-SUPPORTED CHILD CARE--CREDITS ALLOWED.--

A. A taxpayer that pays for child care services in New Mexico for dependent children of an employee of the taxpayer during the employee's hours of employment may claim a credit against the corporate income tax imposed pursuant to the Corporate Income and Franchise Tax Act in an amount equal to thirty percent of the total expenses, net of any reimbursements, for child care services incurred and paid by the taxpayer in the taxable year.

B. A taxpayer that operates a child care facility in New Mexico used primarily by the dependent children of the taxpayer's employees may also claim a credit against the corporate income tax imposed pursuant to the Corporate Income and Franchise Tax Act in an amount equal to thirty percent of the net cost of operating the child care facility for the taxable year. If two or more taxpayers share in the cost of operating a child care facility primarily for the dependent children of the taxpayers' employees, each taxpayer shall be allowed a credit in relation to the taxpayer's share of the cost of operating the child care facility. Each taxpayer's share of the tax credit shall be determined by dividing the employer's share of the net cost of operating the child care facility by the number of children served and multiplying the result by the number of the taxpayer's employees' children served. The credit allowed pursuant to this subsection may be taken only if the child care facility is operated under the authority of a license issued pursuant to the Public Health Act and is operated without profit by the taxpayer. For the purposes of this section, the term "net cost" means the cost of operating a child care facility less any amounts collected as fees for use of the facility, any federal tax credits with respect to the facility or its operation and any other payment or reimbursement from any other source other than the credit provided by this section.

C. For the purposes of this section, "dependent children" means children under twelve years of age.

D. The credits provided for by Subsections A and B of this section may only be deducted from the taxpayer's corporate income tax liability for the taxable year in which the expenditures occurred. The credit may not exceed thirty thousand dollars (\$30,000) in any taxable year. If the credit amount exceeds the corporate income tax liability, the excess may be carried forward for three consecutive years; provided that in no event shall the annual credit amount exceed thirty thousand dollars (\$30,000)."

Section 9

Section 9. Section 7-3-3 NMSA 1978 (being Laws 1961, Chapter 243, Section 3, as amended) is amended to read:

"7-3-3. TAX WITHHELD AT SOURCE.--

A. Every employer who deducts and withholds a portion of an employee's wages for payment of income tax under the provisions of the Internal Revenue Code shall deduct and withhold an amount for each payroll period computed from a state withholding tax table furnished by the department; provided:

(1) if the employee instructs the employer to withhold a greater amount, the employer shall deduct and withhold the greater amount;

(2) if the employee is not a resident of New Mexico and is to perform services in New Mexico for fifteen or fewer days cumulatively during the calendar year, the employer is not required to deduct and withhold an amount from that employee's wages; and

(3) if the aggregate monthly amount withheld under this section would be less than one dollar (\$1.00) for an employee, the employer shall not be required to deduct and withhold wages in regard to that employee.

B. The department shall devise and furnish a state withholding tax table based on statutes made and provided to employers required to withhold amounts under this section. This table shall be devised to provide for a yearly aggregate withholding that will approximate the state income tax liability of average taxpayers in each exemption category.

C. If an individual requests in writing that the payor deduct and withhold an amount from the amount of the pension or annuity due the individual, the payor making payment of a pension or annuity to an individual domiciled in New Mexico shall deduct and withhold the amount requested to be deducted and withheld, provided that the payor is not required to deduct and withhold any amount less than ten dollars (\$10.00) per payment. The written request shall include the payee's name, current address, taxpayer identification number and, if applicable, the contract, policy or account number to which the request applies."

Section 10

Section 10. APPLICABILITY.--The provisions of Sections 1 through 6 and 8 of this act apply to taxable years beginning on or after January 1, 1995. The provisions of Section 7 of this act are applicable to taxable years beginning on or after January 1, 1996.

Section 11

Section 11. EFFECTIVE DATE.--The effective date of the provisions of Section 9 this act is July 1, 1995.

CHAPTER 12

RELATING TO TAXATION; CHANGING CERTAIN PROVISIONS OF THE PROPERTY TAX CODE AND SECTIONS 4-33-6, 4-39-2, 4-39-3 AND 4-39-6 NMSA 1978 (BEING LAWS 1947, CHAPTER 196, SECTION 6, LAWS 1978, CHAPTER 47, SECTION 1, LAWS 1969, CHAPTER 269, SECTION 2 AND LAWS 1955, CHAPTER 176, SECTION 5, AS AMENDED); AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 4-33-6 NMSA 1978 (being Laws 1947, Chapter 196, Section 6) is amended to read:

"4-33-6. COPIES OF CERTIFICATE OF ELECTION--PUBLICATION--DELIVERY.--Immediately upon canvassing the results of the election held pursuant to Chapter 4, Article 33 NMSA 1978, the board of county commissioners shall cause a certified copy of its certificate of election to be published in a newspaper of general circulation in both counties and shall cause a copy to be delivered to the department of finance and administration, the taxation and revenue department and the county assessor of each county affected."

Section 2

Section 2. Section 4-39-2 NMSA 1978 (being Laws 1978, Chapter 47, Section 1) is amended to read:

"4-39-2. COURSES IN PROPERTY VALUATION AND PROPERTY TAX ADMINISTRATION AUTHORIZED--ISSUANCE OF CERTIFICATES.--The taxation and revenue department, in cooperation with the international association of assessing officers, may establish four grades of courses in the field of property valuation and property tax administration. The courses shall be graded in order of increasing difficulty and shall be administered by the department. Persons completing a course and passing an examination on a particular grade of property valuation and property tax administration shall be issued an appraiser's certificate of an appropriate grade. No person shall be issued an appraiser's certificate of a particular grade unless he has been issued an appraiser's certificate for each one of the lesser grades. The appraiser's certificates shall be denominated "Appraiser 1", "Appraiser 2", "Appraiser 3" and "Appraiser 4" and shall be granted in order of difficulty of the course and examination completed. The "Appraiser 4" certificate shall be granted for completion of the most difficult course. County assessors or appraisers who have been granted an "Appraiser 4" certificate shall be designated "New Mexico certified appraiser" and shall be provided by the taxation and revenue department with a certificate granting this designation."

Section 3

Section 3. Section 4-39-3 NMSA 1978 (being Laws 1969, Chapter 269, Section 2, as amended) is amended to read:

"4-39-3. QUALIFICATIONS FOR APPRAISER'S CERTIFICATES.--The taxation and revenue department, in cooperation and in keeping with the standards of the international association of assessing officers, shall establish the qualifications that are prerequisite to the issuance of each grade of appraiser's certificate."

Section 4

Section 4. Section 4-39-6 NMSA 1978 (being Laws 1955, Chapter 176, Section 5, as amended) is amended to read:

"4-39-6. ASSESSORS--REMOVAL PROCEEDINGS AGAINST--SECRETARY OF TAXATION AND REVENUE MAY CAUSE TO BE INSTITUTED--DISTRICT ATTORNEY--ATTORNEY GENERAL.--

A. The secretary of taxation and revenue may, if grounds appear therefor, cause removal proceedings to be instituted against any assessor by the district attorney for the county for which the assessor was elected, or by the attorney general, in the manner provided by law for the institution and prosecution of removal proceedings against public officers by district attorneys.

B. The secretary of taxation and revenue shall cause removal proceedings to be instituted under Subsection A of this section against any assessor whose functions have been suspended under Section 7-35-6 NMSA 1978 when any suspension under that section continues without interruption for a period of more than sixty days.

C. Nothing in this section shall be construed to repeal or limit any provisions of law relating to the liability of assessors as such or as public officers to fine, imprisonment or removal from office for failure, refusal or neglect to discharge any duty imposed upon them by law, but shall be in addition to them."

Section 5

Section 5. A new section of the Property Tax Code is enacted to read:

"ADDITIONAL DEFINITION.--As used in the Property Tax Code, "costs" means the expenses incurred by the department in connection with collecting delinquent taxes. As applied to a particular property, "costs" may be, in the discretion of the department, either the sum of the expenses incurred specifically in connection with that property or the uniform charge applied to the class of delinquent properties of which the property is a member."

Section 6

Section 6. Section 7-36-2 NMSA 1978 (being Laws 1973, Chapter 258, Section 14, as amended) is amended to read:

"7-36-2. ALLOCATION OF RESPONSIBILITY FOR VALUATION AND DETERMINING CLASSIFICATION OF PROPERTY FOR PROPERTY TAXATION PURPOSES--COUNTY ASSESSOR AND DEPARTMENT.--

A. The county assessor is responsible and has the authority for the valuation of all property subject to valuation for property taxation purposes in the county except the property specified by Subsections B and C of this section.

B. The department is responsible and has the authority for the valuation of all property subject to valuation for property taxation purposes and used in the conduct of the following businesses:

- (1) railroad;
- (2) communications system as that term is defined in Section 7-36-30 NMSA 1978;
- (3) pipeline;
- (4) public utility; and
- (5) airline.

C. The department is responsible and has the authority for the valuation of property subject to valuation for property taxation purposes when that property is:

(1) an electricity generating plant, whether or not owned by a public utility, if all or part of the electricity is generated for ultimate sale to the consuming public;

(2) mineral property and property held or used in connection with mineral property as defined in Sections 7-36-22 through 7-36-25 NMSA 1978; or

(3) machinery, equipment and other personal property of all resident and nonresident persons customarily engaged in construction that involves the use during a tax year of the machinery, equipment and other personal property in more than one county. For the purposes of this paragraph, "construction" means leveling or clearing land, excavating earth, drilling wells of any type, including seismograph shot holes or core drilling, or similar work, or building, altering, repairing or demolishing any:

- (a) road, highway, bridge, parking area or related project;

- (b) building, fence, stadium or other structure;
- (c) airport, subway or similar facility;
- (d) park, trail, athletic field, golf course or similar facility;
- (e) dam, reservoir, canal, ditch or similar facility;
- (f) sewerage or water treatment facility, power generating plant, pump station, natural gas compressing station, gas processing plant, coal gasification plant, refinery, distillery or similar facility;
- (g) sewerage, water, gas or other pipeline;
- (h) transmission line;
- (i) radio, television or other tower;
- (j) water, oil or other storage tank;
- (k) shaft, tunnel or other mining appurtenance; or
- (l) similar work.

D. The entity having responsibility and authority for valuing the property described in Subsections A through C of this section shall also have responsibility and authority for classifying that property as either residential or nonresidential under the provisions of Section 7-36-2.1 NMSA 1978.

E. The secretary by regulation may delegate authority to the county assessor for the valuation and classification of property subject to valuation for property taxation purposes for which the department is responsible pursuant to Subsections B through D of this section only if:

(1) the property is held or used in connection with the transmission, storage, measurement or distribution of water and the transmission, storage, measurement and distribution is conducted by a single person entirely within a single county; or

(2) the property is held or used in connection with a communications system as defined in Section 7-36-30 NMSA 1978 and the system operates entirely within a single county.

F. The department is authorized to enter into one or more agreements with each county assessor, subject to approval of each agreement by the appropriate board of county commissioners, under which the county assessor agrees to perform the

valuation of property for which the department is responsible under Subsection B of this section but which property is not subject to the special methods of valuation set forth in Sections 7-36-27, 7-36-28 and 7-36-30 through 7-36-32 NMSA 1978."

Section 7

Section 7. Section 7-36-2.1 NMSA 1978 (being Laws 1981, Chapter 37, Section 63) is amended to read:

"7-36-2.1. CLASSIFICATION OF PROPERTY.--

A. Property subject to valuation for property taxation purposes shall be classified as either residential property or nonresidential property.

B. The department by regulation, ruling, order or other directive shall provide for the implementation of a classification system and shall include a method for apportioning the value of multiple-use properties between residential and nonresidential components."

Section 8

Section 8. Section 7-36-4 NMSA 1978 (being Laws 1976, Chapter 61, Section 1, as amended by Laws 1985, Chapter 109, Section 3 and also by Laws 1985, Chapter 225, Section 6) is amended to read:

"7-36-4. FRACTIONAL PROPERTY INTERESTS--DEFINITIONS.--

A. As used in this section:

(1) "fractional interest" means a tangible interest in real property, except for mineral property as defined in Section 7-36-22 NMSA 1978, that is less than the totl of the interests existing in the property, but "fractional interest" does not include those property interests described in Sections 7-36-3, 7-36-3.1 and 7-36-3.2 NMSA 1978 nor does it include the lessee's interest under a lease when the term of the lease is more than seventy-five years;

(2) "exempt entity" means any person whose real property is exempt from taxation under the constitution of New Mexico or the Enabling Act (36 Stat. 557, as amended) by reason of ownership;

(3) "improvements" includes surface and subsurface structures, fixtures, transmission lines, pipelines and other works, but "improvements" does not include:

(a) that property either included or specifically excluded under the terms "property used in connection with mineral property" under Section 7-36-23 NMSA 1978, "property used in connection with potash mineral property" under Section 7-36-24 NMSA 1978 and "property used in connection with uranium mineral property" under Section 7-36-25 NMSA 1978;

(b) a dwelling occupied by a low-income resident in a housing project authorized under the provisions of the Municipal Housing Law; and

(c) those property interests described in Sections 7-36-3, 7-36-3.1 and 7-36-3.2 NMSA 1978; and

(4) "nonexempt entity" means any person that is not an exempt entity.

B. Fractional interests of nonexempt entities in real property of exempt entities are exempt from property taxation under the Property Tax Code, but this exemption shall not apply to the following property:

(1) improvements of land of an exempt entity if the improvements are owned or leased by a nonexempt entity; these improvements are hereby subjected to valuation for property taxation purposes and to property taxation to be paid by the nonexempt entity; and

(2) property interests of nonexempt entities held under equitable title in the property of exempt entities."

Section 9

Section 9. Section 7-36-7 NMSA 1978 (being Laws 1973, Chapter 258, Section 15, as amended) is amended to read:

"7-36-7. PROPERTY SUBJECT TO VALUATION FOR PROPERTY TAXATION PURPOSES.--

A. Except for the property listed in Subsection B of this section or exempt pursuant to Section 7-36-8 NMSA 1978, all property is subject to valuation for property taxation purposes under the Property Tax Code if it has a taxable situs in the state.

B. The following property is not subject to valuation for property taxation purposes under the Property Tax Code:

(1) property exempt from property taxation under the federal or state constitution, federal law, the Property Tax Code or other laws, but this does not include property all or a part of the value of which is exempt because of the application of a veteran or head-of-family exemption nor does this provision excuse an owner from

any obligations to report his property as required by regulation of the department adopted under Section 7-38-8.1 NMSA 1978 or to claim its exempt status under Subsection C of Section 7-38-17 NMSA 1978;

(2) oil and gas property subject to valuation and taxation under the Oil and Gas Ad Valorem Production Tax Act and the Oil and Gas Production Equipment Ad Valorem Tax Act; and

(3) productive copper mineral property subject to valuation and taxation under the Copper Production Ad Valorem Tax Act; for the purposes of this section, "copper mineral property" means all mineral property and property held in connection with mineral property when seventy-five percent or more, by either weight or value, of the salable mineral extracted from or processed by the mineral property is copper."

Section 10

Section 10. Section 7-36-8 NMSA 1978 (being Laws 1973, Chapter 373, Section 1, as amended) is amended to read:

"7-36-8. TANGIBLE PERSONAL PROPERTY EXEMPT FROM PROPERTY TAX--EXCEPTIONS.--

A. Except as provided in Subsection B of this section, tangible personal property owned by a person is exempt from property taxation.

B. The following tangible personal property owned by a person is subject to valuation and taxation under the Property Tax Code:

(1) livestock;

(2) manufactured homes;

(3) aircraft not registered under the Aircraft Registration Act;

(4) private railroad cars, the earnings of which are not taxed under the provisions of the Railroad Car Company Tax Act;

(5) tangible personal property subject to valuation under Sections 7-36-22 through 7-36-25 and 7-36-27 through 7-36-32 NMSA 1978;

(6) vehicles not registered under the provisions of the Motor Vehicle Code and for which the owner has claimed a deduction for depreciation for federal income tax purposes during any federal income taxable year occurring in whole or in part during the twelve months immediately preceding the first day of the property tax year; and

(7) other tangible personal property not specified in Paragraphs (1) through (6) of this subsection:

(a) that is used, produced, manufactured, held for sale, leased or maintained by a person for purposes of the person's profession, business or occupation; and

(b) for which the owner has claimed a deduction for depreciation for federal income tax purposes during any federal income taxable year occurring in whole or in part during the twelve months immediately preceding the first day of the property tax year."

Section 11

Section 11. Section 7-36-15 NMSA 1978 (being Laws 1975, Chapter 165, Section 2) is amended to read:

"7-36-15. METHODS OF VALUATION FOR PROPERTY TAXATION PURPOSES--GENERAL PROVISIONS.--

A. Property subject to valuation for property taxation purposes under this article of the Property Tax Code shall be valued by the methods required by this article of the Property Tax Code whether the determination of value is made by the department or the county assessor. The same or similar methods of valuation shall be used for valuation of the same or similar kinds of property for property taxation purposes.

B. Unless a method or methods of valuation are authorized in Sections 7-36-20 through 7-36-33 NMSA 1978, the value of property for property taxation purposes shall be its market value as determined by application of the sales of comparable property, income or cost methods of valuation or any combination of these methods. In using any of the methods of valuation authorized by this subsection, the valuation authority shall apply generally accepted appraisal techniques.

C. Dams, reservoirs, tanks, canals, irrigation wells, installed irrigation pumps, stock-watering wells and pumps, similar structures and equipment used for irrigation or stock-watering purposes, water rights and private roads shall not be valued separately from the land they serve. The foregoing improvements and rights shall be considered as appurtenances to the land they serve, and their value shall be included in the determination of value of the land.

D. The department shall adopt regulations in accordance with the procedures in Section 7-38-90 NMSA 1978 to implement the methods of valuation authorized in this article of the Property Tax Code."

Section 12

Section 12. Section 7-38-67 NMSA 1978 (being Laws 1973, Chapter 258, Section 107, as amended) is amended to read:

"7-38-67. REAL PROPERTY SALE REQUIREMENTS.--

A. Real property may not be sold for delinquent taxes before the expiration of three years from the first date shown on the tax delinquency list on which the taxes on the real property became delinquent.

B. Notice of the sale must be published in a newspaper of general circulation within the county where the real property is located at least once a week for the three weeks immediately preceding the week of the sale. The notice shall state the time and place of the sale and shall include a description of the real property sufficient to permit its identification and location by potential purchasers.

C. Real property shall be sold at public auction either by the department or an auctioneer hired by the department. The auction shall be held in the county where the real property is located at a time and place designated by the department.

D. If the real property can be divided so as to enable the department to sell only part of it and pay all delinquent taxes, penalties, interest and costs, the department may, with the consent of the owner, sell only a part of the real property.

E. Before the sale, the department shall determine a minimum sale price for the real property. In determining the minimum price, the department shall consider the value of the property owner's interest in the real property, the amount of all delinquent taxes, penalties and interest for which it is being sold and the costs. The minimum price shall not be less than the total of all delinquent taxes, penalties, interest and costs. Real property may not be sold for less than the minimum price unless no offer met the minimum price when it was offered at an earlier public auction. A sale properly made under the authority of and in accordance with the requirements of this section constitutes full payment of all delinquent taxes, penalties and interest that are a lien against the property at the time of sale, and the sale extinguishes the lien.

F. Payment shall be made in full by the close of the public auction before an offer may be deemed accepted by the department.

G. Real property not offered for sale may be offered for sale at a later sale, but the requirements of this section and Section 7-38-66 NMSA 1978 shall be met in connection with each sale."

Section 13

Section 13. Section 7-38-69 NMSA 1978 (being Laws 1973, Chapter 258, Section 109, as amended) is amended to read:

"7-38-69. DISTRIBUTION OF AMOUNTS COLLECTED UNDER INSTALLMENT AGREEMENTS.--Amounts collected under installment agreements entered into by the department that represent delinquent taxes shall be remitted to the county treasurer of the county to which the net taxable value of the property is allocated for distribution to the governmental units. Amounts collected that represent penalties, interest and costs shall be retained by the department in accordance with Section 7-38-71 NMSA 1978. Money collected shall be remitted at the times and in the manner required by regulations of the department of finance and administration. When the department has received payment in full of delinquent taxes, penalties, interest and costs paid under an installment agreement, the department shall notify the county treasurer of that fact, and the county treasurer shall make an entry on the property tax schedule indicating that the delinquent property taxes, penalties and interest have been paid."

Section 14

Section 14. Section 7-38-71 NMSA 1978 (being Laws 1973, Chapter 258, Section 111, as amended) is amended to read:

"7-38-71. DISTRIBUTION OF AMOUNTS RECEIVED FROM SALE OF PROPERTY.--

A. Money received by the department from the sale of real or personal property for delinquent property taxes shall be deposited in a suspense fund and distributed as follows:

(1) first, that portion equal to the costs shall be retained by the department for use, subject to appropriation by the legislature, in administration of the Property Tax Code;

(2) second, that portion equal to the penalties and interest due shall be retained by the department for use, subject to appropriation by the legislature, by the department in administration of the Property Tax Code;

(3) third, that portion equal to the delinquent taxes due shall be remitted by the department to the appropriate county treasurer for distribution by the treasurer to the governmental units in accordance with the law and the regulations of the department of finance and administration; and

(4) the balance shall be paid to the former owner of the property sold or to any other person designated by order directed to the department by a court of competent jurisdiction, provided that the department may first apply all or any portion of the balance to be paid against the amount of any property tax, including any penalty and interest related thereto, owed by the person to whom the balance would otherwise be paid.

B. As a condition precedent to payment of the balance of the sale amount received to the former owner of the property, the department may require any person claiming to be entitled to that payment to present sufficient evidence of proof of former ownership of the property to the department. The department shall adopt regulations providing for the procedures to be followed by persons claiming sale proceeds as former owners in those instances where conflicting claims exist or the department requires proof of ownership.

C. If no person claims the balance of sale proceeds, whether the property was sold under the provisions of the Property Tax Code or prior law, as the former owner of the property within two years of the date of the sale and after a reasonable search to determine the former owner is made by the department and no former owner is found, the balance of the sale proceeds shall be considered abandoned property and deposited in accordance with the provisions of the Uniform Unclaimed Property Act.

D. If the balance of proceeds from the sale after paying a higher priority claim under Subsection A of this section is insufficient to pay all of the next priority claim, then the complete balance shall be applied to that next priority claim as partial payment."

Section 15

Section 15. REPEAL.--Sections 4-39-7, 7-36-5 and 7-36-6 NMSA 1978 (being Laws 1955, Chapter 176, Section 6 and Laws 1976, Chapter 61, Sections 2 and 3) are repealed.

Section 16

Section 16. APPLICABILITY.--The provisions of Sections 6 and 8 through 11 apply to the 1996 and subsequent property tax years.

HOUSE BILL 26

CHAPTER 13

WIITH PARTIAL VETO

RELATING TO EDUCATION; MAKING APPROPRIATIONS.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Education Appropriation Act".

Section 2

Section 2. DEFINITIONS.--As used in the Education Appropriation Act:

A. "federal funds" means payments by the United States government to state government or state agencies for specific purposes or in lieu of taxes, including grants, reimbursements and payments made in accordance with contracts or cooperative agreements, and shared revenue except those payments made in accordance with the federal Mineral Lands Leasing Act (30 U.S.C.A. 181, et seq.) and the State and Local Fiscal Assistance Act of 1972 (31 U.S.C.A. 1221-1264), as amended;

B. "general fund" means that fund created by Section 6-4-2 NMSA 1978 and includes the federal Mineral Lands Leasing Act receipts; and

C. "other state funds" means:

(1) unencumbered balances in state agency accounts appropriated by the General Appropriation Act of 1994; and

(2) all revenue available to state agencies from sources other than the general fund and federal funds.

Section 3

Section 3. FORMAT.--The general format of the appropriations set forth in the Education Appropriation Act with respect to symbols used, column headings and amounts stated are those used in the General Appropriation Act of 1994.

Section 4

Section 4. APPROPRIATIONS.--The appropriation for public school support in fiscal year 1996 shall be:

PUBLIC SCHOOL SUPPORT:

Item	General Fund	Other State Funds	Internl Svc funds/Inter-Agency Trnsf	Federal Funds	Total
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(1) State equalization guarantee

distribution:	1,158,165.0	1,000.0			1,159,165.0
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(2) Additional state equalization guarantee distribution - special education: 2,800.0		2,800.0
(3) Transportation distributions:		
(a) Operations	77,270.8	77,270.8
(b) School-owned bus replacements	2,429.2	2,429.2
Subtotal	79,700.0	79,700.0
(4) Supplemental Distributions:		
(a) Out-of-state tuition 311.0		311.0
(b) Emergency	1,500.0	1,500.0
(c) Emergency Capital outlay 300.0		300.0
(5) Noncertified school personnel and minimum teacher salary	350.0	350.0
(6) Training and experience	3,400.0	3,400.0
Subtotal	1,246,526.0 1,000.0	1,247,526.0

For the 1995-96 school year, the additional state equalization guarantee distribution for special education shall be added to the state equalization guarantee distribution prior to the calculation required pursuant to Section 22-8-25 NMSA 1978. During that school year, the state department of public education shall define special education related services to include evaluation for purposes of calculating the state equalization guarantee distribution.

The rate of distribution of the state equalization guarantee distribution shall be based on a program unit value determined by the superintendent of public instruction. That unit value shall be used to establish tentative budgets for the 1995-96 school year. Upon completion of final budgets or verification of the

number of units statewide for fiscal year 1996, the superintendent of public instruction may adjust the program unit value.

~~Included in the state equalization guarantee distribution are sufficient funds to provide for a minimum three percent salary increase for all public school employees. The legislature encourages local school boards to give priority to certified instructional staff so that regional parity may be achieved within a reasonable time frame.~~

The superintendent of public instruction may fund mid-year increases in student membership resulting from expansion at military bases from the supplemental emergency fund. The superintendent of public instruction shall certify to the secretary of finance and administration that the need exists before supplemental emergency funds may be released.

The general fund appropriation for noncertified school personnel and minimum teacher salaries shall be distributed to those districts that the superintendent of public instruction determines will require additional funding to provide the minimum salary level of twenty-two thousand dollars (\$22,000) per year to all classroom teachers and a minimum wage rate of six dollars (\$6.00) per hour to all noncertified school personnel. Funds not allocated to those purposes by October 30, 1995 shall be distributed to all school districts on a per-unit basis by the superintendent of public instruction.

The general fund appropriation of three million four hundred thousand dollars (\$3,400,000) for training and experience shall enable the superintendent of public instruction to make an additional distribution to certain local school districts. Any local school district that did not receive a waiver from the superintendent of public instruction in the calculation of the October 1994 training and experience index for instructional staff shall receive an additional distribution for the 1995-96 school year. That distribution shall be calculated as follows: number of membership program units in that district times (.007) times the unit value established by the superintendent of public instruction for the 1995-96 school year.

The general fund appropriation to the public school fund shall be reduced by the amounts transferred to the public school fund from the current school fund and from the federal Mineral Lands Leasing Act (30 U.S.C.A. 181, et seq.) receipts otherwise unappropriated.

Unexpended or unencumbered balances in the distributions authorized remaining at the end of fiscal year 1996 from appropriations made from the general fund shall revert to the general fund.

Item	General Fund	Other State Funds	Internl Svc funds/Inter- Agency Trnsf	Federal Funds	Total
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INSTRUCTIONAL MATERIAL FUND:

24,700.0	527.0			25,227.0
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The appropriation to the instructional material fund is made from the federal Mineral Lands Leasing Act (30 U.S.C.A. 181, et seq.) receipts.

STATE SUPPORT RESERVE FUND:

1,250.0				1,250.0
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EDUCATIONAL TECHNOLOGY FUND:

3,000.0				3,000.0
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TOTAL PUBLIC SCHOOL SUPPORT:

1,275,476.0	1,527.0			1,277,003.0
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ADULT BASIC EDUCATION FUND:

3,000.0			1,658.5	4,658.5
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STATE DEPARTMENT OF PUBLIC EDUCATION:

(1) Administration:

(a) Personal services

5,445.0	2,468.1	7,913.1		
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(b) Employee benefits

1,508.0	685.3	2,193.3		
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(c) In-state travel

300.0	12.2	171.7	483.9	
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(d) Maintenance and
repairs

140.0	11.4	3.7	155.1	
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(e) Supplies and
materials

145.0	20.5	92.0	257.5	
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(f) Contractual
services

258.0	8.8	464.8	731.6	
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(g) Operating costs

320.6		27.0	571.4	919.0
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(h) Other costs	3.4		155.0	158.4
(i) Capital outlay	35.0	13.5	77.5	126.0
(j) Out-of-state travel	25.0		60.4	85.4
Authorized FTE: 171.0 Permanent; 64.0 Term; .2 Temporary				
Subtotal	8,180.0		93.4	4,749.9 13,023.3

The appropriation to the state department of public education includes two hundred seventeen thousand two hundred dollars (\$217,200) from federal Mineral Lands Leasing Act (30 U.S.C.A. 181, et seq.) receipts.

Category transfers and budget increases from internal service funds/interagency transfers are specifically authorized for the state department of public education. Such internal service funds/interagency transfers are appropriated.

(2) Special projects:

3,200.0	3,200.0
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The state department of public education shall conduct an application and review process to determine the specific dollar amounts to be distributed to local school districts or individual projects; provided that not more than nine hundred seventy-five thousand dollars (\$975,000) shall be expended for public school service learning initiatives; a peer leadership conference on substance abuse prevention; teacher writing instruction projects; total quality management principles in public schools, contingent upon that program providing an equal amount of matching funds from other than state sources; violence prevention behavior modeling in video programs; teacher and administrator summer academies, contingent upon that program providing an equal amount of matching funds from other than state sources; and school-to-work initiatives.

Item	General Fund	Other State Funds	Internl Svc funds/Inter-Agency Trnsf	Federal Funds	Total
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(3) Apprenticeship Assistance: 600.0

600.0

(4) Regional Education Cooperatives:

(a) Region IX

86.8 870.2 420.0 1,377.0

Authorized FTE: 17.5 Term

(b) High Plains

1,159.2 658.9 342.6 2,160.7

Authorized FTE: 46.0 Term

(c) Central 681.5 1,127.5 1,809.0

Authorized FTE: 22.4 Term

Category transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for regional education cooperatives. Such other state funds and internal service funds/interagency transfers are appropriated.

Unexpended or unencumbered balances in the state department of public education remaining at the end of fiscal year 1996 from appropriations made from the general fund shall not revert.

Section 5

Section 5. SPECIAL APPROPRIATIONS.--The following special appropriations are made from the general fund to the following agencies for expenditure in fiscal years 1995 and 1996:

Item	General Fund	Other State Funds	Internl Svc funds/Inter-Agency Trnsf	Federal Funds	Total
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STATE DEPARTMENT OF PUBLIC EDUCATION

(1) Staff development programs	445.0				445.0
(2) Classroom supplies and materials	1,350.0		1,350.0		
(3) World class teachers project	700.0			700.0	
(4) Year-round or double session school costs	225.0			225.0	
(5) Transportation management system	750.0				750.0

The general fund appropriation of four hundred forty-five thousand dollars (\$445,000) for staff development programs shall be distributed equally to each local school district

to design and implement a strategic planning process that includes a professional development component. The state department of public education shall develop a statewide professional development proposal based on the school districts' plan and submit a written report to the legislative education study committee by November 1, 1995 with recommendation for future funding of professional development.

The general fund appropriation of one million three hundred fifty thousand dollars (\$1,350,000) for classroom supplies and materials shall be distributed by the superintendent of public instruction to local school districts on the basis of the number of classroom teachers employed by the district as reflected by the October 1995 payroll. The distributions shall be utilized to reimburse teachers for expenses incurred by the purchase of classroom supplies and materials.

The general fund appropriation of two hundred twenty-five thousand dollars (\$225,000) for year-round schools or double session schools shall be distributed proportionately by the superintendent of public instruction to local school districts operating year-round schools and to districts operating high schools on a double session schedule at a rate not to exceed twenty-five dollars (\$25.00) per student or one hundred thousand dollars (\$100,000) per school for the purpose of defraying additional operational costs incurred as a result of utilizing either schedule format.

The general fund appropriation of seven hundred fifty thousand dollars (\$750,000) for a transportation management system shall be expended for the purpose of contracting for establishment of a pilot transportation management system.

Item	General Fund	Other State Funds	Internl Svc funds/Inter-Agency Trnsf	Federal Funds	Total
PUBLIC SCHOOL CAPITAL IMPROVEMENTS FUND	7,000.0			7,000.0	
LEGISLATIVE EDUCATION STUDY COMMITTEE					
(1) Public school funding formula study	125.0				125.0
(2) Public school capital needs assessment	75.0				75.0

Section 6. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

HOUSE BILL 3

CHAPTER 14

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
AUTHORIZING THE ACQUISITION OF THE CHAMA LAND AND CATTLE COMPANY
RANCH IN RIO ARRIBA COUNTY BY THE NEW MEXICO FINANCE AUTHORITY;
MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1

Section 1. NEW MEXICO FINANCE AUTHORITY--AUTHORIZATION TO ACQUIRE
THE CHAMA LAND AND CATTLE COMPANY RANCH.--

A. The New Mexico finance authority is authorized to issue bonds, notes or other obligations in an amount not to exceed twenty-three million dollars (\$23,000,000) for the purpose of acquiring land, buildings, facilities, equipment, animal herds and other personal property comprising, located and used on the property commonly known as the Chama land and cattle company ranch in Rio Arriba county.

B. The New Mexico finance authority is authorized to make an offer to purchase the Chama land and cattle company ranch from the Chapter 11 bankruptcy trustee appointed by the United States bankruptcy court for the northern district of Texas, Dallas division, who is responsible for the sale and disposition of the assets of the American elk conservatory, inc., the Chama land and cattle company, inc., the American elk conservatory holdings, inc. and the lodge at Chama, inc., which corporations currently hold the land, buildings, facilities, equipment, animal herds and other personal property comprising, located and used on the property commonly known as the Chama land and cattle company ranch in Rio Arriba county.

C. The New Mexico finance authority is authorized to make a refundable earnest money deposit with the bankruptcy trustee not to exceed two hundred fifty thousand dollars (\$250,000) from the public project revolving fund within the New Mexico finance authority.

D. The offer to purchase the Chama land and cattle company ranch shall be in the name of the New Mexico finance authority upon terms and conditions satisfactory to the New Mexico finance authority. The offer to purchase may be an offer for acquisition of the assets or outstanding stock, or any combination thereof, of the corporations holding title to the assets constituting the Chama land and cattle company ranch by direct purchase of the assets or stock or by an exchange of bonds, notes or other obligations of the New Mexico finance authority for the assets or outstanding stock. If stock of corporations is acquired, the New Mexico finance authority is authorized to own and hold such stock until such time or times it deems appropriate to merge all or any of such corporations into another, or to dissolve all or any of such corporations.

E. The multipurpose use, management and ownership of the land and facilities constituting the Chama land and cattle company ranch shall be established by law; provided, the New Mexico finance authority may enter into contracts and agreements with the bankruptcy trustee or other parties as necessary to continue the existing use of the ranch property and facilities during the period between purchase and action by the second session of the forty-second legislature establishing the multipurpose use, management and ownership of the Chama land and cattle company ranch.

F. Any bonds, notes or other obligations issued by the New Mexico finance authority for acquisition of the Chama land and cattle company ranch may be subject to optional redemption or prepayment without penalty at any time deemed appropriate by the New Mexico finance authority. Any bonds, notes or other obligations issued by the New Mexico finance authority for acquisition of the Chama land and cattle company ranch shall mature on the date or dates established by the New Mexico finance authority and shall be secured by a subordinate pledge of money in the public project revolving fund.

G. The acquisition of the Chama land and cattle company ranch shall be subject to approval of the state board of finance prior to closing the transaction with the bankruptcy trustee.

H. As required by Section 6-21-8 NMSA 1978, the purchase of the Chama land and cattle company ranch is authorized to be financed with money in the public project revolving fund of the New Mexico finance authority.

Section 2

Section 2. APPROPRIATION.--Two million dollars (\$2,000,000) is appropriated from the general fund to the public project revolving fund of the New Mexico finance authority for expenditure in fiscal years 1995 and 1996 for the purpose of defraying a portion of the cost of acquiring the Chama land and cattle company ranch. Any unexpended or unencumbered balance remaining at the end of fiscal year 1996 shall not revert to the general fund.

Section 3

Section 3. CONTINGENCY.--Section 2 of this act shall become effective upon acceptance by the United States bankruptcy court for the northern district of Texas, Dallas division of the offer of the New Mexico finance authority to purchase the Chama land and cattle company ranch in Rio Arriba county.

Section 4

Section 4. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE WAYS AND MEANS COMMITTEE SUBSTITUTE FOR
SENATE BILL 1183 WITH EMERGENCY CLAUSE
SIGNED MARCH 15, 1995

CHAPTER 15

RELATING TO TAXATION; ENACTING THE NATURAL GAS AND CRUDE OIL PRODUCTION INCENTIVE ACT; AUTHORIZING A PRODUCTION RESTORATION INCENTIVE SEVERANCE TAX EXEMPTION AND A WELL WORKOVER INCENTIVE SEVERANCE TAX RATE; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. SHORT TITLE.--Sections 1 through 6 of this act may be cited as the "Natural Gas and Crude Oil Production Incentive Act".

Section 2

Section 2. DEFINITIONS.--As used in the Natural Gas and Crude Oil Production Incentive Act:

- A. "department" means the taxation and revenue department;
- B. "division" means the oil conservation division of the energy, minerals and natural resources department;
- C. "natural gas" means any combustible vapor composed chiefly of hydrocarbons occurring naturally;
- D. "operator" means the person responsible for the actual physical operation of a natural gas or oil well;
- E. "person" means any individual, or other legal entity, including any group or combination of individuals or other legal entities acting as a unit;
- F. "production projection" means the estimate of the productive capacity of a natural gas or oil well that is certified by the division pursuant to the provisions of the Natural Gas and Crude Oil Production Incentive Act as the future rate of production

from the well prior to the operator of the well performing a well workover project on the well;

G. "production restoration incentive tax exemption" means the tax exemption set forth in Subsection B of Section 7-29-4 NMSA 1978 for natural gas or oil produced from a production restoration project;

H. "production restoration project" means the use of any process for returning to production a natural gas or oil well that had thirty days or less of production between January 1, 1993 and December 31, 1994 as approved and certified by the division;

I. "severance" means the taking from the soil of any product in any manner whatsoever;

J. "well workover incentive tax rate" means the tax rate set forth in Paragraphs (4) and (5) of Subsection A of Section 7-29-4 NMSA 1978 on the natural gas or oil produced in excess of the production projection from a well workover project; and

K. "well workover project" means any procedure undertaken by the operator of a natural gas or oil well that is intended to increase the production from the well and that has been approved and certified by the division.

Section 3

Section 3. APPROVAL OF PRODUCTION RESTORATION PROJECTS AND WELL WORKOVER PROJECTS.--

A. A natural gas or oil well shall be approved by the division as a production restoration project if:

(1) the operator of the well makes application to the division in accordance with the provisions of the Natural Gas and Crude Oil Production Incentive Act and rules and regulations adopted pursuant to that act for approval of a production restoration project; and

(2) the division records show that the well had thirty days or less of production between January 1, 1993 and December 31, 1994.

B. A natural gas or oil well shall be approved by the division as a well workover project if:

(1) the operator of the well makes application to the division in accordance with the provisions of the Natural Gas and Crude Oil Production Incentive

Act and rules and regulations adopted pursuant to that act for approval of a well workover project;

(2) the division determines that the procedure proposed to be undertaken by the operator of the well is a procedure intended to increase the production from the well, but is not routine maintenance that would be performed by a prudent operator to maintain the well in operation. Such procedures may include, but are not limited to:

(a) re-entry into the well to drill deeper, to sidetrack to a different location or to recompleting for production;

(b) recompleting by reperforation of a zone from which natural gas or oil has been produced or by perforation of a different zone;

(c) repair or replacement of faulty or damaged casing or related downhole equipment;

(d) fracturing, acidizing or installing compression equipment;
or

(e) squeezing, cementing or installing equipment necessary for removal of excessive water, brine or condensate from the well bore in order to establish, continue or increase production from the well; and

(3) the operator of the well submits to the division an estimate of the productive capacity of the well based on at least twelve months of established production, and the division, based on its verification of that estimate, determines the future rate of production from the well prior to the operator of the well performing the well workover project on the well and certifies that as the production projection for the project.

Section 4

Section 4. APPLICATION PROCEDURES--CERTIFICATION OF APPROVAL--RULES AND REGULATIONS--ADMINISTRATION.--

A. The operator of a proposed production restoration project or well workover project shall apply to the division for approval of a production restoration project or a well workover project in the form and manner prescribed by the division and shall provide any relevant material and information the division requires for that approval.

B. Upon a determination that the project complies with the provisions of the Natural Gas and Crude Oil Production Incentive Act and rules and regulations adopted pursuant to that act, the division shall approve the application and shall issue a

certification of approval to the operator and designate the natural gas or oil well as a production restoration project or well workover project, as applicable.

C. At the time of issuing a certification of approval to an operator of a natural gas or oil well for a well workover project, the division shall also certify the production projection for that project.

D. In addition to the powers enumerated in Section 70-2-12 NMSA 1978, the division shall adopt, promulgate and enforce rules and regulations to carry out the provisions of Sections 1 through 5 of the Natural Gas and Crude Oil Production Incentive Act.

E. The division shall consider and approve applications for approval of a production restoration project or well workover project without holding hearings on the applications. If the division denies approval of an application pursuant to such a process, the division, upon the request of the applicant, shall set a hearing of the application before an examiner appointed by the division to conduct the hearing. The hearing shall be conducted in accordance with the provisions of the Oil and Gas Act for such hearings.

Section 5

Section 5. NOTICE TO SECRETARY OF TAXATION AND REVENUE.--The division shall notify immediately the secretary of taxation and revenue upon:

A. adoption of rules and regulations pursuant to the provisions of the Natural Gas and Crude Oil Production Incentive Act;

B. certification of the date that production has been restored on a production restoration project; and

C. certification of the date that a well workover project has been completed.

Section 6

Section 6. QUALIFICATION FOR PRODUCTION RESTORATION INCENTIVE TAX EXEMPTION AND WELL WORKOVER INCENTIVE TAX RATE--SECRETARY OF TAXATION AND REVENUE APPROVAL--REFUND.--

A. The person responsible for paying the oil and gas severance tax on natural gas or oil produced from a production restoration project shall qualify to receive a ten-year production restoration incentive tax exemption upon:

(1) application to the department in the form and manner prescribed by the department for approval for the ten-year production restoration incentive tax exemption;

(2) submission of the certification of approval from the division and designation of the natural gas or oil well as a production restoration project; and

(3) submission of any other relevant material that the secretary of taxation and revenue deems necessary to administer the applicable provisions of the Natural Gas and Crude Oil Production Incentive Act.

B. The person responsible for payment of the oil and gas severance tax on natural gas or oil produced from a well workover project shall qualify for the well workover incentive tax rate on the natural gas or oil produced in excess of the production projection for that project upon:

(1) application to the department in the form and manner prescribed by the department for approval to apply the well workover incentive tax rate to the natural gas or oil produced in excess of the production projection from a well workover project;

(2) submission of the certification from the division of approval and designation of the natural gas or oil well as a well workover project and of the production projection for the well workover project; and

(3) any other relevant material that the department considers necessary to administer the applicable provisions of the Natural Gas and Crude Oil Production Incentive Act.

C. The production restoration incentive tax exemption shall apply to natural gas or oil produced from a production restoration project beginning the first day of the month following the date the division certifies that production has been restored and ending the last day of the tenth year of production following that date. The well workover incentive tax rate applies to the natural gas or oil produced in excess of the production projection from a well workover project beginning the first day of the month following the date the division certifies that the well workover project has been completed.

D. The person responsible for payment of the oil and gas severance tax on natural gas or oil production from an approved well workover project may file a claim for refund in accordance with Section 7-1-26 NMSA 1978 for taxes paid in excess of the amount due using the well workover incentive tax rate. Notwithstanding the provisions of Subsection E of Section 7-1-26 NMSA 1978, any such refund granted shall be made in the form of a credit against any future oil and gas severance tax liabilities incurred by the taxpayer.

E. The secretary of taxation and revenue may adopt and promulgate rules and regulations to enforce the provisions of this section.

Section 7

Section 7. Section 7-29-2 NMSA 1978 (being Laws 1959, Chapter 52, Section 2, as amended) is amended to read:

"7-29-2. DEFINITIONS.--As used in the Oil and Gas Severance Tax Act:

A. "commission", "department", "division" or "oil and gas accounting division" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "production unit" means a unit of property designated by the department from which products of common ownership are severed;

C. "severance" means the taking from the soil of any product in any manner whatsoever;

D. "value" means the actual price received for products at the production unit, except as otherwise provided in the Oil and Gas Severance Tax Act;

E. "product" or "products" means oil, natural gas or liquid hydrocarbon, individually or any combination thereof, or carbon dioxide;

F. "operator" means any person:

(1) engaged in the severance of products from a production unit; or

(2) owning an interest in any product at the time of severance who receives a portion or all of such product for his interest;

G. "primary recovery" means the displacement of oil and of other liquid hydrocarbons removed from natural gas at or near the wellhead from an oil well or pool as classified by the oil conservation division of the energy, minerals and natural resources department pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978 into the well bore by means of the natural pressure of the oil well or pool, including but not limited to artificial lift;

H. "purchaser" means a person who is the first purchaser of a product after severance from a production unit, except as otherwise provided in the Oil and Gas Severance Tax Act;

I. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, co-partnership, cooperative, joint venture, association or other group or combination acting as a unit, and the plural as well as the singular number;

J. "interest owner" means a person owning an entire or fractional interest of whatsoever kind or nature in the products at the time of severance from a production unit, or who has a right to a monetary payment that is determined by the value of such products;

K. "new production natural gas well" means a producing crude oil or natural gas well proration unit that begins its initial natural gas production on or after May 1, 1987 as determined by the oil conservation division of the energy, minerals and natural resources department;

L. "qualified enhanced recovery project", prior to January 1, 1994, means the use or the expanded use of carbon dioxide, when approved by the oil conservation division of the energy, minerals and natural resources department pursuant to the Enhanced Oil Recovery Act, for the displacement of oil and of other liquid hydrocarbons removed from natural gas at or near the wellhead from an oil well or pool classified by the oil conservation division pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978;

M. "qualified enhanced recovery project", on and after January 1, 1994, means the use or the expanded use of any process approved by the oil conservation division of the energy, minerals and natural resources department pursuant to the Enhanced Oil Recovery Act for the displacement of oil and of other liquid hydrocarbons removed from natural gas at or near the wellhead from an oil well or pool classified by the oil conservation division pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978, other than a primary recovery process; the term includes but is not limited to the use of a pressure maintenance process, a water flooding process and immiscible, miscible, chemical, thermal or biological process or any other related process;

N. "production restoration project" means the use of any process for returning to production a natural gas or oil well that had thirty days or less of production between January 1, 1993 and December 31, 1994, as approved and certified by the oil conservation division of the energy, minerals and natural resources department pursuant to the Natural Gas and Crude Oil Production Incentive Act;

O. "well workover project" means any procedure undertaken by the operator of a natural gas or crude oil well that is intended to increase the production from the well and that has been approved and certified by the oil conservation division of the energy, minerals and natural resources department pursuant to the Natural Gas and Crude Oil Production Incentive Act; and

P. "tax" means the oil and gas severance tax."

Section 8

Section 8. Section 7-29-4 NMSA 1978 (being Laws 1980, Chapter 62, Section 5, as amended) is amended to read:

"7-29-4. OIL AND GAS SEVERANCE TAX IMPOSED-- COLLECTION--
INTEREST OWNER'S LIABILITY TO STATE--INDIAN LIABILITY.--

A. There is imposed and shall be collected by the department a tax on all products that are severed and sold, except as provided in Subsection B of this section. The measure of the tax and the rates are:

(1) on natural gas severed and sold, except as provided in Paragraph (4) of this subsection, three and three-fourths percent of the taxable value determined under Section 7-29-4.1 NMSA 1978;

(2) on oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead, except as provided in Paragraphs (3) and (5) of this subsection, three and three-fourths percent of taxable value determined under Section 7-29-4.1 NMSA 1978;

(3) on oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead produced from a qualified enhanced recovery project, one and seven-eighths percent of the taxable value determined under Section 7-29-4.1 NMSA 1978, provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to the fiscal year in which the tax rate is to be imposed, was less than twenty-eight dollars (\$28.00) per barrel;

(4) on the natural gas from a well workover project that is in excess of the production projection certified by the oil conservation division of the energy, minerals and natural resources department in its approval of the well workover project, one and seven-eighths percent of the taxable value determined under Section 7-29-4.1 NMSA 1978, provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to the fiscal year in which the tax rate is to be imposed, was less than twenty-four dollars (\$24.00) per barrel;

(5) on the oil and other liquid hydrocarbons removed from natural gas at or near the wellhead from a well workover project that is in excess of the production projection certified by the oil conservation division of the energy, minerals and natural resources department in its approval of the well workover project, one and seven-eighths percent of the taxable value determined under Section 7-29-4.1 NMSA 1978, provided that the annual average price of west Texas intermediate crude oil,

determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to the fiscal year in which the tax rate is to be imposed, was less than twenty-four dollars (\$24.00) per barrel; and

(6) on carbon dioxide, three and three-fourths percent of the taxable value determined under Section 7-29-4.1 NMSA 1978.

B. The tax imposed in Subsection A of this section shall not be imposed on:

(1) natural gas severed and sold from a production restoration project during the first ten years of production following the restoration of production, provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to each fiscal year in which the tax exemption is to be effective, was less than twenty-four dollars (\$24.00) per barrel; and

(2) oil and other liquid hydrocarbons removed from natural gas at or near the wellhead from a production restoration project during the first ten years of production following the restoration of production, provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to each fiscal year in which the tax exemption is to be effective, was less than twenty-four dollars (\$24.00) per barrel.

C. Every interest owner shall be liable for the tax to the extent of his interest in such products. Any Indian tribe, Indian pueblo or Indian shall be liable for the tax to the extent authorized or permitted by law.

D. The tax imposed by this section may be referred to as the "oil and gas severance tax".

HOUSE BILL 65

CHAPTER 16

RELATING TO TAXATION; PROVIDING AN INCENTIVE FOR THE USE OF VEHICLES CONVERTED TO ALTERNATIVE FUEL USE; ENACTING THE ALTERNATIVE FUEL TAX ACT; PROVIDING FOR IMPOSITION AND COLLECTION OF THE ALTERNATIVE FUEL EXCISE TAX; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

Section 1

Section 1. SHORT TITLE.--Sections 1 through 10 of this act may be cited as the "Alternative Fuel Tax Act".

Section 2

Section 2. PURPOSE.--To encourage the use of alternative fuel for the propulsion of motor vehicles on the roads of New Mexico, thereby increasing the market for supplies of New Mexico natural gas and reducing harmful environmental emissions, it is the purpose of the Alternative Fuel Tax Act to provide for fair taxation of alternative fuel used for such purposes.

Section 3

Section 3. DEFINITIONS.--As used in the Alternative Fuel Tax Act:

A. "alternative fuel" means liquefied petroleum gas, compressed natural gas and liquefied natural gas used for the generation of power to propel a motor vehicle on the highways;

B. "alternative fuel user" means any user who is a registrant, owner or operator of a motor vehicle propelled by alternative fuel;

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

D. "distributor" means any person who delivers or dispenses alternative fuel into the storage tank of a motor vehicle;

E. "gallon" means the quantity of liquid necessary to fill a standard United States gallon liquid measure, which is approximately 3.785 liters, for liquid alternative fuel or one hundred fourteen cubic feet for nonliquid alternative fuel;

F. "gross vehicle weight" means the weight of a motor vehicle or a combination motor vehicle without load, plus the weight of any load on the motor vehicle;

G. "highway" means every road, highway, thoroughfare, street or way, including toll roads, generally open to the use of the public as a matter of right for the purpose of motor vehicle travel and notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair;

H. "motor vehicle" means any self-propelled vehicle or device subject to registration under Section 66-3-1 NMSA 1978 that is used or may be used on the public

highways in whole or in part for the purpose of transporting persons or property and includes any connected trailer or semitrailer;

I. "person" means an individual or any other legal entity; "person" also means, to the extent permitted by law, any federal, state or other government or any department, agency or instrumentality of the state, county, municipality or any political subdivision thereof;

J. "registrant" means any person who has registered a motor vehicle pursuant to the laws of this state or of another state;

K. "sale" means any delivery, exchange, gift or other disposition;

L. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

M. "supply tank" means any tank or other receptacle in which or by which fuel may be carried and supplied to the fuel-furnishing device or apparatus of the propulsion mechanism of a motor vehicle when the tank or receptacle either contains alternative fuel or alternative fuel is delivered into it;

N. "use" means:

(1) the receipt or placing of alternative fuel by an alternative fuel user into the fuel supply tank of any motor vehicle registered, owned or operated by the alternative fuel user;

(2) the consumption by an alternative fuel user of alternative fuel in the propulsion of a motor vehicle on the highways of this state and any activity ancillary to that propulsion; or

(3) the importation of alternative fuel in the fuel supply tank of any motor vehicle as fuel for the propulsion of the motor vehicle on the highways;

O. "user" means any person other than the United States government or any of its agencies or instrumentalities; the state of New Mexico or any of its political subdivisions, agencies or instrumentalities; or an Indian nation, tribe or pueblo or any agency or instrumentality of an Indian nation, tribe or pueblo who uses alternative fuel to propel a motor vehicle on the highways; and

P. the definitions of "alternative fuel user" and "distributor" shall be construed so that a person may at the same time be an alternative fuel user and a distributor.

Section 4

Section 4. IMPOSITION AND RATE OF TAX--DENOMINATION AS ALTERNATIVE FUEL EXCISE TAX.--

A. For the privilege of distributing alternative fuel in this state there is imposed an excise tax at a rate provided in Subsection C of this section on each gallon of alternative fuel distributed in New Mexico.

B. The tax imposed by this section may be called the "alternative fuel excise tax".

C. For each gallon of alternative fuel distributed in New Mexico, the tax imposed by Subsection A of this section shall be:

(1) for the period beginning January 1, 1996 and ending December 31, 1997, three cents (\$0.03) per gallon;

(2) for the period beginning January 1, 1998 and ending December 31, 1999, six cents (\$0.06) per gallon;

(3) for the period beginning January 1, 2000 and ending December 31, 2001, nine cents (\$0.09) per gallon; and

(4) for the period beginning January 1, 2002 and thereafter, twelve cents (\$0.12) per gallon.

D. In lieu of the rates provided in Subsection C of this section, any user who registers, owns or operates a motor vehicle whose gross vehicle weight does not exceed fifty-four thousand pounds that is propelled by alternative fuel may pay the alternative fuel excise tax on an annual basis as follows:

(1) for the period beginning January 1, 1996 and ending December 31, 1997, the following schedule shall apply:

Gross Vehicle Weight	Annual Tax
0 to 6,000 pounds	\$ 15.00
6,001 to 16,000 pounds	25.00
16,001 to 26,000 pounds	75.00
26,001 to 40,000 pounds	175.00
40,001 to 54,000 pounds	275.00;

(2) for the period beginning January 1, 1998 and ending December 31, 1999, the following schedule shall apply:

Gross Vehicle Weight	Annual Tax
0 to 6,000 pounds	\$ 30.00
6,001 to 16,000 pounds	50.00
16,001 to 26,000 pounds	150.00
26,001 to 40,000 pounds	350.00
40,001 to 54,000 pounds	550.00;

(3) for the period beginning January 1, 2000 and ending December 31, 2001, the following schedule shall apply:

Gross Vehicle Weight	Annual Tax
0 to 6,000 pounds	\$ 45.00
6,001 to 16,000 pounds	75.00
16,001 to 26,000 pounds	225.00
26,001 to 40,000 pounds	525.00
40,001 to 54,000 pounds	825.00; and

(4) for the period beginning January 1, 2002 and thereafter, the following schedule shall apply:

Gross Vehicle Weight	Annual Tax
0 to 6,000 pounds	\$ 60.00
6,001 to 16,000 pounds	100.00
16,001 to 26,000 pounds	300.00
26,001 to 40,000 pounds	700.00
40,001 to 54,000 pounds	1,100.00.

E. To facilitate administration of the Alternative Fuel Tax Act, the annual tax provided for in Subsection D of this section may be prorated for periods of less than one year at the discretion of the secretary.

F. Alternative fuel purchased for distribution shall not be subject to the alternative fuel excise tax at the time of purchase or acquisition, but the tax shall be due on any alternative fuel at the time it is dispensed or delivered into the supply tank of a motor vehicle that is operated on the highways of this state.

Section 5

Section 5. EXEMPTIONS--ALTERNATIVE FUEL EXCISE TAX.--

A. Alternative fuel distributed to or used by the United States or any agency or instrumentality thereof for the exclusive use of the United States or any agency or instrumentality thereof is exempt from the imposition of the alternative fuel excise tax.

B. Alternative fuel distributed to or used by the state of New Mexico or any political subdivision, agency or instrumentality thereof for the exclusive use of the state of New Mexico or any political subdivision, agency or instrumentality thereof is exempt from the imposition of the alternative fuel excise tax.

C. Alternative fuel distributed to or used by an Indian nation, tribe or pueblo or any agency or instrumentality thereof for the exclusive use of the Indian nation, tribe or pueblo or any agency or instrumentality thereof is exempt from the imposition of the alternative fuel excise tax.

Section 6

Section 6. TAX RETURNS--PAYMENT OF TAX--ALTERNATIVE FUEL DISTRIBUTORS.--

A. Alternative fuel distributors shall file alternative fuel excise tax returns in form and content as prescribed by the secretary on or before the twenty-fifth day of the month following the month in which alternative fuel is distributed in New Mexico. Payment of the alternative fuel excise tax shall be made with or prior to filing of the return.

B. In computing the alternative fuel excise tax due, amounts of alternative fuel distributed to an alternative fuel user may be deducted from the total amount of alternative fuel distributed in New Mexico during the tax period provided the alternative fuel user can establish proof of compliance with the provisions of Section 7 of the Alternative Fuel Tax Act.

Section 7

Section 7. TAX RETURNS--PAYMENT OF TAX--ALTERNATIVE FUEL USER PERMIT.--

A. Alternative fuel users who elect to be subject to the provisions of Subsection D of Section 4 of the Alternative Fuel Tax Act shall pay the annual tax concurrent with vehicle registration.

B. The department shall issue an alternative fuel user permit in a form designed by the department valid for one year from the month of issuance to each alternative fuel user upon the filing of an application by the alternative fuel user acceptable to the department.

C. The department may revoke, after due notice and hearing, the alternative fuel user permit of any alternative fuel user found to be in violation of any provision of the Alternative Fuel Tax Act.

Section 8

Section 8. ALTERNATIVE FUEL DISTRIBUTOR LICENSE REQUIRED.--

A. The department shall issue a license valid for up to three years to each alternative fuel distributor upon the filing of an application by the alternative fuel distributor acceptable to the department.

B. To secure an alternative fuel distributor license, an applicant shall:

(1) register as an alternative fuel distributor under the provisions of Section 7-1-12 NMSA 1978;

(2) file with the department on a form furnished by the department an application for an alternative fuel distributor license; and

(3) accompany the application with payment of an alternative fuel distributor fee in the amount of twenty-five dollars (\$25.00).

C. The department may revoke, after due notice and hearing, the alternative fuel distributor license of any alternative fuel distributor found to be in violation of any provision of the Alternative Fuel Tax Act.

Section 9

Section 9. DELIVERY AND USE OF ALTERNATIVE FUEL-- PROHIBITED ACTS.--It is a violation of the Alternative Fuel Tax Act to:

A. operate a motor vehicle upon the highways of this state with a connection between a cargo or other tank or container, not considered in the Alternative

Fuel Tax Act as being the motor vehicle's fuel supply tank, and a carburetor or other fuel supply device. Fuel supply tanks, including auxiliary fuel supply tanks, shall be separate and apart from cargo tanks or other containers, with no connection by pipe, tube, valve or otherwise;

B. sell or deliver to any person alternative fuel from any alternative fuel supply tank or auxiliary alternative fuel supply tank;

C. deliver alternative fuel from a cargo tank into the alternative fuel supply tank of a motor vehicle; provided, however, delivery of liquefied alternative fuels may be made into the alternative fuel supply tank of a motor vehicle by a registered and licensed alternative fuel distributor when made by that distributor from the cargo tank of a vehicle operated by that distributor, which tank is specially designed to make this type of alternative fuel delivery; or

D. engage in the business of distributing alternative fuel in New Mexico without obtaining an alternative fuel distributor license under the provisions of Section 8 of the Alternative Fuel Tax Act.

Section 10

Section 10. ADMINISTRATION AND ENFORCEMENT OF ACT.--The department shall interpret the provisions of the Alternative Fuel Tax Act. The department shall administer and enforce the collection of the alternative fuel excise tax, and the Tax Administration Act applies to the administration and enforcement of the tax.

Section 11

Section 11. Section 7-1-6.10 NMSA 1978 (being Laws 1983, Chapter 211, Section 15, as amended) is amended to read:

"7-1-6.10. DISTRIBUTIONS--STATE ROAD FUND.--

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state road fund in an amount equal to the net receipts attributable to the taxes, surcharges, penalties and interest imposed pursuant to the Gasoline Tax Act and to the taxes, surtaxes, fees, penalties and interest imposed pursuant to the Special Fuels Tax Act, the Special Fuels Supplier Tax Act and the Alternative Fuel Tax Act less:

(1) the amount distributed to the state aviation fund pursuant to Subsection C of Section 7-1-6.7 NMSA 1978;

(2) the amount distributed to the motorboat fuel tax fund pursuant to Section 7-1-6.8 NMSA 1978;

(3) the amount distributed to municipalities and counties pursuant to Subsection A of Section 7-1-6.9 NMSA 1978;

(4) the amount distributed to the county government road fund pursuant to Section 7-1-6.19 NMSA 1978;

(5) the amount distributed to the corrective action fund pursuant to Section 7-1-6.25 NMSA 1978;

(6) the amount distributed to the municipalities pursuant to Section 7-1-6.27 NMSA 1978;

(7) the amount distributed to the municipal arterial program and the local governments road fund pursuant to Section 7-1-6.28 NMSA 1978; and

(8) the amount distributed to the general fund pursuant to Section 7-1-6.37 NMSA 1978.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state road fund in an amount equal to the net receipts attributable to the taxes, fees, interest and penalties from the Weight Distance Tax Act."

Section 12

Section 12. Section 7-9-26 NMSA 1978 (being Laws 1969, Chapter 144, Section 19, as amended) is amended to read:

"7-9-26. EXEMPTION--GROSS RECEIPTS AND COMPENSATING TAX--FUEL.--Exempted from the gross receipts and compensating tax are the receipts from selling and the use of gasoline, special fuel or alternative fuel on which the tax imposed by Section 7-13-3, 7-16-3 or 7-16A-3 NMSA 1978 or the Alternative Fuel Tax Act has been paid and not refunded."

Section 13

Section 13. Section 7-13A-2 NMSA 1978 (being Laws 1990, Chapter 124, Section 15) is amended to read:

"7-13A-2. DEFINITIONS.--As used in the Petroleum Products Loading Fee Act:

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

B. "distributor" means any person registered as a distributor for purposes of the Gasoline Tax Act and any person who receives special fuel in this state;

C. "gallon" means the quantity of liquid necessary to fill a standard United States gallon liquid measure, which is approximately 3.785 liters, or that same quantity adjusted to a temperature of sixty degrees fahrenheit at the election of any distributor, but a distributor shall report on the same basis for a period of at least one year;

D. "gasoline" means any flammable liquid used primarily as fuel for the propulsion of motor vehicles, motorboats or aircraft. "Gasoline" does not include diesel-engine fuel, kerosene and products specially prepared and sold for use in the turboprop or jet-type engines;

E. "highway" means every road, highway, thoroughfare, street or way, including toll roads, generally open to the use of the public as a matter of right for the purpose of motor vehicle travel, and notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair;

F. "motor vehicle" means any self-propelled vehicle or device that is used or may be used on the public highways in whole or in part for the purpose of transporting persons or property and includes any connected trailer or semitrailer;

G. "person" means an individual or any other legal entity, including any gas, water or electric utility owned or operated by a county, municipality or other political subdivision of the state. "Person" also means, to the extent permitted by law, any federal, state or other government or any department, agency or instrumentality of the state, county, municipality or any political subdivision thereof;

H. "petroleum product" means gasoline and special fuels;

I. "received" means:

(1)

(a) a petroleum product that is produced, refined, manufactured, blended or compounded at a refinery in this state or stored at a pipeline terminal in this state by any person is "received" by such person when it is loaded there into tank cars, tank trucks, tank wagons or other types of transportation equipment or when it is placed into any tank or other container from which sales or deliveries not involving transportation are made;

(b) when, however, such a petroleum product is shipped or delivered to another distributor, then it is "received" by the distributor to whom it is so shipped or delivered; and

(c) further, when such petroleum product is shipped or delivered to another person not a distributor for the account of a person that is a distributor, it is "received" by the distributor for whose account it is shipped;

(2) notwithstanding the provisions of Paragraph (1) of this subsection, when a petroleum product is shipped or delivered from a refinery or pipeline terminal to another refinery or pipeline terminal, the petroleum product is not "received" by reason of such shipment or delivery;

(3) any product other than gasoline that is blended to produce gasoline other than at a refinery or pipeline terminal in this state is "received" by a person who is the owner thereof at the time and place the blending is completed; and

(4) except as otherwise provided, a petroleum product is "received" at the time and place it is first unloaded in this state and by the person who is the owner thereof immediately preceding the unloading, unless the owner immediately after the unloading is a distributor, in which case the distributor is considered as having "received" the petroleum product;

J. "secretary" means the secretary of taxation and revenue or the secretary's delegate; and

K. "special fuel" means diesel-engine fuel, kerosene and all other liquid fuels used for the generation of power to propel a motor vehicle, except:

(1) gasoline as defined in Section 7-13-2 NMSA 1978;

(2) alternative fuel as defined in the Alternative Fuel Tax Act;

(3) products specially prepared and sold for use in turboprop or jet-type aircraft; and

(4) liquefied petroleum gases and natural gas."

Section 14

Section 14. Section 7-16A-2 NMSA 1978 (being Laws 1992, Chapter 51, Section 2, as amended) is amended to read:

"7-16A-2. DEFINITIONS.--As used in the Special Fuels Supplier Tax Act:

A. "bulk storage" means the storage of special fuels in any tank or receptacle, other than a supply tank, for the purpose of sale by a dealer or for use by a user or for any other purpose;

B. "bulk storage user" means a user who operates, owns or maintains bulk storage in this state from which the user places special fuel into the supply tanks of motor vehicles owned or operated by that user;

C. "dealer" means any person who sells and delivers special fuel to a user;

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

E. "government-licensed vehicle" means a motor vehicle lawfully displaying a registration plate, as defined in the Motor Vehicle Code:

(1) issued by the United States or by any state identifying the motor vehicle as belonging to the United States or any of its agencies or instrumentalities or to the state of New Mexico or any of its political subdivisions, agencies or instrumentalities; or

(2) issued by any state identifying the motor vehicle as belonging to an Indian nation, tribe or pueblo or an agency or instrumentality thereof;

F. "gross vehicle weight" means the weight of a motor vehicle or combination motor vehicle without load, plus the weight of any load on the vehicle;

G. "highway" means every road, highway, thoroughfare, street or way, including toll roads, generally open to the use of the public as a matter of right for the purpose of motor vehicle travel and notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair;

H. "motor vehicle" means any self-propelled vehicle or device that is used or may be used on the public highways in whole or in part for the purpose of transporting persons or property and includes any connected trailer or semitrailer;

I. "person" means an individual or any other legal entity; "person" also means, to the extent permitted by law, any federal, state or other government or any department, agency or instrumentality of the state, county, municipality or any political subdivision thereof;

J. "received" means:

(1) special fuel that is produced, refined, manufactured, blended or compounded at a refinery in this state or stored at a pipeline terminal in this state by any person is "received" by that person when it is loaded there into tank cars, tank trucks, tank wagons or other types of transportation equipment or when it is placed into any tank or other container from which sales or deliveries not involving transportation are made; but when such special fuel is shipped or delivered to another person:

(a) registered as a special fuel supplier under the Special Fuels Supplier Tax Act, then it is "received" by the special fuel supplier to whom it is so shipped or delivered; or

(b) not registered as a special fuel supplier under the Special Fuels Supplier Tax Act for the account of a person who is so registered, it is "received" by the special fuel supplier for whose account it is shipped;

(2) notwithstanding the provisions of Paragraph (1) of this subsection, when special fuel is shipped or delivered from a refinery or pipeline terminal to another refinery or pipeline terminal, such special fuel is not "received" by reason of such shipment or delivery;

(3) any product other than special fuel that is blended to produce special fuel other than at a refinery or pipeline terminal in this state is "received" by a person who is the owner of the special fuel at the time and place the blending is completed;

(4) except as otherwise provided, special fuel is "received" at the time and place it is first unloaded in this state and by the person who is the owner thereof immediately preceding the unloading, unless the owner immediately after the unloading is a registered special fuel supplier, in which case the registered special fuel supplier is considered as having "received" the special fuel; and

(5) with respect to a motor vehicle that is not registered pursuant to the laws of this state or a motor vehicle for which the operator cannot produce a valid tax identification card, entry of the motor vehicle into the state. The amount of special fuel "received" upon entry into this state shall be determined in accordance with regulations of the secretary;

K. "registrant" means any person who has registered a motor vehicle pursuant to the laws of this state or of another state;

L. "sale" means any delivery, exchange, gift or other disposition;

M. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

N. "special fuel" means diesel-engine fuel used for the generation of power to propel a motor vehicle, except gasoline as defined in Section 7-13-2 NMSA 1978 or alternative fuel as defined in the Alternative Fuel Tax Act;

O. "special fuel user" means any user who is a registrant, owner or operator of a motor vehicle using special fuel and having a gross vehicle weight in excess of twenty-six thousand pounds;

P. "state" or "jurisdiction" means a state, territory or possession of the United States, the District of Columbia, the commonwealth of Puerto Rico, a foreign country or a state or province of a foreign country;

Q. "supplier" means any person, but not including the United States or any of its agencies except to the extent now or hereafter permitted by the constitution of the United States and laws thereof, who receives special fuel within the meaning of "received" as defined in this section;

R. "supply tank" means any tank or other receptacle in which or by which fuel may be carried and supplied to the fuel-furnishing device or apparatus of the propulsion mechanism of a motor vehicle when the tank or receptacle either contains special fuel or special fuel is delivered into it;

S. "tax" means the special fuel excise tax imposed under the Special Fuels Supplier Tax Act;

T. "use" means:

(1) the receipt or placing of special fuels by a special fuel user into the fuel supply tank of any motor vehicle registered, owned or operated by the special fuel user;

(2) the consumption by a special fuel user of special fuels in the propulsion of a motor vehicle on the highways of this state and any activity ancillary to that propulsion; or

(3) the importation of special fuels in the fuel supply tank of any motor vehicle as fuel for the propulsion of the motor vehicle on the highways; and

U. "user" means any person other than the United States government or any of its agencies or instrumentalities; the state of New Mexico or any of its political subdivisions, agencies or instrumentalities; or an Indian nation, tribe or pueblo or any agency or instrumentality of an Indian nation, tribe or pueblo who uses special fuel to propel a motor vehicle on the highways."

Section 15

Section 15. TEMPORARY PROVISION--CONTINUITY OF ACTIONS.--

A. All taxes due but not paid on liquefied petroleum gas or natural gas or on motor vehicles propelled by such a fuel under the Special Fuels Supplier Tax Act on the effective date of the Alternative Fuel Tax Act remain due until paid or until a final determination is made that the taxes are not due.

B. Any protests, claims for refund, court proceedings or other actions ongoing with respect to liquefied petroleum gas or natural gas or to motor vehicles propelled by such a fuel pursuant to the provisions of the Special Fuels Supplier Tax Act on the effective date of the Alternative Fuel Tax Act shall be finally determined with respect to the applicable provisions of the Special Fuels Supplier Tax Act.

Section 16

Section 16. REPEAL.--Section 7-16A-7 NMSA 1978 (being Laws 1992, Chapter 51, Section 7) is repealed.

Section 17

Section 17. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 1996.

HOUSE BILL 66

CHAPTER 17

RELATING TO PUBLIC HEALTH; PROVIDING FOR THE DISPOSAL OF DEAD BODIES; AMENDING SECTIONS OF THE NMSA 1978 TO ALLOW ADULT CHILDREN OF DECEASED DISCRETION IN DISPOSAL OF BODY.

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

Section 1

Section 1. Section 24-12A-2 NMSA 1978 (being Laws 1993, Chapter 200, Section 2) is amended to read:

"24-12A-2. NO WRITTEN INSTRUCTIONS--PRIORITY OF OTHERS TO DECIDE DISPOSITION.--If a decedent has left no written instructions regarding the disposition of his remains, the following persons in the order listed shall determine the means of disposition, not to be limited to cremation, of the remains of the decedent:

- A. the surviving spouse;
- B. a majority of the surviving adult children of the decedent;
- C. the surviving parents of the decedent;
- D. a majority of the surviving siblings of the decedent;

E. an adult who has exhibited special care and concern for the decedent, who is aware of the decedent's views and desires regarding the disposition of his body and who is willing and able to make a decision about the disposition of the decedent's body; or

F. the adult person of the next degree of kinship in the order named by New Mexico law to inherit the estate of the decedent."

Section 2

Section 2. Section 61-32-19 NMSA 1978 (being Laws 1993, Chapter 204, Section 19) is amended to read:

"61-32-19. CREMATION--REQUIREMENTS--RIGHT TO AUTHORIZE CREMATION.--

A. No cremation shall be performed until all necessary documentation is obtained authorizing the cremation.

B. Any adult may authorize his own cremation and the lawful disposition of his cremated remains by:

(1) stating his desire to be cremated in a written statement that is signed by the individual and notarized or witnessed by two persons; or

(2) including an express statement in his will indicating that the testator desired that his remains be cremated upon his death.

C. A personal representative acting pursuant to the Probate Code or an establishment or crematory shall comply with a statement made in accordance with the provisions of this section. A statement that conforms to the provisions of this section authorizes a personal representative, establishment or crematory to cremate a decedent's remains. Statements dated prior to June 18, 1993 shall be given effect if they meet this section's requirements.

D. A personal representative, establishment or crematory acting in reliance upon a document executed pursuant to the provisions of this section, who has no actual notice of revocation or contrary indication, is presumed to be acting in good faith.

E. No establishment, crematory or employee of an establishment or crematory or other person that relies in good faith on a statement written pursuant to this section shall be subject to liability for cremating the remains in accordance with the provisions of this section. The written authorization is a complete defense to a cause of action by any person against any other person acting in accordance with that authorization.

F. If a decedent has left no written instructions regarding the disposition of his remains, the following persons in the order listed shall determine the means of disposition, not to be limited to cremation, of the remains of the decedent:

(1) the surviving spouse;

(2) a majority of the surviving adult children of the decedent;

(3) the surviving parents of the decedent;

(4) a majority of the surviving siblings of the decedent;

(5) an adult who has exhibited special care and concern for the decedent, who is aware of the decedent's views and desires regarding the disposition of his body and who is willing and able to make a decision about the disposition of the decedent's body; or

(6) the adult person of the next degree of kinship in the order named by New Mexico law to inherit the estate of the decedent.

G. A crematory authority shall keep an accurate record of all cremations performed, and the disposition of the cremains by the crematory, for a period of not less than five years.

H. Cremains may be disposed of by any licensed establishment, crematory authority, cemetery or person having the right to control the disposition of the cremains, or that person's agent, in a lawful manner.

I. Legal forms for cremation authorization shall provide that they will hold harmless a crematory authority or establishment from any liability for disposing of unclaimed cremains in a lawful manner after a period of one year."

SENATE BILL 97

CHAPTER 18

RELATING TO TRADE PRACTICES AND REGULATIONS; PROVIDING FOR A MERCHANT'S RIGHT TO LIMIT PURCHASES TO PERSONS BUYING FOR RESALE; AMENDING THE ANTITRUST ACT; AMENDING THE UNFAIR PRACTICES ACT.

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

Section 1

Section 1. Section 57-1-18 NMSA 1978 (being Laws 1955, Chapter 250, Section 1, as amended) is amended to read:

"57-1-18. LIMITATION OF RETAIL PURCHASES UNLAWFUL.--It is unlawful for any merchant to advertise or offer for sale any item of merchandise with a limitation upon the number of the item that any retail purchaser may purchase at the advertised price. It is further unlawful for any merchant offering or advertising any item of merchandise in his place of business at any given price to refuse to sell to any prospective retail purchaser for cash the whole or any part of his stock of such item at such price. However, this section shall not be applicable to a purchaser purchasing for resale."

Section 2

Section 2. Section 57-12-2 NMSA 1978 (being Laws 1967, Chapter 268, Section 2, as amended) is amended to read:

"57-12-2. DEFINITIONS.--As used in the Unfair Practices Act:

A. "person" includes, where applicable, natural persons, corporations, trusts, partnerships, associations, cooperative associations, clubs, companies, firms, joint ventures or syndicates;

B. "seller-initiated telephone sale" means a sale, lease or rental of goods or services in which the seller or his representative solicits the sale by telephoning the prospective purchaser and in which the sale is consummated entirely by telephone or mail, but does not include a transaction:

(1) in which a person solicits a sale from a prospective purchaser who has previously made an authorized purchase from the seller's business; or

(2) in which the purchaser is accorded the right of rescission by the provisions of the Consumer Credit Protection Act, 15 U.S.C. 1635 or regulations issued pursuant thereto;

C. "trade" or "commerce" includes the advertising, offering for sale, sale or distribution of any services and any property and any other article, commodity or thing of value, including any trade or commerce directly or indirectly affecting the people of this state;

D. "unfair or deceptive trade practice" means any false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or services in the extension of credit or in the collection of debts by any person in the regular course of his trade or commerce, which may, tends to or does deceive or mislead any person and includes but is not limited to:

(1) representing goods or services as those of another when the goods or services are not the goods or services of another;

(2) causing confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services;

(3) causing confusion or misunderstanding as to affiliation, connection or association with or certification by another;

(4) using deceptive representations or designations of geographic origin in connection with goods or services;

(5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;

(6) representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand;

(7) representing that goods or services are of a particular standard, quality or grade or that goods are of a particular style or model if they are of another;

(8) disparaging the goods, services or business of another by false or misleading representations;

(9) offering goods or services with intent not to supply them in the quantity requested by the prospective buyer to the extent of the stock available, unless the purchaser is purchasing for resale;

(10) offering goods or services with intent not to supply reasonable expectable public demand;

(11) making false or misleading statements of fact concerning the price of goods or services, the prices of competitors or one's own price at a past or future time or the reasons for, existence of or amounts of price reduction;

(12) making false or misleading statements of fact for the purpose of obtaining appointments for the demonstration, exhibition or other sales presentation of goods or services;

(13) packaging goods for sale in a container that bears a trademark or trade name identified with goods formerly packaged in the container, without authorization, unless the container is labeled or marked to disclaim a connection between the contents and the trademark or trade name;

(14) using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive;

(15) stating that a transaction involves rights, remedies or obligations that it does not involve;

(16) stating that services, replacements or repairs are needed if they are not needed; or

(17) failure to deliver the quality or quantity of goods or services contracted for; and

E. "unconscionable trade practice" means any act or practice in connection with the sale, lease, rental or loan, or in connection with the offering for sale, lease, rental or loan, of any goods or services or in the extension of credit or in the collection of debts which to a person's detriment:

(1) takes advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree; or

(2) results in a gross disparity between the value received by a person and the price paid."

SENATE BILL 349

CHAPTER 19

RELATING TO MOTOR VEHICLES; PROVIDING FOR DEFINED CONDITIONS IN CERTAIN MOTOR VEHICLE FRANCHISE AGREEMENTS.

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

Section 1

Section 1. Section 57-16-3 NMSA 1978 (being Laws 1973, Chapter 6, Section 3, as amended) is amended to read:

"57-16-3. DEFINITIONS.--As used in Chapter 57, Article 16 NMSA 1978:

A. "motor vehicle" means every self-propelled vehicle, having two or more wheels, by which a person or property may be transported on a public highway, and includes recreational vehicles;

B. "motor vehicle dealer" or "dealer" means any person who sells or solicits or advertises the sale of new or used motor vehicles. "Motor vehicle dealer" or "dealer" shall not include:

(1) receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order of any court;

(2) public officers while performing their duties as such officers;

(3) persons making casual sales of their own vehicles duly registered and licensed to them by the state; or

(4) finance companies, banks and other lending institutions covering sales of repossessed vehicles;

C. "person" means every natural person, partnership, corporation, association, trust, estate or any other legal entity;

D. "manufacturer" means any person who manufactures or assembles new motor vehicles either within or outside of this state;

E. "distributor" means any person who distributes or sells new or used motor vehicles to dealers and who is not a manufacturer;

F. "representative" means any person who is or acts as an agent, employee or representative of a manufacturer or distributor and who performs any duties in this state relating to promoting the distribution or sale of new or used motor vehicles or contacts dealers in this state on behalf of a manufacturer or distributor;

G. "franchise" means an oral or written arrangement for a definite or indefinite period in which a manufacturer, distributor or representative grants to a motor vehicle dealer a license to use a trade name, service mark or related characteristic and in which there is a community of interest in the marketing of motor vehicles or services related to marketing of motor vehicles at wholesale, retail, leasing or otherwise;

H. "fraud" includes, in addition to its normal legal connotation, the following:

(1) a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact;

(2) a promise or representation not made honestly and in good faith; and

(3) an intentional failure to disclose a material fact;

I. "sale" includes:

(1) the issuance, transfer, agreement for transfer, exchange, pledge, hypothecation or mortgage in any form, whether by transfer in trust or

otherwise, of any motor vehicle or interest therein or of any franchise related thereto; and

(2) any option, subscription or other contract or solicitation looking to a sale or offer or attempt to sell in any form, whether spoken or written. A gift or delivery of any motor vehicle or franchise with respect thereto with, or as, a bonus on account of the sale of anything shall be deemed a sale of such motor vehicle or franchise;

J. "motorcycle" means any motor vehicle used on or off a public highway that has an unladen weight of less than one thousand five hundred pounds;

K. "recreational vehicle" means any motor vehicle with a camping body that either has its own motive power or is drawn by another vehicle;

L. "designated family member" means a spouse, child, grandchild, parent, brother or sister of a deceased or incapacitated dealer who is entitled to inherit the dealer's ownership interest in the dealership under the terms of a will or the laws of intestate succession in this state. In the case of an incapacitated dealer, the term means the person appointed by a court as the legal representative of the dealer's property. The term also includes the appointed and qualified personal representative and the testamentary trustee of a deceased dealer. However, the term shall be limited to mean only that individual designated by the motorcycle dealer in a written document filed with the manufacturer, distributor or representative in the event that such a document has been filed;

M. "current price" means an amount equal to the price listed in the manufacturer's or distributor's printed price list in effect when the franchise is terminated, less applicable trade and cash discounts;

N. "dealer cost" means an amount equal to the sum of the original invoice price that the dealer paid for inventory and the cost of the delivery of the inventory from the manufacturer or distributor to the dealer, less applicable discounts; and

O. "inventory" means new or unused motorcycles, motorcycle attachments and repair parts that are provided by a manufacturer or distributor to a dealer under a franchise agreement and that are purchased within thirty-six months of the termination of the franchise or are listed in the manufacturer's or distributor's current sales manual or price list at the time that the franchise is terminated."

Section 2

Section 2. A new section of Chapter 57, Article 16 NMSA 1978 is enacted to read:

"RECREATIONAL VEHICLES--FRANCHISE AGREEMENTS.--

A. Every recreational vehicle manufacturer, distributor or representative shall execute a written franchise or sales agreement with each of its recreational vehicle dealers. Each agreement shall include the following provisions:

- (1) warranty service obligations;
- (2) specific territory or market area designation;
- (3) grounds for termination;
- (4) repurchase obligations;
- (5) sales volume and performance; and
- (6) dispute resolution procedures.

B. Notwithstanding the provisions of Subsection A of this section, a dealer and manufacturer, distributor or representative may mutually agree not to include the provisions listed in Paragraphs (2) through (6) of Subsection A of this section; provided, however, a written declaration stating which of the provisions were intentionally omitted and not applicable shall be incorporated into the written agreement."

Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1996.

SENATE BILL 574

CHAPTER 20

RELATING TO OPTOMETRY; AMENDING, REPEALING AND ENACTING SECTIONS OF THE OPTOMETRY ACT.

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

Section 1

Section 1. A new section of the Optometry Act is enacted to read:

"LICENSE ISSUED.--Each applicant for a license to practice optometry as provided in Chapter 61, Article 2 NMSA 1978 who successfully passes the examination for licensure, possesses the required educational qualifications and

meets other requirements of the Optometry Act or regulations adopted pursuant to that act is entitled to a license that carries with it the title "doctor of optometry".

Section 2

Section 2. Section 61-2-2 NMSA 1978 (being Laws 1973, Chapter 353, Section 2, as amended) is amended to read:

"61-2-2. DEFINITIONS.--As used in the Optometry Act:

A. "practice of optometry" means:

(1) the employment of any subjective or objective means or methods, including the prescription or administration of topical ocular pharmaceutical agents, for the purpose of determining the visual defects or abnormal conditions of the human eye and its adnexa; and

(2) the employing, adapting or prescribing of preventive or corrective measures, including lenses, prisms, contact or corneal lenses or other optical appliances; and prescribing or administering topical ocular pharmaceutical agents and oral pharmaceutical agents as authorized in Section 61-2-10.2 NMSA 1978 for the correction, relief or referral of visual defects or abnormal conditions of the human eye and its adnexa. The "practice of optometry" shall not include the use of surgery or injections in the treatment of eye diseases; provided, persons who sell or dispense eyeglasses upon prescription and who do not prescribe ophthalmic lenses for the eyes shall not employ, adapt, dispense, modify, provide, sell, give or fit contact or corneal lenses; and provided further, the testing, design, dispensing and monitoring of a contact lens fitting shall be performed at the optometrist's place of practice;

B. "ophthalmic lens" means a lens that has a spherical, cylindrical or prismatic value and that is ground pursuant to a prescription and intended to be used as eyeglasses or spectacles;

C. "contact or corneal lens" means any lens to be worn on the anterior segment of the human eye, to be prescribed, dispensed, adapted, employed, modified, provided, sold and fitted by a licensed optometrist or physician;

D. "prescription" means a formula written for ophthalmic lenses, for a topical ocular pharmaceutical agent or for an oral pharmaceutical agent as authorized in Section 61-2-10.2 NMSA 1978 that comes under the provisions of the New Mexico Drug, Device and Cosmetic Act by a person duly licensed and containing the following essential elements:

(1) an order given individually for the person for whom prescribed, either directly from the prescriber to the pharmacist or indirectly by means of a

written order signed by the prescriber, and shall bear the name and address of the prescriber, his license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue; or

(2) dioptric power of spheres, cylinders and prisms, axes of cylinders, position of prism base and, if so desired by the prescriber, light transmission properties and lens curve values;

(3) designation of pupillary distance; and

(4) name of patient, date of prescription, expiration date and the name and office location of prescriber; provided, however, that:

(5) those who sell and dispense eyeglasses upon the written prescription of a physician, surgeon or optometrist may determine the:

(a) type, form, size and shape of ophthalmic lenses;

(b) placement of optical centers for distance-seeing and near-work;

(c) designation of type and placement of reading segments in multivision lenses;

(d) type and quality of frame or mounting, type of bridge and distance between lenses, type, length and angling of temples; and

(e) designation of pupillary distance;

E. "eyeglasses" means any exterior optical device using ophthalmic lenses for the correction or relief of disturbances in and anomalies of human vision and includes spectacles and other devices using ophthalmic lenses; and

F. "board" means the board of optometry."

Section 3

Section 3. Section 61-2-6 NMSA 1978 (being Laws 1973, Chapter 353, Section 5, as amended) is amended to read:

"61-2-6. ORGANIZATION--MEETINGS--COMPENSATION--POWERS AND DUTIES.--

A. The board shall annually elect a chairman, a vice chairman and a secretary-treasurer, each of whom shall serve until his successor is elected and qualified.

B. The board shall meet at least annually for the purpose of examining candidates for licensure. Special meetings may be called by the chairman and shall be called upon the written request of a majority of the board members. A majority of the board members currently serving constitutes a quorum.

C. Members of the board may be reimbursed as provided in the Per Diem and Mileage Act but shall receive no other compensation, perquisite or allowance.

D. The board shall:

(1) administer and enforce the provisions of the Optometry Act;

(2) adopt, publish and file, in accordance with the Uniform Licensing Act and the State Rules Act, all rules and regulations for the implementation and enforcement of the provisions of the Optometry Act;

(3) adopt and use a seal;

(4) administer oaths and take testimony on any matters within the board's jurisdiction;

(5) keep an accurate record of all its meetings, receipts and disbursements;

(6) keep a record of all examinations held, together with the names and addresses of all persons taking the examinations and the examination results. Within thirty days after any examination, the board shall give written notice to each applicant examined of the results of the examination as to the respective applicant;

(7) certify as passing each applicant who obtains a grade of at least seventy-five percent on each subject upon which he is examined; providing that any applicant failing may apply for re-examination at the next scheduled examination date;

(8) keep a book of registration in which the name, address and license number of all licensees shall be recorded, together with a record of all license renewals, suspensions and revocations;

(9) grant, deny, renew, suspend or revoke licenses to practice optometry in accordance with the provisions of the Uniform Licensing Act for any cause stated in the Optometry Act;

(10) develop and administer qualifications for certification for the use of topical ocular pharmaceutical agents and oral pharmaceutical agents as

authorized in Section 61-2-10.2 NMSA 1978, including minimum educational requirements and examination, as required by Section 61-2-10 NMSA 1978 and provide the board of pharmacy with an annual list of optometrists certified to use topical ocular pharmaceutical agents and oral pharmaceutical agents as authorized in Section 61-2-10.2 NMSA 1978;

(11) provide for the suspension of an optometrist's license for sixty days upon a determination of use of pharmaceutical agents without prior certification in accordance with Section 61-2-10 NMSA 1978, after proper notice and an opportunity to be heard before the board; and

(12) have the power to employ agents or attorneys."

Section 4

Section 4. Section 61-2-10 NMSA 1978 (being Laws 1977, Chapter 30, Section 3, as amended) is amended to read:

"61-2-10. CERTIFICATION FOR USE OF TOPICAL OCULAR PHARMACEUTICAL AGENTS--DISPLAY.--

A. The board shall issue certification for the use of topical ocular pharmaceutical agents to optometrists licensed on the effective date of this section who have completed appropriate forms issued by the board and submitted proof of successful completion of the educational requirements for certification established by the board, which requirements shall be not less than those required in Paragraph (2) of Subsection B of this section.

B. The board shall issue certification for the use of topical ocular pharmaceutical agents to optometrists licensed after the effective date of this section who have completed appropriate forms issued by the board and submitted proof of:

(1) having satisfactorily completed a course in pharmacology as applied to optometry with particular emphasis on the topical application of diagnostic pharmaceutical agents to the eye for the purpose of examination of the human eye and the analysis of ocular functions, which course is offered by an institution accredited by a regional or professional accreditation organization recognized or approved by the national commission on accrediting or the United States secretary of education; or

(2) having postgraduate education with a minimum of seventy hours of instruction in general and ocular pharmacology as applied to optometry taught by an accredited institution and approved by the board.

C. The board shall issue certification for the use of topical ocular pharmaceutical agents to optometrists who have successfully completed an examination and submitted proof of having satisfactorily completed a course in pharmacology as applied to optometry, with particular emphasis on the application of pharmaceutical agents for the purpose of examination of the human eye, analysis of ocular functions and treatment of visual defects or abnormal conditions of the human eye and its adnexa. The course shall constitute a minimum of one hundred classroom-clinical hours of instruction in general and ocular pharmacology, including therapeutic pharmacology, as applied to optometry, and shall be taught by an accredited institution and approved by the board.

D. The certification authorized by this section shall be displayed in a conspicuous place in the optometrist's principal office or place of business."

Section 5

Section 5. A new section of the Optometry Act, Section 61-2-10.2 NMSA 1978, is enacted to read:

"61-2-10.2. DESIGNATION OF ORAL PHARMACEUTICAL AGENTS--
CERTIFICATION FOR USE OF CERTAIN AGENTS.--

A. Subject to the provisions of the Optometry Act, optometrists may prescribe or administer the following classes of oral pharmaceutical agents:

- (1) anti-infective medications, not including antifungals;
- (2) anti-glaucoma medications, not including osmotic medications;
- (3) anti-allergy medications;
- (4) anti-inflammatory medications, not including oral corticosteroids and immunosuppression agents; and
- (5) analgesic medications, including schedules III through V controlled substances, as provided in the Controlled Substances Act.

B. The board shall issue certification for the use of oral pharmaceutical agents as set forth in Subsection A of this section to optometrists who are certified for the use of topical ocular pharmaceutical agents. To be certified, an optometrist shall submit to the board proof of having satisfactorily completed a course in pharmacology as applied to optometry, with particular emphasis on the administration of oral pharmaceutical agents for the purpose of examination of the human eye, and analysis of ocular functions and treatment of visual defects or abnormal conditions of the human eye and its adnexa. The course shall constitute a minimum of twenty hours of

instruction in clinical pharmacology, including systemic pharmacology as applied to optometry, and shall be taught by an accredited institution approved by the board.

C. The certification authorized by this section shall be displayed in a conspicuous place in the optometrist's principal office or place of business."

Section 6

Section 6. Section 61-2-11 NMSA 1978 (being Laws 1973, Chapter 353, Section 9, as amended) is amended to read:

"61-2-11. LICENSE FEES--LICENSURE UNDER PRIOR LAW.--

A. Applicants for licensure as an optometrist shall pay the following fees:

(1) for licensure without written examination, a fee set by the board in an amount not to exceed one hundred fifty dollars (\$150);

(2) for licensure by examination, a fee set by the board in an amount not to exceed one hundred dollars (\$100);

(3) for the issuance of a certificate of license, a fee set by the board in an amount not to exceed twenty-five dollars (\$25.00);

(4) for the annual renewal of license, a fee set by the board in an amount not to exceed one hundred dollars (\$100); and

(5) for late renewal after September 1 of any year, a late charge set by the board in an amount not to exceed twenty-five dollars (\$25.00), which late fee is in addition to any other fees.

B. Any person licensed as an optometrist under any prior laws of this state, whose license is valid on the effective date of the Optometry Act, shall be held to be licensed under the provisions of the Optometry Act and shall be entitled to the annual renewal of his present license as provided in that act.

C. Prior to engaging in the active practice of optometry in this state, each licensee shall furnish the board evidence that he holds a registration number with the taxation and revenue department and has completed, as a condition of licensure by endorsement, such continuing education requirements as set by the regulations of the board."

Section 7

Section 7. Section 61-2-12 NMSA 1978 (being Laws 1973, Chapter 353, Section 10) is amended to read:

"61-2-12. LICENSE--DISPLAY--RENEWAL--RETIREMENT--RESUMPTION OF PRACTICE.--

A. Every person to whom a certificate of license as an optometrist has been issued shall display the certificate of license in a conspicuous place in his principal office or place of business.

B. Each license shall be renewed annually on or before July 1 by the licensee remitting to the secretary-treasurer of the board the proper fee and proofs of registration with the revenue processing division of the taxation and revenue department and of continued education as required by regulation of the board. Notice of renewal shall be sent to each licensee by the board before July 1 of each year. Failure to renew his license on or before September 1 shall subject the licensee to a late charge as determined by regulation of the board not to exceed the limit set forth in the Optometry Act. Any license not renewed by October 1 of each year shall be automatically revoked. Upon receipt of the renewal certificate, each licensee shall attach a copy of the renewal certificate to his certificate of license.

C. Each optometrist applying for the renewal of his license shall furnish to the secretary-treasurer of the board satisfactory evidence that he has attended, in the preceding year, at least two days of the annual education program, to include a minimum of six credit hours of continuing education in ocular therapeutic pharmacological agents, as conducted by the New Mexico optometric association, or its equivalent as determined by the board. The secretary-treasurer shall send a written notice of the continuing education requirements at least thirty days prior to August 1 of each year to the last known address of the licensee. Failure of a licensee to meet annual postgraduate education requirements shall be grounds for the revocation of his license. Any license revoked because of the failure to meet the continuing education requirements shall be reinstated by the board upon the presentation of evidence of postgraduate study of a standard approved by the board and the payment of all fees due.

D. Any optometrist who intends to retire from the practice of optometry shall notify the board in writing before the expiration of his renewal of licensure, and the secretary-treasurer of the board shall acknowledge the receipt of the notice and record it. If, within a period of five years from the year of retirement the optometrist desires to resume practice, he shall so notify the board in writing, and, upon giving proof of completing refresher courses prescribed by regulation of the board and the payment of an amount equivalent to all lapsed renewal fees, his certificate of license shall be restored to him in full effect. Any optometrist not currently licensed because of failure to timely renew, because of retirement or for any other reason, who practices optometry in this state shall be subject to the penalties provided for violation of the Optometry Act.

E. Before engaging in the practice of optometry and after a license has been issued to him, each registered optometrist shall notify the secretary-treasurer of

the board in writing of the address at which he intends to begin practice and subsequently of any changes in his business address or location. Any notices the board is required to give a licensee shall legally have been given when delivered to the latest address furnished by the licensee to the board."

Section 8

Section 8. Section 61-2-14 NMSA 1978 (being Laws 1973, Chapter 353, Section 12, as amended) is amended to read:

"61-2-14. OFFENSES.--

A. Each of the following acts committed by any person constitutes a fourth degree felony, punishable upon conviction as provided in the Criminal Code:

(1) practicing or attempting to practice optometry without a current license issued by the board;

(2) using or attempting to use pharmaceutical agents without the certification issued by the board;

(3) permitting any person in one's employ, supervision or control to practice optometry or use pharmaceutical agents unless that person is licensed or licensed and certified in accordance with the provisions of the Optometry Act; and

(4) practicing optometry, including the use of pharmaceutical agents during any period of time in which one's license has been revoked or suspended as provided by the Optometry Act.

B. Each of the following acts committed by any person constitutes a misdemeanor, punishable upon conviction as provided in the Criminal Code:

(1) making a willfully false oath or affirmation where the oath or affirmation is required by the Optometry Act;

(2) selling or using any designation, diploma or certificate tending to imply that one is a practitioner of optometry, unless one holds a license as provided by the Optometry Act;

(3) refusal, after a request, to provide a patient a copy of his spectacle prescription, not including a contact lens prescription, providing the prescription is not over one year old;

(4) duplicating or replacing an ophthalmic lens, not including contact lenses, without a current prescription not more than two years old or without a written authorization from the patient if the prescription is not available;

(5) except for licensed optometrists and as provided in Subsection A of Section 61-2-15 NMSA 1978, using any trial lenses, trial frames, graduated test cards or other appliances or instruments for the purpose of examining the eyes or rendering assistance to anyone who desires to have an examination of the eyes; provided, however, that it is not the intent of this paragraph to prevent any school nurse, schoolteacher or employee in public service from ascertaining the possible need of vision services, provided that such person, clinic or program does not attempt to diagnose or prescribe ophthalmic lenses for the eyes or recommend any particular practitioner or system of practice;

(6) advertising by any means the fabricating, adapting, employing, providing, sale or duplication of eyeglasses or any part thereof. This paragraph does not preclude the use of a business name, trade name or trademark not relating to price or the use of the address, telephone number, office hours and designation of the provider in or at retail outlets, on business cards, eyeglass cleaners and cases or in news media or in public directories, mailings and announcements of location openings or the use of the words "doctors' prescriptions for eyeglasses filled" or "eyeglass repairs, replacements and adjustments"; or

(7) selling of prescription eyeglasses or contact lenses, frames or mountings for lenses in an establishment in which the majority of its income is not derived from being engaged in that endeavor."

Section 9

Section 9. Section 61-11-7 NMSA 1978 (being Laws 1969, Chapter 29, Section 6, as amended) is amended to read:

"61-11-7. DRUG DISPENSATION--LIMITATIONS.--

A. The Pharmacy Act does not prohibit:

(1) any hospital or state or county institution or clinic, without the services of a staff pharmacist, from acquiring and having in its possession any dangerous drug for the purpose of dispensing, provided it is in a dosage form suitable for dispensing and provided that the hospital, institution or clinic employs consulting pharmacist;

(2) if the consulting pharmacist is not available, the withdrawal of any drug from stock by a licensed professional nurse on the order of a licensed practitioner in such amount as needed for administering to and treatment of his patient;

(3) the extemporaneous preparation by a licensed professional nurse on the order of a licensed practitioner of simple solutions for injection when the solution may be prepared from a quantity of drug that has been prepared previously by

a pharmaceutical manufacturer or pharmacist and obtained by the hospital, institution or clinic in a form suitable for the preparation of the solution;

(4) the sale of nonnarcotic, nonpoisonous or nondangerous nonprescription medicines or preparations by nonregistered persons or unlicensed stores when sold in their original containers;

(5) the sale of drugs intended for veterinary use; provided that if such drugs bear the legend: "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian", the drug may be sold or distributed only as provided in Subsection A of Section 26-1-15 NMSA 1978, by a person possessing a license issued by the board under Subsection B of Section 61-11-14 NMSA 1978;

(6) the sale to or possession or administration of topical ocular pharmaceutical agents by licensed optometrists who have been certified by the board of optometry for the use of such agents;

(7) the sale to or possession or administration of oral pharmaceutical agents as authorized in Subsection A of Section 61-2-10.2 NMSA 1978 by licensed optometrists who have been certified by the board of optometry for the use of such agents; or

(8) supportive personnel from providing assistance to pharmacists.

B. All prescriptions requiring the preparation of dosage forms or amounts of dangerous drugs not available in the stock of a hospital, institution or clinic or a prescription necessitating compounding shall be either compounded or dispensed only by a pharmacist."

Section 10

Section 10. REPEAL.--Section 61-2-10.1 NMSA 1978 (being Laws 1986, Chapter 80, Section 1) is repealed.

Section 11

Section 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 478

CHAPTER 21

RELATING TO OCCUPATIONAL LICENSING; AMENDING A SECTION OF THE NMSA 1978 TO REMOVE RESTRICTIONS FOR FOOT TREATMENTS BY PHYSICIAN ASSISTANTS.

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

Section 1

Section 1. Section 61-6-9 NMSA 1978 (being Laws 1973, Chapter 361, Section 5, as amended by Laws 1994, Chapter 57, Section 14 and also by Laws 1994, Chapter 80, Section 4) is amended to read:

"61-6-9. PHYSICIAN ASSISTANTS--RULES AND REGULATIONS.--

A. The board may adopt and enforce reasonable rules and regulations:

(1) for setting qualifications of education, skill and experience for registration of a person as a physician assistant and providing forms and procedures for obtaining certificates of registration and for annual registration of employment, supervising licensed physician and place of employment;

(2) for examining and evaluating applicants for registration as a physician assistant as to their skill, knowledge and experience in the field of medical care;

(3) for establishing when and for how long physician assistants are permitted to prescribe, administer and distribute dangerous drugs other than controlled substances in Schedule I of the Controlled Substances Act pursuant to regulations adopted by the board after consultation with the board of pharmacy;

(4) for allowing a supervising licensed physician to temporarily delegate his supervisory responsibilities for a physician assistant to another licensed physician;

(5) for allowing a physician assistant to temporarily serve under the supervision of a licensed physician other than the supervising licensed physician of record; and

(6) for the purpose of carrying out all other provisions of the Physician Assistant Act.

B. The board shall not adopt any rule or regulation allowing a physician assistant to measure the powers, range or accommodative status of human vision; diagnose vision problems; prescribe lenses, prisms, vision training or contact lenses; or fit contact lenses. This restriction does not preclude vision screening. The board shall not adopt any rule or regulation allowing a physician assistant to perform treatment of

the human foot outside the physician assistant's scope of practice."

SENATE BILL 112

CHAPTER 22

RELATING TO JUVENILES; PERMITTING PUBLICATION OF A CHILD'S NAME IN CERTAIN PROCEEDINGS.

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

Section 1

Section 1. Section 32A-1-17 NMSA 1978 (being Laws 1993, Chapter 77, Section 26) is amended to read:

"32A-1-17. APPEALS.--

A. Any party may appeal from a judgment of the court to the court of appeals in the manner provided by law. The appeal shall be heard by the court of appeals upon the files, records and transcript of the evidence of the court. Confidentiality, as provided in Sections 32A-3B-22, 32A-4-33 and 32A-5-8 NMSA 1978 or by order of the court, shall be maintained by the court of appeals.

B. The appeal to the court of appeals does not stay the judgment appealed from, but the court of appeals may order a stay upon application and hearing consistent with the provisions of the Children's Code if suitable provision is made for the care and custody of the child. If the order appealed from grants the legal custody of the child to or withholds it from one or more of the parties to the appeal, the appeal shall be heard at the earliest practicable time.

C. If the court of appeals does not dismiss the petition and order the child released, it shall affirm the court's judgment or it shall modify the court's judgment and remand the child to the jurisdiction of the court for disposition consistent with the appellate court's decision on the appeal. Any party may appeal to the supreme court in the manner provided by law.

D. A child who has filed notice of appeal shall be furnished a transcript of the proceedings, or as much of it as is requested, without cost upon the filing of an affidavit that the child or the person who is legally responsible for the care and support of the child is financially unable to purchase the transcript.

E. Appeals from the court to the court of appeals shall proceed in accordance with time limits to be established by the supreme court."

CHAPTER 23

RELATING TO CRIMINAL LAW; DEFINING HOUSEHOLD MEMBER IN CERTAIN SECTIONS OF THE CRIMINAL CODE, THE CRIMINAL PROCEDURE ACT AND THE FAMILY VIOLENCE PROTECTION ACT.

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

Section 1

Section 1. Section 30-3A-3 NMSA 1978 (being Laws 1993, Chapter 86, Section 3) is amended to read:

"30-3A-3. STALKING--PENALTIES.--

A. Stalking consists of knowingly pursuing a pattern of conduct that poses a credible threat to another person and that is intended to place that person in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint; provided that, in furtherance of the threat, the stalker must commit one or more of the following acts on more than one occasion:

(1) following a person, other than in the residence of the stalker;

(2) placing a person under surveillance by remaining present outside that person's school, residence, workplace or vehicle or any other place frequented by the person other than in the residence of the stalker; or

(3) harassing a person.

B. As used in this section, "credible threat" means a threat, verbal or nonverbal, made with the intent and the apparent ability to carry out the threat, that would cause a reasonable person to fear for his safety or the safety of a household member.

C. As used in this section, "household member" means a spouse, former spouse, family member, including a relative, parent, present or former step-parent, present or former in-law, child or co-parent of a child, or a person with whom the threatened person has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member for the purposes of this section.

D. Whoever commits stalking is guilty of a misdemeanor. Upon a second conviction, the offender shall be sentenced to a jail term of at least seventy-two consecutive hours that shall not be suspended, deferred or taken under advisement.

Upon a third or subsequent conviction, the offender shall be guilty of a fourth degree felony."

Section 2

Section 2. Section 31-1-7 NMSA 1978 (being Laws 1979, Chapter 178, Section 1) is amended to read:

"31-1-7. ARREST WITHOUT WARRANT--LIABILITY.--

A. Notwithstanding the provisions of any other law to the contrary, a peace officer may arrest a person and take that person into custody without a warrant when the officer is at the scene of a domestic disturbance and has probable cause to believe that the person has committed an assault or a battery upon a household member. As used in this section, "household member" means a spouse, former spouse, family member, including a relative, parent, present or former step-parent, present or former in-law, child or co-parent of a child, or a person with whom the victim has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member for purposes of this section.

B. No peace officer shall be held criminally or civilly liable for making an arrest pursuant to this section, provided he acts in good faith and without malice.

C. Whether or not an arrest is made pursuant to this section, a peace officer may remain with the victim and assist the victim in getting to a shelter or receiving proper medical attention."

Section 3

Section 3. Section 40-13-2 NMSA 1978 (being Laws 1987, Chapter 286, Section 2, as amended) is amended to read:

"40-13-2. DEFINITIONS.--As used in the Family Violence Protection Act:

A. "co-parents" means persons who have a child in common, regardless of whether they have been married or have lived together at any time;

B. "court" means the district court of the judicial district where an alleged victim of domestic abuse resides or is found;

C. "domestic abuse" means any incident by a household member against another household member resulting in:

(1) physical harm;

(2) severe emotional distress;

(3) bodily injury or assault;

(4) a threat causing imminent fear of bodily injury by any household member;

(5) criminal trespass;

(6) criminal damage to property;

(7) repeatedly driving by a residence or work place;

(8) telephone harassment;

(9) stalking;

(10) harassment; or

(11) harm or threatened harm to children as set forth in the paragraphs of this subsection;

D. "household member" means a spouse, former spouse, family member, including a relative, parent, present or former step-parent, present or former in-law, child or co-parent of a child, or a person with whom the petitioner has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member for purposes of this section; and

E. "order of protection" means a court order granted for the protection of victims of domestic abuse."

SENATE BILL 512

CHAPTER 24

RELATING TO EMPLOYEE LEASING; AMENDING SECTIONS OF THE EMPLOYEE LEASING ACT TO PROVIDE FOR LICENSURE AND SURETY BOND REQUIREMENTS FOR EMPLOYEE LEASING CONTRACTORS; CLARIFYING WORKERS' COMPENSATION PROVISIONS FOR CERTAIN EMPLOYEE LEASING CONTRACTORS AND CLIENT EMPLOYERS.

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

Section 1

Section 1. Section 60-13A-4 NMSA 1978 (being Laws 1993, Chapter 162, Section 4) is amended to read:

"60-13A-4. LICENSURE REQUIREMENTS FOR CERTAIN EMPLOYEE LEASING CONTRACTORS.--An existing employee leasing contractor domiciled in New Mexico as of September 30, 1993 shall be issued an employee leasing contractor's license upon application."

Section 2

Section 2. Section 60-13A-5 NMSA 1978 (being Laws 1993, Chapter 162, Section 5) is amended to read:

"60-13A-5. COMPLIANCE WITH AND APPLICABILITY OF WORKERS' COMPENSATION LAWS.--

A. Every employee leasing contractor shall comply with the provisions of Section 52-1-4 NMSA 1978, and that compliance shall be a condition precedent to initial registration. Failure to maintain compliance with the cited law shall result in the immediate revocation of any registration or license held by the noncomplying employee leasing contractor in addition to any other sanctions that may be imposed under applicable laws or regulations.

B. Workers' compensation insurance or self-insurance applicable to leased workers shall cover the employee leasing contractor and the client as co-insureds. Workers' compensation insurance applicable to leased employees may be provided in any manner authorized by and in compliance with regulations of the superintendent of insurance issued pursuant to Section 59A-2-9.1 NMSA 1978.

C. The employee leasing contractor and the client shall be deemed co-employers of leased workers for purposes of the Workers' Compensation Act. The Workers' Compensation Act shall constitute leased workers' exclusive remedy against both the employee leasing contractor and the client if the conditions of Section 52-1-9 NMSA 1978 are satisfied."

Section 3

Section 3. Section 60-13A-7 NMSA 1978 (being Laws 1993, Chapter 162, Section 7) is amended to read:

"60-13A-7. SURETY REQUIREMENTS FOR EMPLOYEE LEASING CONTRACTORS.--

A. An employee leasing contractor domiciled and registered in New Mexico as of September 30, 1993 shall file and maintain with the department a surety bond in the amount of twenty-five thousand dollars (\$25,000) issued by an insurance company authorized to do business in this state. An employee leasing contractor domiciled and registered in New Mexico after September 30, 1993 shall file and

maintain with the department a surety bond in the amount of one hundred thousand dollar (\$100,000) issued by an insurance company authorized to do business in this state. Interest accrued on such liquid securities shall be paid to the employee leasing contractor providing the liquid security. The bond shall be conditioned upon the prompt payment of wages for which the employee leasing contractor becomes liable. The employee leasing contractor's liability for these wages shall terminate six months after the employee leasing contractor terminates his employee leasing business.

B. In lieu of the surety bond required under Subsection A of this section, the employee leasing contractor may deposit with a depository designated by the department liquid securities with a market value equal to the amount required for a surety bond. The deposit contract shall authorize the department to liquidate the securities to the extent necessary to pay any obligations that the employee leasing contractor fails to pay promptly when due."

SENATE BILL 922

CHAPTER 25

RELATING TO PROFESSIONAL AND OCCUPATIONAL LICENSES; PROVIDING FOR DENIAL, SUSPENSION OR REVOCATION OF CERTAIN LICENSES FOR NONPAYMENT OF CHILD SUPPORT; PROVIDING FOR JOINT POWERS AGREEMENTS; ENACTING THE PARENTAL RESPONSIBILITY ACT.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the Parental Responsibility Act.

Section 2

Section 2. PURPOSE.--The purpose of the Parental Responsibility Act is to require parents to eliminate child support arrearages in order to maintain a professional or an occupational license, which will subsequently reduce both the number of children in New Mexico who live at or below the poverty level and the financial obligation that falls to the state when parents do not provide for their minor children.

Section 3

Section 3. DEFINITIONS.--As used in the Parental Responsibility Act:

A. "applicant" means an obligor who is applying for issuance of a license;

B. "board" means:

(1) the construction industries commission, the construction industries division and the electrical bureau, mechanical bureau and general construction bureau of the construction industries division of the regulation and licensing department;

(2) the manufactured housing committee and manufactured housing division of the regulation and licensing department;

(3) a board, commission or agency that administers a professional or occupation licensed pursuant to Chapter 61 NMSA 1978;

(4) any other state agency to which the Uniform Licensing Act is applied by law; or

(5) a licensing board or other authority that issues a license, certificate, registration or permit to engage in a profession or occupation regulated in New Mexico;

C. "certified list" means a verified list that includes the names, social security numbers and last known addresses of obligors not in compliance with a judgment and order for support;

D. "compliance" means that an obligor is more than thirty days in arrears in payment of amounts required to be paid pursuant to an outstanding judgment and order for support;

E. "department" means the human services department;

F. "judgment and order for support" means the judgment entered against an obligor by the district court or a tribal court in a case brought by the department pursuant to Title IV-D of the Social Security Act;

G. "license" means a license, certificate, registration or permit issued by a board that a person is required to have to engage in a profession or occupation in New Mexico and includes a commercial driver's license;

H. "licensee" means an obligor to whom a license has been issued; and

I. "obligor" means the person who has been ordered to pay child or spousal support pursuant to a judgment and order for support.

Section 4

Section 4. APPLICATION FOR LICENSE.--A person who submits an application for a license issued by a board is not eligible for issuance of the license if he is not in compliance with a judgment and order for support. A board that denies or proposes to deny the application on the grounds that he is not in compliance with a judgment and order for support shall advise the applicant in writing of the grounds for denial of his application and his right, if any, to a hearing. The applicant shall have a right to a hearing if, pursuant to law governing hearings for his profession or occupation, the denial of his application on other grounds would have entitled him to a hearing. The application shall be reinstated if within thirty days of the date of the notice, the applicant provides the board with a certified statement from the department that he is in compliance with a judgment and order for support.

Section 5

Section 5. RENEWAL OF LICENSE.--A licensee who seeks renewal of his license from a board is not eligible to have the license renewed if he is not in compliance with a judgment and order for support. A board that denies or proposes to deny the renewal of a license on the grounds that the licensee is not in compliance with a judgment and order for support shall advise the licensee in writing of the grounds for the denial or proposed denial and his right to a hearing. The licensee shall have a right to a hearing on the denial of the renewal of his license pursuant to law governing hearings for his profession or occupation. The application for renewal shall be reinstated if within thirty days of the date of the notice the licensee provides the board with a certified statement from the department that he is in compliance with a judgment and order for support.

Section 6

Section 6. SUSPENSION OR REVOCATION OF LICENSE.--The failure of a licensee to be in compliance with a judgment and order for support is grounds for suspension or revocation of a license. The proceeding shall be conducted by the board pursuant to the law governing suspension and revocation proceedings for his profession or occupation.

Section 7

Section 7. CERTIFIED LISTS.--The department shall provide each board with a certified list of obligors not in compliance with a judgment and order for support within ten calendar days after the first day of each month. By the end of the month in which the certified list is received, the board shall report to the department the names of applicants and licensees of the board who are on the list and the action the board has taken in connection with such applicants and licensees.

Section 8

Section 8. COURT ORDERS.--As part of a judgment and order for support, a district court may require the obligor to surrender any license held by him or may refer the matter to the appropriate board for further action.

Section 9

Section 9. RULES AND REGULATIONS.--On or before November 1, 1995, boards shall promulgate and file, in accordance with the States Rules Act, rules and regulations to implement the provisions of the Parental Responsibility Act.

Section 10

Section 10. ACTION BY SUPREME COURT.--The supreme court shall adopt by order rules for the denial of applications or licensing and renewal of licenses and for the suspension or revocation of licenses of lawyers and other persons licensed by the supreme court for the failure of an applicant or licensee to be in compliance with a judgment and order for support and may delegate the enforcement of the rules to a board under its supervision.

Section 11

Section 11. JOINT POWERS AGREEMENTS.--A board may enter into a joint powers agreement with the regulation and licensing department to administer the provisions of the Parental Responsibility Act for the board.

Section 12

Section 12. FEDERAL FUNDS--BOARD SURCHARGES.--

A. The department may enter into joint powers agreements with boards to assist in the implementation of the Parental Responsibility Act. The agreements shall provide for payment to the boards of federal funds to cover the portion of costs allowable under federal law and regulation that are incurred by the boards in implementing those sections. The agreement shall also provide for payment by the boards to the department for the nonfederal share of costs incurred by the department in assisting the boards. The boards shall reimburse the department for the nonfederal share of costs incurred pursuant to the Parental Responsibility Act from money collected from licensees or applicants for licenses.

B. Notwithstanding any other provision of law, each board may levy a surcharge on any fee assessed for licensure or regulation of the profession or occupation to cover the costs of implementing and administering the provisions of the Parental Responsibility Act. The surcharge may be adopted after notice to the licensees and applicants, but shall not require the adoption or amendment of a regulation.

Section 13

Section 13. ANNUAL REPORT.--The department shall report to the governor and the legislature by December 1 of each year on the progress of child support enforcement measures, including:

A. the number of delinquent obligors certified by the department;

B. the number of obligors who also were licensees or applicants subject to the provisions of the Parental Responsibility Act;

C. the number of licenses that were suspended or revoked by each board, the number of new licenses and renewals that were delayed or denied by each board and the number of licenses and renewals that were granted following an applicant's compliance with a judgment and order for support; and

D. the costs incurred in the implementation and enforcement of the Parental Responsibility Act.

Section 14

Section 14. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR SENATE BILL 18

CHAPTER 26

RELATING TO COUNTY CLERKS; PROVIDING FOR RENTAL, LEASE AND LEASE-PURCHASE OF EQUIPMENT AND FOR STAFF TRAINING.

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

Section 1

Section 1. Section 14-8-12.2 NMSA 1978 (being Laws 1985, Chapter 122, Section 2, as amended) is amended to read:

"14-8-12.2. RECORDING FEES--WHEN INSTRUMENT IS PHOTOCOPIED.--

A. For each instrument recorded and when the instrument is photocopied, the county clerk shall charge a recording fee of five dollars (\$5.00) for the first page and two dollars (\$2.00) for each additional page or portion thereof of the same instrument.

B. For each instrument recorded and when the instrument is photocopied, the county clerk may charge, in addition to any other fees authorized by law, including

the fee provided in Subsection A of this section, an equipment recording fee. The equipment recording fee shall not exceed three dollars (\$3.00) for each instrument recorded, except that in class A counties the equipment recording fee shall not exceed two dollars (\$2.00).

C. Amounts collected from the equipment recording fee shall be deposited into a county clerk recording and filing fund, which shall be established by the county. Money in the county clerk recording and filing fund shall be expended only to rent, purchase, lease or lease-purchase equipment associated with recording, filing, maintaining or reproducing documents in the county clerk's office and for staff training on office procedures and equipment.

D. The equipment recording fee and expenditures from the county clerk recording and filing fund shall be determined annually by the county clerk and approved by the board of county commissioners."

Section 2

Section 2. Section 14-8-16 NMSA 1978 (being Laws 1973, Chapter 258, Section 150, as amended) is amended to read:

"14-8-16. FILINGS OF LEGAL DESCRIPTIONS AND PLATS OF REAL PROPERTY AUTHORIZED--RECORDING--FEES.--

A. Any person owning real property that is subject to property taxation under the Property Tax Code may file for record in the office of the county clerk of the county where the real property is located a legal description or a plat of the real property. To be eligible for recording, the legal description or plat shall be certified by a professional surveyor licensed in the state.

B. The United States, the state or its political subdivisions and any agency, department or instrumentality of the United States, the state or its political subdivisions may file for record in the office of the county clerk of the county where the real property is located a legal description or a plat of real property. To be eligible for recording, the legal description or plat shall be certified by a professional surveyor licensed in the state and shall show the governmental agency, department or political subdivision under whose supervision and direction the description or plat was prepared.

C. The county clerk shall number descriptions filed under this section consecutively and shall number plats filed under this section consecutively. Immediately upon receiving a description or plat for filing, the county clerk shall note on the instrument the filing number and the time of filing and shall make proper entries in his reception book and in his index to general real estate records.

D. The county clerk shall record descriptions and plats filed under this section in the same manner as other similar instruments affecting real property are

recorded. The county clerk shall charge a fee of two dollars fifty cents (\$2.50) for filing and recording each description or plat. If the county clerk uses a post binder with transparent protective pages for the protection of the plats, he shall charge a fee of five dollars (\$5.00) for filing and recording each unit of a plat that is eighteen inches by twenty-four inches or part thereof.

E. For filing legal descriptions or plats of real property, the county clerk may charge, in addition to any other fees authorized by law, including the fee provided for in Subsection D of this section, an equipment recording fee. The equipment recording fee shall not exceed three dollars (\$3.00) for each instrument or plat recorded, except that in class A counties the equipment recording fee shall not exceed two dollars (\$2.00).

F. Amounts collected from the equipment recording fee shall be deposited into a county clerk recording and filing fund, which shall be established by the county. Money in the county clerk recording and filing fund shall be expended only to rent, purchase, lease or lease-purchase equipment associated with recording, filing, maintaining or reproducing documents in the county clerk's office, and for staff training on office procedures and equipment.

G. The equipment recording fee and expenditures from the county clerk recording and filing fund shall be determined annually by the county clerk and approved by the board of county commissioners.

H. All plats to be recorded under this section shall be filed in duplicate with the county clerk. One copy shall be recorded by the county clerk, and one copy shall be delivered by the county clerk to the county assessor."

SENATE BILL 635

CHAPTER 27

**RELATING TO PUBLIC RECORDS; DEFINING MICROPHOTOGRAPHY;
PROVIDING FOR ELECTRONIC AUTHENTICATION TO BE SUBSTITUTED FOR A
SIGNATURE; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.**

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

Section 1

Section 1. A new section of the Public Records Act is enacted to read:

"ELECTRONIC AUTHENTICATION -- SUBSTITUTION FOR SIGNATURE.--
Whenever there is a requirement for a signature on any document, electronic

authentication that meets the standards promulgated by the commission may be substituted."

Section 2

Section 2. Section 14-3-2 NMSA 1978 (being Laws 1959, Chapter 245, Section 2, as amended) is amended to read:

"14-3-2. DEFINITIONS.--As used in the Public Records Act:

A. "commission" means the state commission of public records;

B. "administrator" means the state records administrator;

C. "public records" means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government or because of the informational and historical value of data contained therein. Library or museum material of the state library, state institutions and state museums, extra copies of documents preserved only for convenience of reference and stocks of publications and processed documents are not included;

D. "agency" means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico;

E. "records center" means the central records depository which is the principal state facility for the storage, disposal, allocation or use of noncurrent records of agencies or materials obtained from other sources;

F. "microphotography system" means all microphotography equipment, services and supplies; and

G. "microphotography" means the transfer of images onto film and electronic imaging or other information storage techniques that meet the performance guidelines for legal acceptance of public records produced by information system technologies pursuant to regulations adopted by the commission."

SENATE BILL 687

CHAPTER 28

RELATING TO MOTOR VEHICLES; AMENDING SECTION 66-7-413.1 NMSA 1978 (BEING LAWS 1985, CHAPTER 4, SECTION 1, AS AMENDED).

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

Section 1

Section 1. Section 66-7-413.1 NMSA 1978 (being Laws 1985, Chapter 4, Section 1, as amended) is amended to read:

"66-7-413.1. FARM CARRIERS--EXCESSIVE SIZE--
LIMITATION.--Farm carriers, as defined in Sections 65-2-82 and 65-2-116 NMSA 1978, may, without securing permits or escorts, transport loads up to twelve feet in width only if the load consists of hay tied in bales over five feet in either length or width and the load is not transported for any distance greater than two hundred miles; provided that the farm carriers display a sign across the front and rear stating "WIDE LOAD" in large visible letters."

SENATE BILL 399

CHAPTER 29

RELATING TO RETIREE HEALTH CARE; AMENDING SECTION 10-7C-16 NMSA 1978 (BEING LAWS 1990, CHAPTER 6, SECTION 16) TO REMOVE OBSOLETE AND UNNECESSARY PROVISIONS PERTAINING TO STAFFING AND ADMINISTRATION OF THE RETIREE HEALTH CARE AUTHORITY.

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

Section 1

Section 1. Section 10-7C-16 NMSA 1978 (being Laws 1990, Chapter 6, Section 16) is amended to read:

"10-7C-16. RETIREE HEALTH CARE FUND--BUDGET.-- Expenditures for the administration of the Retiree Health Care Act shall be made as provided by an operating budget adopted by the board and approved by the state budget division of the department of finance and administration as provided by law and pursuant to appropriation by the legislature.

For the development and administration of the program up to ten full-time equivalents are hereby authorized by the legislature."

CHAPTER 30

WITH LINE ITEM VETOES

MAKING GENERAL APPROPRIATIONS AND AUTHORIZING EXPENDITURES BY STATE AGENCIES AND DISTRIBUTIONS FOR PUBLIC EDUCATION REQUIRED BY LAW.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "General Appropriation Act of 1995".

Section 2

Section 2. DEFINITIONS.--As used in the General Appropriation Act of 1995:

A. "general fund" means that fund created by Section 6-4-2 NMSA 1978 and includes the severance tax income fund and federal Mineral Lands Leasing Act receipts;

B. "internal service funds" means:

(1) revenue available to state agencies for the financing of goods or services provided by one state agency to another state agency on a cost-reimbursement basis; and

(2) unencumbered balances in state agency internal service fund accounts appropriated by the General Appropriation Act of 1995;

C. "interagency transfers" means revenue transferred from one state agency to another through contracts or joint powers agreements;

D. "federal funds" means payments by the United States government to state government or state agencies for specific purposes or in lieu of taxes, including grants, reimbursements and payments made in accordance with contracts or cooperative agreements, and shared revenue except those payments made in accordance with the federal Mineral Lands Leasing Act;

E. "other state funds" means:

(1) unencumbered, non-reverting balances in state agency accounts, other than in internal service funds accounts, appropriated by the General Appropriation Act of 1995;

(2) all revenue available to state agencies from sources other than the general fund, internal service funds, interagency transfers and federal funds; and

(3) all revenue, the use of which is restricted by statute, or legal or contractual agreement;

F. "state agency" means an office, department, agency, institution, board, bureau, commission, court, district attorney, council or committee of state government;

G. "expenditures" means costs, expenses, encumbrances, other financing uses, other than refunds authorized by law, recognized in accordance with generally accepted accounting principles for the legally authorized budget amounts and budget period;

H. "revenue" means all money received by a state agency from sources external to that agency, net of refunds and other correcting transactions, other than from issue of debt, liquidation of investments or as agent or trustee for other governmental entities or private persons;

~~I. "full-time equivalent" or "FTE" means one or more authorized positions which together receive compensation for not more than two thousand eighty hours worked in fiscal year 1996. The calculation of hours worked includes compensated absences but does not include overtime, compensatory time or sick leave paid pursuant to Section 10-7-10 NMSA 1978;~~

J. "term position" means a position established for a one-time project or program, with a specific ending date, or positions associated with a nonrecurring or unstable revenue source;

K. "item" means the value of goods or services acquired by a state agency or grants awarded by a state agency during a specific period of time;

L. "category" means an aggregation of related items that represents the object of an appropriation including personal services, employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel and other financing uses; and

M. "division transfer" means a transfer of appropriations from one organizational unit of a state agency to other organizational units of that state agency; ~~provided, however, the annual cumulative effect of transfers shall not increase~~

or decrease the appropriation of an organizational unit by more than seven and one-half percent.

Section 3

Section 3. GENERAL PROVISIONS.--

A. Amounts set out under column headings are expressed in thousands of dollars.

B. Amounts set out under column headings "General Fund", "Other State Funds" and "Internal Service Funds/Interagency Transfers" are appropriated from the source indicated by the column heading. All amounts set out under the column heading "Internal Service Funds/Interagency Transfers" indicate an intergovernmental transfer and do not represent a portion of total state government appropriations. Amounts set out under the column heading "Federal Funds" are provided for information only and are not appropriations. All amounts designated as "Totals" or "Subtotals" are also provided for information and are not appropriations.

C. Appropriations are made as set out in Section 4 of the General Appropriation Act of 1995 for expenditure in fiscal year 1996 from the general fund, other state funds or internal service funds/interagency transfers as indicated to state agencies named or for the purposes expressed, or so much as may be necessary, within available revenues and unencumbered balances.

~~D. Nothing in the General Appropriation Act of 1995 shall be construed as granting legislative authority to move functions, responsibilities, money, appropriations, real or personal property or FTE from one department or agency of state government to any other department or agency of state government as a means to reorganize statutorily created departments and agencies. Pursuant to the provisions of Subsection D of Section 9-1-5 NMSA 1978, appropriate legislation for reorganization of executive departments may be recommended to the second session of the forty-second legislature.~~

~~E. Unencumbered balances in state agency accounts remaining at the end of fiscal year 1995 shall revert to the general fund by October 1, 1995, unless otherwise indicated in the General Appropriation Act of 1994 or otherwise provided by law.~~

~~F. Unencumbered balances in state agency accounts remaining at the end of fiscal year 1996 shall revert to the general fund by October 1, 1996, unless otherwise indicated in the General Appropriation Act of 1995 or otherwise provided by law.]~~

G. Expenditure of fiscal year 1996 appropriations shall not exceed the amounts authorized in the General Appropriation Act of 1995. Expenditures shall be made only in accordance with budgets approved by the state budget division in accordance with the provisions of Section 6-3-7 NMSA 1978.

H. The state budget division shall monitor revenue received by state agencies from sources other than the general fund and shall order reductions in the operating budget of any state agency whose revenue from such sources is not meeting budgeted projections.

I. Except as otherwise specifically stated in the General Appropriation Act of 1995, appropriations are made in that act for the expenditures of state agencies and for other purposes as required by existing law for fiscal year 1996. If any other act of the forty-second legislature, first session, approved by the governor, changes existing law with regard to the name or responsibilities of a state agency or the name or purpose of a fund or distribution, the appropriation made in the General Appropriation Act of 1995 shall be transferred from the state agency, fund or distribution to which an appropriation has been made as required by existing law to the appropriate state agency, fund or distribution provided by the new law.

J. During fiscal year 1996, the department of finance and administration shall prepare and present quarterly revenue estimates to the legislative finance committee. If at any time these revenue estimates indicate that the state will be in a deficit position, the department shall present a contingency plan that outlines the methods by which the administration intends to address the deficit.

K. In accordance with Section 6-3-24 NMSA 1978, authorization for a state agency to request a budget adjustment is ~~[specifically and exclusively]~~ set forth in Section 4 of the General Appropriation Act of 1995.

L. The state budget division may approve budget increases for fiscal year 1996 for state agencies whose revenues from federal funds, from state board of finance loans, from revenue appropriated by other acts of the legislature, or from gifts, donations, bequests, insurance settlements, refunds, or payments into revolving funds exceed specifically appropriated amounts. Such gifts, donations, bequests, insurance settlements, refunds, and payments into revolving funds are appropriated. In approving a budget increase from federal funds, the director of the state budget division shall advise the legislative finance committee as to the source of the federal funds and the source and amount of any matching funds required.

M. ~~For fiscal year 1996, the number of permanent and term full-time equivalent positions specified for each agency shall be exceeded only in accordance with the provisions of the General Appropriation Act of 1995, unless additional personnel are provided for in other acts of the legislature. In case of an emergency or availability of federal funds, other state funds, internal service funds or interagency transfers that do not affect the general fund and in conjunction with the state personnel office or the state agency's office governing personnel, the state budget division may approve additional term positions beyond the number specified in the General Appropriation Act of 1995 or other acts of the legislature. When approving such increases, the state budget division shall file with the legislative finance committee a written statement of the conditions under which the additional positions are approved, along with the duration of the emergency or~~

~~availability of funds. The operating budget for each state agency shall reflect the number of positions authorized by the legislature. It is not the intent of this provision to prohibit intra-agency position transfers.~~

N. Fiscal year 1996 compensation increases are included in appropriations contained in Section 4 of the General Appropriation Act of 1995 as follows:

(1) classified employees in agencies governed by the State Personnel Act shall receive a salary increase equivalent to three percent of the midpoint value of their salary range effective on the first full pay period after the anniversary date of their appointment to current class if their job performance has been at least satisfactory; and no incumbent's salary may exceed the maximum of the salary range and an incumbent whose salary falls at or above the range maximum on their anniversary date shall not be eligible for this increase; employees whose salaries are equal to or above their respective salary range maximum shall receive an annualized one-time lump-sum payment equivalent to three percent of their salary range midpoint, subject to satisfactory job performance and effective the first full pay period following the employee's anniversary date. Under this provision lump-sum payments in combination with any increase to an employee's base salary shall not exceed a total of three percent of the employee's salary range midpoint during fiscal year 1996;

(2) all district attorney permanent employees shall receive a salary increase equivalent to three percent of the midpoint value of their salary range effective on the anniversary date of their appointment to current class if their job performance has been evaluated as fully effective;

(3) all judicial permanent employees other than employees whose salaries are set by statute shall be eligible for increases on their hire date in accordance with the judicial compensation plan; provided that the average hire date increase for all judicial employees shall not exceed three percent. Justices of the supreme court shall receive a three percent salary and benefit increase, from seventy-nine thousand five hundred sixty-seven dollars (\$79,567) to eighty-one thousand nine hundred fifty-four dollars (\$81,954); the chief justice of the supreme court, the chief judge of the court of appeals, judges of the court of appeals, district court judges, metropolitan court judges and magistrate court judges shall also receive a salary and benefit increase pursuant to the provisions of Section 34-1-9 NMSA 1978;

(4) state police officers shall progress on a career ladder as established by the state police career pay plan; and

~~(5) the appropriations in Subsection J of Section 4 of the General Appropriation Act of 1995 is sufficient to provide an average three percent compensation increase for higher education employees.~~

O. Except for gasoline credit cards used solely for operation of official vehicles and telephone credit cards used solely for official business, none of the appropriations contained in the General Appropriation Act of 1995 may be expended for payment of credit card invoices.

P. To prevent unnecessary spending, expenditures from the General Appropriation Act of 1995 for gasoline for state-owned vehicles at public gasoline service stations shall be made only for self-service gasoline; provided that a state agency head may

provide exceptions from the requirement to accommodate disabled persons or for other reasons the public interest may require.

Q. When establishing operating budgets based on appropriations in the General Appropriation Act of 1995, the department of finance and administration is specifically authorized to establish those budgets in accordance with generally accepted accounting principles for the purpose of properly classifying other financing sources and uses, including interfund, intrafund and interagency transfers.

R. Laws 1994, Chapter 6, Section 4 is repealed effective July 1, 1995.

Section 4

Section 4. FISCAL YEAR 1996 APPROPRIATIONS.--

A. LEGISLATIVE

General
Item Fund Total

LEGISLATIVE COUNCIL SERVICE:

(1) Legislative maintenance department:

(a) Personal services 1,059.1 1,059.1

(b) Employee benefits 377.9 377.9

(c) Travel 3.1 3.1

(d) Maintenance and repairs 169.8 169.8

(e) Supplies and materials 20.0 20.0

(f) Contractual services 59.2 59.2

(g) Operating costs 592.9 592.9

(h) Capital outlay 19.7 19.7

(i) Out-of-state travel 2.0 2.0

~~Authorized FTE: 35.00 Permanent; 4.00 Temporary~~

Category transfers are specifically authorized for the legislative maintenance department.

General

Item Fund Total

(2) Energy council dues 35.0 35.0

(3) Pre-session expenses 50.0 50.0

~~(4) Cultural awareness and sensitivity training 25.0 25.0~~

~~(5) Electric utility regulation oversight committee 75.0 75.0~~

~~(6) Health care task force 200.0 200.0~~

~~(7) Transportation users leadership alliance 5.0 5.0~~

(8) Public school funding formula task force 150.0 150.0

The general fund appropriation to the legislative council service for the public school funding formula task force is contingent upon House Bill 927 of the forty-second legislature, first session, becoming law.

Subtotal 2,843.7

TOTAL LEGISLATIVE 2,843.7 2,843.7

B. JUDICIAL

General

Item Fund Total

SUPREME COURT LAW LIBRARY:

(a) Personal services 269.6 269.6

(b) Employee benefits 86.8 86.8

(c) Travel 1.5 1.5

(d) Maintenance and repairs 11.6 11.6

(e) Supplies and materials 4.9 4.9

(f) Contractual services 73.1 73.1

(g) Operating costs 197.2 197.2

(h) Capital outlay 79.7 79.7

(i) Out-of-state travel 1.6 1.6

~~Authorized FTE: 8.00 Permanent~~

Subtotal 726.0

Other Intrnl Svc

State Funds/Inter-
Item Funds Agency Trnsf Total

NEW MEXICO COMPILATION COMMISSION:

(a) Personal services 95.3 95.3

(b) Employee benefits 34.2 34.2

(c) Travel 9.6 9.6

(d) Maintenance and repairs 10.5 10.5

(e) Supplies and materials 13.0 13.0

(f) Contractual services 165.1 657.4 822.5

(g) Operating costs 74.2 74.2

(h) Other costs .1 .1

(i) Capital outlay 32.6 32.6

~~Authorized FTE: 3.00 Permanent~~

Subtotal 1,092.0

General

Item Funds Total

JUDICIAL STANDARDS COMMISSION:

(a) Personal services 77.5 77.5

- (b) Employee benefits 21.9 21.9
- (c) Travel 5.2 5.2
- (d) Maintenance and repairs 1.5 1.5
- (e) Supplies and materials 1.5 1.5
- (f) Contractual services 10.9 10.9
- (g) Operating costs 21.2 21.2
- (h) Capital outlay 5.8 5.8
- (i) Out-of-state travel 2.0 2.0

~~Authorized FTE: 2.00 Permanent~~

Subtotal 147.5

JUDGES PRO TEMPORE: 73.3 73.3

Unexpended or unencumbered balances in the judges pro tempore fund remaining at the end of fiscal year 1996 shall not revert.

General

Item Funds Total

COURT OF APPEALS:

- (a) Personal services 2,147.5 2,147.5
- (b) Employee benefits 621.7 621.7
- (c) Travel 10.0 10.0
- (d) Maintenance and repairs 28.6 28.6
- (e) Supplies and materials 26.2 26.2
- (f) Contractual services 34.2 34.2
- (g) Operating costs 198.3 198.3
- (h) Capital outlay 20.8 20.8
- (i) Out-of-state travel 9.9 9.9

~~Authorized FTE: 52.00 Permanent~~

Subtotal 3,097.2

Other

General State

Item Fund Funds Total

SUPREME COURT:

(a) Personal services 1,367.5 1,367.5

(b) Employee benefits 400.1 400.1

(c) Travel 8.7 99.0 107.7

(d) Maintenance and repairs 9.5 821.4 830.9

(e) Supplies and materials 22.7 50.0 72.7

(f) Contractual services 51.4 51.4

(g) Operating costs 73.7 340.2 413.9

(h) Capital outlay 14.1 49.7 63.8

(i) Out-of-state travel 5.9 16.2 22.1

~~Authorized FTE: 33.00 Permanent~~

Subtotal 3,330.1

General Federal

Item Fund Funds Total

ADMINISTRATIVE OFFICE OF THE COURTS:

(1) Administration:

(a) Personal services 892.3 892.3

(b) Employee benefits 299.5 299.5

(c) Travel 28.4 28.4

(d) Maintenance and repairs 3.9 3.9

- (e) Supplies and materials 21.5 21.5
- (f) Contractual services 221.7 124.7 346.4
- (g) Operating costs 116.0 116.0
- (h) Out-of-state travel 18.8 18.8
- (i) Other financing uses 829.7 829.7

~~Authorized FTE: 26.00 Permanent~~

~~Included in the general fund appropriation to the administrative office of the courts in the contractual services category is one hundred thousand dollars (\$100,000) to establish a program in Bernalillo county that offers a neutral point for the exchange of children between parents to facilitate visitation privileges while allowing minimal contact between parents.~~

General
Item Fund Total

- (2) Magistrate courts:
- (a) Personal services 6,453.8 6,453.8
- (b) Employee benefits 1,973.3 1,973.3
- (c) Travel 66.2 66.2
- (d) Maintenance and repairs 19.0 19.0
- (e) Supplies and materials 238.2 238.2
- (f) Contractual services 23.1 23.1
- (g) Operating costs 1,832.5 1,832.5
- (h) Capital outlay 10.2 10.2

~~Authorized FTE: 231.00 Permanent~~

The general fund appropriation to the magistrate courts shall not be transferred into any other activity of the administrative office of the courts.

Included in the general fund appropriation to the magistrate courts in the operating costs category is one million two hundred eighty-five thousand three hundred dollars (\$1,285,300) for magistrate court rental expenses. ~~Included in the general fund appropriations to the magistrate courts is thirty-seven thousand dollars (\$37,000) for an additional magistrate court judge in Quay county, contingent upon House Bill 134 of the forty-second legislature, first session, becoming law; and twenty-five thousand dollars (\$25,000) for an additional FTE position for McKinley county.~~

Subtotal 13,172.8

Other

General State
Item Fund Funds Total

SUPREME COURT BUILDING COMMISSION:

(a) Personal services 200.1 200.1

(b) Employee benefits 91.6 91.6

(c) Travel 2.1 2.1

(d) Maintenance and repairs 50.6 50.6

(e) Supplies and materials 2.8 2.8

(f) Contractual services 33.8 33.8

(g) Operating costs 92.2 92.2

~~Authorized FTE: 12.00 Permanent~~

Subtotal 473.2

Other

General State
Item Fund Funds Total

JURY AND WITNESS FEE FUND:

(a) Operating costs 178.2 346.1 524.3

(b) Other costs 1,009.8 1,961.2 2,971.0

The appropriation to the jury and witness fee fund shall be spent to pay only the costs of jurors, prospective jurors, witnesses, court interpreters and expert witnesses for grand juries and magistrate courts. Juror costs shall include suitable refreshments.

Unexpended or unencumbered balances in the jury and witness fee fund remaining at the end of fiscal year 1996 from appropriations made from the general fund shall not revert.

Subtotal 3,495.3

		General
Item Fund	Total	

COURT-APPOINTED ATTORNEY FEES FUND: 1,584.0 1,584.0

The general fund appropriation to the court-appointed attorney fees fund shall be expended only to pay attorneys representing clients under the Mental Health and Developmental Disabilities Code, including initial commitment hearings; to pay guardian ad litem fees and other costs associated with cases filed pursuant to the Uniform Parentage Act and for indigent representation in civil contempt cases for child support enforcement; and to pay court-appointed attorneys representing clients under the Adult Protective Services Act and to pay guardian ad litem fees and attorneys required under the Children's Code. The fund shall not be used to pay attorney fees incurred as a result of a court appointment of the public defender department to represent an indigent defendant on a criminal matter.

Intrnl Svc		
General Funds/Inter-		
Item Fund Agency Trnsf Total		

DISTRICT COURTS:

(1) First judicial district:

(a) Personal services 1,487.4 94.4 1,581.8

(b) Employee benefits 495.2 30.0 525.2

(c) Travel 19.4 .9 20.3

(d) Maintenance and repairs 19.0 1.7 20.7

(e) Supplies and materials 35.4 7.9 43.3

(f) Contractual services 63.9 53.8 117.7

(g) Operating costs 100.8 14.5 115.3

(h) Capital outlay 13.7 13.7

~~Authorized FTE: 50.50 Permanent; 2.00 Term~~

Included in the general fund appropriation to the first judicial district is forty thousand dollars (\$40,000) to establish a teen court in Santa Fe county with two FTE positions serving as support staff.

Other Intrnl Svc

General State Funds/Inter-
Item Fund Funds Agency Trnsf Total

(2) Second judicial district:

(a) Personal services 6,422.2 273.8 176.6 6,872.6

(b) Employee benefits 2,078.9 87.8 52.9 2,219.6

(c) Travel 18.1 .6 4.0 22.7

(d) Maintenance and repairs 109.9 10.5 2.0 122.4

(e) Supplies and materials 242.5 23.1 6.2 271.8

(f) Contractual services 214.3 32.1 3.5 249.9

(g) Operating costs 283.5 59.0 16.0 358.5

(h) Other costs 8.4 8.4

(i) Capital outlay 93.3 47.4 21.1 161.8

(j) Out-of-state travel 12.9 6.5 2.0 21.4

~~Authorized FTE: 223.50 Permanent; 12.00 Term~~

Included in the general fund appropriation for the second judicial district court is two hundred twenty-two thousand dollars (\$222,000) for an additional judgeship if an additional judgeship is created by law and the hiring of domestic violence personnel, including a hearing officer and monitor, a family counselor and a probation officer.

Other Intrnl Svc

General State Funds\Inter-
Item Fund Funds Agency Trnsf Total

(3) Third judicial district:

(a) Personal services 1,105.6 80.0 1,185.6

(b) Employee benefits 341.9 25.2 367.1

(c) Travel 13.4 1.7 15.1

(d) Maintenance and repairs 5.6 1.4 7.0

(e) Supplies and materials 25.0 .5 5.1 30.6

(f) Contractual services 112.3 9.0 49.6 170.9

(g) Operating costs 63.7 3.2 11.6 78.5

(h) Capital outlay 35.8 1.0 11.1 47.9

~~Authorized FTE: 37.00 Permanent; 2.00 Term~~

Included in the general fund appropriation for the third judicial district court is seventy-eight thousand six hundred dollars (\$78,600) for an additional judgeship and staff if an additional judgeship is created by law.

Included in the general fund appropriation for the third judicial district court in the contractual services category is forty thousand dollars (\$40,000) to expand teen court.

General

Item Fund Total

(4) Fourth judicial district:

(a) Personal services 475.3 475.3

(b) Employee benefits 173.3 173.3

(c) Travel 5.2 5.2

(d) Maintenance and repairs 10.3 10.3

(e) Supplies and materials 9.1 9.1

(f) Contractual services 3.5 3.5

(g) Operating costs 27.6 27.6

(h) Capital outlay 20.8 20.8

~~Authorized FTE: 15.50 Permanent~~

Other Intrnl Svc

General State Funds/Inter-
Item Fund Funds Agency Trnsf Total

(5) Fifth judicial district:

(a) Personal services 1,757.0 1,757.0

(b) Employee benefits 575.2 575.2

(c) Travel 29.9 29.9

(d) Maintenance and repairs 26.7 26.7

(e) Supplies and materials 44.5 44.5

(f) Contractual services 355.3 13.0 37.0 405.3

(g) Operating costs 193.5 193.5

(h) Capital outlay 80.7 80.7

(i) Out-of-state travel 1.2 1.2

~~Authorized FTE: 58.00 Permanent~~

Included in the general fund appropriation to the fifth judicial district court in the operating costs category is thirty-five thousand dollars (\$35,000) for a teen court.

General

Item Fund Total

(6) Sixth judicial district:

(a) Personal services 472.0 472.0

(b) Employee benefits 158.3 158.3

- (c) Travel 14.8 14.8
- (d) Maintenance and repairs 5.5 5.5
- (e) Supplies and materials 16.2 16.2
- (f) Contractual services 52.0 52.0
- (g) Operating costs 82.0 82.0
- (h) Capital outlay 70.1 70.1

~~Authorized FTE: 16.00 Permanent~~

General

Item Fund Total

(7) Seventh judicial district:

- (a) Personal services 549.1 549.1
- (b) Employee benefits 185.6 185.6
- (c) Travel 11.3 11.3
- (d) Maintenance and repairs 5.1 5.1
- (e) Supplies and materials 13.7 13.7
- (f) Contractual services 4.5 4.5
- (g) Operating costs 51.0 51.0
- (h) Capital outlay 63.3 63.3

~~Authorized FTE: 20.50 Permanent~~

Included in the general fund appropriation for the seventh judicial district court is seventy-eight thousand six hundred dollars (\$78,600) for an additional judgeship and staff if an additional judgeship is created by law.

Intrnl Svc

General Funds\Inter-
Item Fund Agency Trnsf Total

(8) Eighth judicial district:

(a) Personal services 510.4 510.4

(b) Employee benefits 169.6 169.6

(c) Travel 10.1 10.1

(d) Maintenance and repairs 5.6 5.6

(e) Supplies and materials 15.8 15.8

(f) Contractual services 61.0 15.0 76.0

(g) Operating costs 45.8 45.8

(h) Capital outlay 44.9 44.9

~~Authorized FTE: 17.00 Permanent~~

Other Intrnl Svc

General State Funds/Inter-
Item Fund Funds Agency Trnsf Total

(9) Ninth judicial district:

(a) Personal services 716.2 76.6 792.8

(b) Employee benefits 238.0 25.7 263.7

(c) Travel 9.6 9.2 18.8

(d) Maintenance and repair 13.5 .6 14.1

(e) Supplies and materials 12.9 1.0 1.1 15.0

(f) Contractual services 64.1 25.5 3.1 92.7

(g) Operating costs 41.5 3.7 45.2

(h) Capital outlay 93.7 93.7

~~Authorized FTE: 23.00 Permanent; 2.00 Term~~

~~Included in the general fund appropriation for the ninth judicial district court in the contractual services category is ten thousand dollars (\$10,000) for the purpose of increasing the availability of family court services and in the capital outlay category is thirty-five thousand dollars (\$35,000) for the purpose of completing construction on a new courtroom in Curry county.~~

General

Item Fund Total

(10) Tenth judicial district:

(a) Personal services 261.5 261.5

(b) Employee benefits 80.7 80.7

(c) Travel 7.1 7.1

(d) Maintenance and repairs 6.9 6.9

(e) Supplies and materials 9.1 9.1

(f) Contractual services 4.9 4.9

(g) Operating costs 25.5 25.5

(h) Capital outlay 17.9 17.9

~~Authorized FTE: 8.14 Permanent~~

Intrnl Svc

General Funds/Inter-
Item Fund Agency Trnsf Total

(11) Eleventh judicial district:

(a) Personal services 943.0 943.0

(b) Employee benefits 300.6 300.6

(c) Travel 14.9 14.9

(d) Maintenance and repairs 14.5 14.5

(e) Supplies and materials 39.0 4.0 43.0

(f) Contractual services 84.6 32.6 117.2

(g) Operating costs 89.6 2.7 92.3

(h) Capital outlay 38.1 38.1

~~Authorized FTE: 33.00 Permanent; .50 Term~~

Included in the general fund appropriation for the eleventh judicial district court is seventy-eight thousand six hundred dollars (\$78,600) for an additional judgeship and staff contingent upon House Bill 17 or similar legislation of the forty-second legislature, first session becoming law.

Other

General State

Item Fund Funds Total

(12) Twelfth judicial district:

(a) Personal services 718.2 718.2

(b) Employee benefits 212.5 212.5

(c) Travel 8.3 8.3

(d) Maintenance and repairs 7.2 7.2

(e) Supplies and materials 18.5 1.0 19.5

(f) Contractual services 35.8 25.5 61.3

(g) Operating costs 74.3 74.3

(h) Capital outlay 28.2 28.2

~~Authorized FTE: 21.00 Permanent~~

Intrnl Svc

General Funds/Inter-

Item Fund Agency Trnsf Total

(13) Thirteenth judicial district:

(a) Personal services 1,107.9 1,107.9

(b) Employee benefits 377.8 377.8

- (c) Travel 15.1 15.1
- (d) Maintenance and repairs 22.0 22.0
- (e) Supplies and materials 39.0 1.0 40.0
- (f) Contractual services 13.2 17.0 30.2
- (g) Operating costs 69.8 69.8
- (h) Capital outlay 99.3 99.3

~~Authorized FTE: 40.00 Permanent~~

~~Included in the general fund appropriation for the thirteenth judicial district court in the personal services and employee benefits categories is twenty-three thousand four hundred dollars (\$23,400) for a permanent investigator and fifteen thousand eight hundred dollars (\$15,800) for a permanent bailiff for Sandoval county; and in the capital outlay category is twenty thousand dollars (\$20,000) to be expended to complete the expansion of the facilities for division one.~~

Subtotal 27,326.4

Other

General	State
Item Fund	Funds Total

BERNALILLO COUNTY METROPOLITAN COURT:

- (a) Personal services 5,314.0 426.9 5,740.9
- (b) Employee benefits 1,732.2 146.2 1,878.4
- (c) Travel 7.5 7.5
- (d) Maintenance and repairs 368.6 368.6
- (e) Supplies and materials 273.2 25.0 298.2
- (f) Contractual services 597.8 90.0 687.8
- (g) Operating costs 779.9 28.6 808.5
- (h) Capital outlay 209.0 56.4 265.4

(i) Out-of-state travel 10.4 10.4

~~Authorized FTE: 197.00 Permanent; 19.00 Term~~

~~The general fund appropriation for the Bernalillo county metropolitan court for operation of the pretrial release program in the personal services and employee benefits categories is reduced by four hundred thousand dollars (\$400,000).~~

~~Included in the general fund appropriation to the Bernalillo county metropolitan court is five hundred fifteen thousand dollars (\$515,000) for three additional judgeships contingent upon enactment into law of House Bill 309 or similar legislation of the forty-second legislature, first session.~~

Subtotal 10,065.7

Intrnl Svc

General Funds/Inter-
Item Fund Agency Trnsf Total

DISTRICT ATTORNEYS:

(1) First judicial district:

(a) Personal services 1,295.7 59.1 1,354.8

(b) Employee benefits 466.3 17.5 483.8

(c) Travel 16.4 .5 16.9

(d) Maintenance and repairs 14.7 14.7

(e) Supplies and materials 30.2 2.5 32.7

(f) Contractual services 10.4 10.2 20.6

(g) Operating costs 97.3 1.2 98.5

(h) Capital outlay 18.9 18.9

(i) Out-of-state travel 1.4 1.4

~~Authorized FTE: 38.50 Permanent; 2.50 Term~~

Included in the general fund appropriation to the first judicial district attorney in the

personal services and employee benefits categories is twenty-seven thousand dollars (\$27,000) for one additional secretary II position to be assigned to the Espanola office.

Intrnl Svc

General Funds/Inter-
Item Fund Agency Trnsf Total

(2) Second judicial district:

(a) Personal services 5,508.7 219.6 5,728.3

(b) Employee benefits 1,837.0 56.9 1,893.9

(c) Travel 61.9 5.3 67.2

(d) Maintenance and repairs 86.4 86.4

(e) Supplies and materials 76.6 76.6

(f) Contractual services 61.1 61.1

(g) Operating costs 550.8 .4 551.2

(h) Capital outlay 19.3 19.3

(i) Out-of-state travel 1.4 1.4

~~Authorized FTE: 168.50 Permanent; 10.00 Term~~

Included in the general fund appropriation to the second judicial district attorney is two hundred seventeen thousand three hundred dollars (\$217,300) to operate a domestic violence unit.

Intrnl Svc

General Funds/Inter-
Item Fund Agency Trnsf Total

(3) Third judicial district:

(a) Personal services 1,063.3 75.6 1,138.9

(b) Employee benefits 346.9 19.5 366.4

(c) Travel 11.9 1.0 12.9

(d) Maintenance and repairs 6.0 1.0 7.0

(e) Supplies and materials 15.0 1.6 16.6

(f) Contractual services 19.4 19.4

(g) Operating costs 42.7 2.6 45.3

(h) Capital outlay 21.3 1.7 23.0

(i) Out-of-state travel 1.2 1.5 2.7

~~Authorized FTE: 34.00 Permanent; 3.00 Term~~

Intrnl Svc

General Funds/Inter-
Item Fund Agency Trnsf Total

(4) Fourth judicial district:

(a) Personal services 635.4 17.3 652.7

(b) Employee benefits 241.7 4.4 246.1

(c) Travel 19.5 19.5

(d) Maintenance and repairs 4.3 4.3

(e) Supplies and materials 11.0 11.0

(f) Contractual services 56.3 56.3

(g) Operating costs 36.4 36.4

(h) Capital outlay 7.4 7.4

(i) Out-of-state travel 1.5 1.5

~~Authorized FTE: 21.00 Permanent; 1.00 Term~~

Intrnl Svc

General Funds/Inter-
Item Fund Agency Trnsf Total

(5) Fifth judicial district:

(a) Personal services 1,232.7 53.8 1,286.5

(b) Employee benefits 405.3 15.9 421.2

(c) Travel 35.0 2.3 37.3

(d) Maintenance and repairs 5.2 5.2

(e) Supplies and materials 19.7 19.7

(f) Contractual services 73.8 73.8

(g) Operating costs 95.6 3.8 99.4

(h) Capital outlay 37.5 37.5

(i) Out-of-state travel 4.0 4.0

~~Authorized FTE: 39.00 Permanent; 2.00 Term~~

Intrnl Svc

General Funds/Inter-
Item Fund Agency Trnsf Total

(6) Sixth judicial district:

(a) Personal services 498.8 145.2 644.0

(b) Employee benefits 181.6 42.4 224.0

(c) Travel 16.1 1.5 17.6

(d) Maintenance and repairs 5.6 5.6

(e) Supplies and materials 9.8 .8 10.6

(f) Contractual services 3.9 .3 4.2

(g) Operating costs 28.3 12.5 40.8

(h) Capital outlay 17.3 17.3

~~Authorized FTE: 14.00 Permanent; 4.25 Term~~

General

Item Fund Total

(7) Seventh judicial district:

(a) Personal services 761.3 761.3

(b) Employee benefits 265.0 265.0

(c) Travel 17.3 17.3

(d) Maintenance and repairs 3.0 3.0

(e) Supplies and materials 13.2 13.2

(f) Contractual services 28.5 28.5

(g) Operating costs 61.4 61.4

(h) Capital outlay 10.4 10.4

(i) Out-of-state travel 2.0 2.0

~~Authorized FTE: 23.00 Permanent~~

Intrnl Svc

General Funds/Inter-
Item Fund Agency Trnsf Total

(8) Eighth judicial district:

(a) Personal services 853.4 31.8 885.2

(b) Employee benefits 298.0 13.3 311.3

(c) Travel 23.0 23.0

(d) Maintenance and repairs 5.2 5.2

(e) Supplies and materials 14.8 3.0 17.8

(f) Contractual services 14.0 38.9 52.9

(g) Operating costs 63.4 6.0 69.4

(h) Capital outlay 14.8 14.8

(i) Out-of-state travel 1.0 1.0

~~Authorized FTE: 24.00 Permanent; 2.00 Term~~

Intrnl Svc

General Funds/Inter-
Item Fund Agency Trnsf Total

(9) Ninth judicial district:

(a) Personal services 681.3 11.5 692.8

(b) Employee benefits 245.1 245.1

(c) Travel 12.1 1.0 13.1

(d) Maintenance and repairs 2.7 2.7

(e) Supplies and materials 11.7 1.3 13.0

(f) Contractual services 2.6 2.2 4.8

(g) Operating costs 43.0 1.0 44.0

(h) Capital outlay 18.0 18.0

(i) Out-of-state travel 1.2 1.2

~~Authorized FTE: 20.00 Permanent; 1.00 Term~~

General

Item Fund Total

(10) Tenth judicial district:

(a) Personal services 188.5 188.5

(b) Employee benefits 58.2 58.2

(c) Travel 6.1 6.1

(d) Maintenance and repairs .7 .7

(e) Supplies and materials 4.9 4.9

(f) Contractual services 1.8 1.8

(g) Operating costs 15.5 15.5

(h) Capital outlay 1.8 1.8

~~Authorized FTE: 5.00 Permanent~~

Intrnl Svc

General Funds/Inter-
Item Fund Agency Trnsf Total

(11) Eleventh judicial district--

Farmington office:

(a) Personal services 884.9 47.9 932.8

(b) Employee benefits 299.6 17.4 317.0

(c) Travel 13.1 .8 13.9

(d) Maintenance and repairs 11.0 11.0

(e) Supplies and materials 15.8 .7 16.5

(f) Contractual services 4.1 4.7 8.8

(g) Operating costs 62.4 1.5 63.9

(h) Capital outlay 14.7 14.7

(i) Out-of-state travel 1.5 1.5

~~Authorized FTE: 28.00 Permanent; 2.00 Term~~

General

Item Fund Total

(12) Eleventh judicial district--

Gallup office:

(a) Personal services 529.6 529.6

(b) Employee benefits 158.9 158.9

(c) Travel 9.1 9.1

(d) Maintenance and repairs 4.2 4.2

(e) Supplies and materials 11.7 11.7

(f) Contractual services 4.9 4.9

(g) Operating costs 30.8 30.8

(h) Capital outlay 24.9 24.9

(i) Out-of-state travel .2 .2

~~Authorized FTE: 16.00 Permanent~~

Intrnl Svc

General Funds/Inter-
Item Fund Agency Trnsf Total

(13) Twelfth judicial district:

(a) Personal services 818.2 71.2 889.4

(b) Employee benefits 262.3 23.5 285.8

(c) Travel 11.4 .1 11.5

(d) Maintenance and repairs 9.2 .3 9.5

(e) Supplies and materials 17.3 4.6 21.9

(f) Contractual services 4.5 .5 5.0

(g) Operating costs 54.1 7.5 61.6

(h) Capital outlay 21.8 21.8

(i) Out-of-state travel 2.0 .9 2.9

~~Authorized FTE: 26.00 Permanent; 2.50 Term~~

General

Item Fund Total

(14) Thirteenth judicial district:

(a) Personal services 1,022.4 1,022.4

(b) Employee benefits 339.7 339.7

- (c) Travel 18.0 18.0
- (d) Maintenance and repairs 2.9 2.9
- (e) Supplies and materials 10.1 10.1
- (f) Contractual services 69.2 69.2
- (g) Operating costs 67.8 67.8
- (h) Capital outlay 13.8 13.8
- (i) Out-of-state travel 2.0 2.0

~~Authorized FTE: 32.00 Permanent~~

Subtotal 25,008.4

Other

General State
Item Fund Funds Total

**ADMINISTRATIVE OFFICE OF THE
DISTRICT ATTORNEYS:**

- (a) Personal services 114.3 83.0 197.3
- (b) Employee benefits 63.4 63.4
- (c) Travel 37.0 37.0
- (d) Maintenance and repairs 4.1 4.1
- (e) Supplies and materials 4.5 4.5
- (f) Contractual services 1.1 1.1
- (g) Operating costs 78.9 78.9
- (h) Capital outlay 2.0 2.0
- (i) Out-of-state travel 20.0 20.0
- (j) Other financing uses 348.1 348.1

~~Authorized FTE: 4.00 Permanent; 2.00 Term~~

Except as otherwise provided, category transfers, division transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for each agency in Subsection B of this section.

Subtotal 756.4

Other Intrnl Svc
General State Funds/Inter- Federal
Item Fund Funds Agency Trnsf Funds Total

TOTAL JUDICIAL 81,851.6 5,781.9 2,590.1 124.7 90,348.3

C. GENERAL CONTROL

Other Intrnl Svc
General State Funds/Inter-
Item Fund Funds Agency Trnsf Total

ATTORNEY GENERAL:

(1) Regular operations:

(a) Personal services 4,747.3 60.0 117.6 4,924.9

(b) Employee benefits 1,475.4 28.0 55.4 1,558.8

(c) Travel 77.0 77.0

(d) Maintenance and repairs 64.3 64.3

(e) Supplies and materials 66.2 66.2

(f) Contractual services 629.5 170.0 799.5

(g) Operating costs 700.4 700.4

(h) Capital outlay 6.4 6.4

(i) Out-of-state travel 40.6 40.6

(j) Other financing uses 3.8 3.8

Authorized FTE: 125.50 Permanent; 1.00 Term

Included in the appropriation from the general fund to the attorney general's office is seventy-five thousand dollars (\$75,000) in the personal services category to establish an office of guardianship services, including hiring of staff and the purchase of needed furniture, equipment and supplies and five hundred sixty-nine thousand five hundred dollars (\$569,500) in the contractual services category for guardianship services statewide.

The general fund appropriation to the regular operations division of the attorney general includes sixty thousand dollars (\$60,000) to provide funding for corporate guardianship services that are currently being provided but are not funded.

The internal service funds/interagency transfers appropriation to the attorney general for regular operations includes one hundred seventy-three thousand dollars (\$173,000) from the risk management division of the general services department.

Five percent of all money recovered from antitrust cases through the attorney general on behalf of all the state, political subdivisions or private citizens shall be deposited in the antitrust litigation fund.

Other
General State
Item Fund Funds Total

(2) Major litigation:

(a) Personal services 518.0 518.0

(b) Employee benefits 156.7 156.7

(c) Travel 7.3 7.3

(d) Supplies and materials 1.6 1.6

(e) Contractual services .6 300.0 300.6

(f) Operating costs 38.0 38.0

(g) Out-of-state travel 9.3 9.3

(h) Other financing uses .5 .5

Authorized FTE: 14.00 Term

~~Included in the other state funds recommendation for the major litigation division of the attorney general is one hundred thousand dollars (\$100,000) from balances of the antitrust litigation fund to enter into negotiations or litigation with both the state of Texas~~

~~and the United States congress to reestablish and remark the proper boundary between Texas and New Mexico at its proper 103 meridian west. The attorney general is also authorized to negotiate a monetary settlement in lieu of the reestablishment of the boundary if necessary.~~

General Federal
Item Fund Funds Total

(3) Medicaid fraud division:

(a) Personal services 118.3 355.1 473.4

(b) Employee benefits 40.2 120.4 160.6

(c) Travel 3.0 9.1 12.1

(d) Maintenance and repairs 1.8 5.4 7.2

(e) Supplies and materials 1.5 4.5 6.0

(f) Contractual services 8.5 25.5 34.0

(g) Operating costs 19.7 59.3 79.0

(h) Capital outlay 5.5 16.5 22.0

(i) Out-of-state travel 2.4 7.0 9.4

(j) Other financing uses .1 .4 .5

~~Authorized FTE: 13.00 Term~~

In the event that Senate Bill 667 of the forty-second legislature, first session, is not enacted into law, three hundred thousand dollars (\$300,000) is appropriated from the general fund and three permanent positions are authorized for the attorney general.

Category transfers are specifically authorized for the attorney general.

Subtotal 10,078.1

Other Intrnl Svc

General State Funds/Inter-
Item Fund Funds Agency Trnsf Total

STATE AUDITOR:

- (a) Personal services 934.0 33.2 197.9 1,165.1
- (b) Employee benefits 270.5 10.5 62.9 343.9
- (c) Travel 26.6 1.0 6.0 33.6
- (d) Maintenance and repairs 9.2 .3 2.1 11.6
- (e) Supplies and materials 13.8 .5 3.1 17.4
- (f) Contractual services 91.5 3.0 7.3 101.8
- (g) Operating costs 132.1 5.4 32.4 169.9
- (h) Out-of-state travel 10.9 10.9
- (i) Other financing uses .8 .8

~~Authorized FTE: 28.00 Permanent; 2.00 Term~~

Category transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the state auditor.

Subtotal 1,855.0

Intrnl Svc

General Funds/Inter-
Item Fund Agency Trnsf Total

TAXATION AND REVENUE DEPARTMENT:

(1) Office of the secretary:

- (a) Personal services 1,630.6 389.5 2,020.1
- (b) Employee benefits 543.0 113.9 656.9
- (c) Travel 22.3 20.0 42.3
- (d) Maintenance and repairs .5 .2 .7
- (e) Supplies and materials 12.3 1.2 13.5
- (f) Contractual services 190.2 190.2
- (g) Operating costs 83.5 22.9 106.4

(h) Capital outlay 22.5 22.5

(i) Out-of-state travel 13.3 3.4 16.7

~~Authorized FTE: 57.00 Permanent~~

Other Intrnl Svc
General State Funds/Inter-
Item Fund Funds Agency Trnsf Total

(2) Administrative services division:

(a) Personal services 3,878.5 76.9 470.5 4,425.9

(b) Employee benefits 1,255.5 23.1 141.2 1,419.8

(c) Travel 23.0 4.0 27.0

(d) Maintenance and repairs 221.7 221.7

(e) Supplies and materials 1,062.4 .5 6.0 1,068.9

(f) Contractual services 64.2 64.2

(g) Operating costs 4,075.3 174.7 4,250.0

(h) Capital outlay 41.6 41.6

(i) Out-of-state travel 5.0 5.0

(j) Other financing uses 35.6 35.6

~~Authorized FTE: 138.00 Permanent; 4.00 Term~~

Other
General State Federal
Item Fund Funds Funds Total

(3) Audit and compliance division:

(a) Personal services 7,048.5 27.8 262.2 7,338.5

(b) Employee benefits 2,398.9 6.3 84.7 2,489.9

(c) Travel 265.9 4.1 270.0

- (d) Maintenance and repairs 23.6 23.6
- (e) Supplies and materials 102.4 5.5 107.9
- (f) Contractual services 173.9 173.9
- (g) Operating costs 1,040.0 18.5 1,058.5
- (h) Other costs 1.0 1.0
- (i) Capital outlay 70.2 70.2
- (j) Out-of-state travel 415.7 40.3 456.0

~~Authorized FTE: 255.00 Permanent; 9.00 Term; 9.00 Temporary~~

Other Intrnl Svc
General State Funds/Inter-
Item Fund Funds Agency Trnsf Total

- (4) Revenue processing division:
- (a) Personal services 4,091.9 254.1 44.7 4,390.7
- (b) Employee benefits 1,429.2 115.4 13.5 1,558.1
- (c) Travel 5.6 2.5 8.1
- (d) Maintenance and repairs 315.5 315.5
- (e) Supplies and materials 155.8 25.1 180.9
- (f) Contractual services 10.6 10.6
- (g) Operating costs 2,064.0 109.4 2,173.4
- (h) Capital outlay 72.0 7.3 79.3
- (i) Out-of-state travel 3.7 1.0 4.7

~~Authorized FTE: 181.00 Permanent; 43.00 Temporary~~

Other
General State

Item Fund Funds Total

(5) Property tax division:

(a) Personal services 786.8 610.6 1,397.4

(b) Employee benefits 311.6 239.0 550.6

(c) Travel 147.7 139.1 286.8

(d) Maintenance and repairs 1.2 .9 2.1

(e) Supplies and materials 7.3 5.6 12.9

(f) Contractual services 53.4 18.7 72.1

(g) Operating costs 32.6 27.1 59.7

(h) Capital outlay 8.5 6.5 15.0

(i) Out-of-state travel 2.5 2.0 4.5

~~Authorized FTE: 49.00 Permanent~~

Other

General State

Item Fund Funds Total

(6) Motor vehicle division:

(a) Personal services 2,867.0 2,871.9 5,738.9

(b) Employee benefits 1,099.2 1,099.7 2,198.9

(c) Travel 36.6 36.6 73.2

(d) Maintenance and repairs 39.4 39.4 78.8

(e) Supplies and materials 176.8 176.4 353.2

(f) Contractual services 310.5 324.6 635.1

(g) Operating costs 519.6 545.3 1,064.9

(h) Capital outlay 18.5 18.5 37.0

(i) Out-of-state travel 3.7 3.6 7.3

~~Authorized FTE: 246.00 Permanent; 10.00 Temporary~~

Intrnl Svc
Funds/Inter- Federal
Item Agency Trnsf Funds Total

(7) Motor transportation division:

(a) Personal services 5,216.1 339.5 5,555.6

(b) Employee benefits 2,068.1 86.5 2,154.6

(c) Travel 297.8 81.9 379.7

(d) Maintenance and repairs 124.9 1.0 125.9

(e) Supplies and materials 222.6 41.4 264.0

(f) Contractual services 24.6 24.6

(g) Operating costs 393.4 7.3 400.7

(h) Other costs .9 .9

(i) Capital outlay 116.6 105.6 222.2

(j) Out-of-state travel 2.7 28.7 31.4

~~Authorized FTE: 192.00 Permanent; 13.00 Term~~

~~Included in the appropriation to the motor transportation division is sufficient money to carry out the school bus inspection program pursuant to Section 22-16-2 NMSA 1978.]~~

Intrnl Svc
General Funds/Inter-
Item Fund Agency Trnsf Total

(8) ONGARD service center:

(a) Personal services 355.4 194.6 550.0

(b) Employee benefits 113.8 62.4 176.2

- (c) Travel 5.5 2.8 8.3
- (d) Maintenance and repairs 4.7 2.3 7.0
- (e) Supplies and materials 4.9 2.5 7.4
- (f) Contractual services 11.7 5.9 17.6
- (g) Operating costs 628.8 367.7 996.5
- (h) Out-of-state travel 6.2 3.1 9.3

~~Authorized FTE: 15.00 Permanent~~

The internal service funds/interagency transfers appropriation of fourteen million four hundred ninety-six thousand six hundred dollars (\$14,496,600) to the taxation and revenue department shall be made from the state road fund.

Unexpended or unencumbered balances in the taxation and revenue department remaining at the end of fiscal year 1996 from appropriations made from the state road fund shall revert to the state road fund.

Category transfers, division transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the taxation and revenue department.

Subtotal 58,860.1

Other Intrnl Svc

General State Funds/Inter-
Item Fund Funds Agency Trnsf Total

INVESTMENT COUNCIL:

- (a) Personal services 284.3 574.3 858.6
- (b) Employee benefits 93.2 188.3 281.5
- (c) Travel 5.8 11.9 17.7
- (d) Maintenance and repairs 5.8 11.9 17.7
- (e) Supplies and materials 6.9 14.8 21.7
- (f) Contractual services 209.1 482.7 65.0 756.8

(g) Operating costs 51.9 104.7 156.6

(h) Capital outlay 6.2 12.5 18.7

(i) Out-of-state travel 6.4 13.0 19.4

(j) Other financing uses 64.9 200.1 265.0

~~[Authorized FTE: 22.00 Permanent]~~

Budget increases and category transfers from internal service funds/interagency transfers are specifically authorized for the investment council.

Subtotal 2,413.7

General

Item Fund Total

DEPARTMENT OF FINANCE AND ADMINISTRATION:

(1) Office of the secretary:

(a) Personal services 308.3 308.3

(b) Employee benefits 102.2 102.2

(c) Travel 5.1 5.1

(d) Maintenance and repairs 1.6 1.6

(e) Supplies and materials 6.6 6.6

(f) Contractual services 83.1 83.1

(g) Operating costs 60.9 60.9

(h) Capital outlay 3.5 3.5

(i) Out-of-state travel 5.9 5.9

(j) Other financing uses 4.9 4.9

~~[Authorized FTE: 6.00 Permanent]~~

General

Item Fund Total

(2) Administrative services division:

(a) Personal services 530.2 530.2

(b) Employee benefits 163.6 163.6

(c) Travel 1.0 1.0

(d) Maintenance and repairs 10.3 10.3

(e) Supplies and materials 15.8 15.8

(f) Contractual services 59.0 59.0

(g) Operating costs 84.4 84.4

(h) Capital outlay 19.1 19.1

(i) Out-of-state travel 3.0 3.0

(j) Other financing uses 1.3 1.3

~~[Authorized FTE: 15.00 Permanent]~~

General

Item Fund Total

(3) Board of finance:

(a) Personal services 224.0 224.0

(b) Employee benefits 65.8 65.8

(c) Travel 6.9 6.9

(d) Maintenance and repairs 2.1 2.1

(e) Supplies and materials 4.3 4.3

(f) Contractual services 35.8 35.8

(g) Operating costs 36.6 36.6

(h) Capital outlay 5.9 5.9

(i) Out-of-state travel 4.0 4.0

(j) Other financing uses .5 .5

~~[Authorized FTE: 5.00 Permanent~~

~~Included in the general fund appropriation to the operating costs category of the state board of finance of the department of finance and administration is twenty-four thousand dollars (\$24,000) that shall be transferred to the state board of finance emergency fund to repay an emergency loan made in 1994 to complete a septic system for the Torreon Navajo chapter.]~~

Upon certification by the state board of finance that a critical emergency exists that cannot be addressed by disaster declaration or other emergency or contingency funds, and upon review by the legislative finance committee, the secretary of the department of finance and administration is authorized to transfer from the general fund operating reserve to the state board of finance emergency fund the amount necessary to meet the emergency. Such transfers shall not exceed an aggregate amount of one million dollars (\$1,000,000) in fiscal year 1996. Funds transferred to the state board of finance emergency fund shall be disbursed in accordance with Section 6-1-2 NMSA 1978.

General

Item Fund Total

(4) State budget division:

(a) Personal services 909.1 909.1

(b) Employee benefits 270.7 270.7

(c) Travel 8.4 8.4

(d) Maintenance and repairs 3.0 3.0

(e) Supplies and materials 11.4 11.4

(f) Contractual services 29.7 29.7

(g) Operating costs 64.3 64.3

(h) Capital outlay 25.7 25.7

(i) Out-of-state travel 4.9 4.9

~~[Authorized FTE: 22.00 Permanent]~~

Other
General State Federal
Item Fund Funds Funds Total

(5) Local government division:

(a) Personal services 1,049.4 236.0 340.4 1,625.8

(b) Employee benefits 311.7 89.4 112.1 513.2

(c) Travel 36.1 13.2 30.0 79.3

(d) Maintenance and repairs 5.7 1.5 2.0 9.2

(e) Supplies and materials 21.9 5.8 7.3 35.0

(f) Contractual services 1,082.3 51.0 9.0 1,142.3

(g) Operating costs 85.9 23.0 28.9 137.8

(h) Other costs 1,409.4 1,409.4

(i) Capital outlay 12.0 2.4 14.4

(j) Out-of-state travel 9.7 2.7 3.3 15.7

(k) Placitas hydrologic study 50.0 50.0

Authorized FTE: 30.00 Permanent; 17.00 Term

~~The general fund appropriation to the local government division of the department of finance and administration includes three hundred thousand dollars (\$300,000) to expand efforts to reduce gang activity in the city of Albuquerque in Bernalillo county. The appropriation is contingent upon the city of Albuquerque contributing at least sixty thousand dollars (\$60,000) to the gang activity reduction program.~~

~~The general fund appropriation to the local government division of the department of finance and administration includes three hundred thousand dollars (\$300,000) for the purpose of initiating a program to train at-risk youth in skills necessary to make public service television messages for youth about prevention of gang violence and substance abuse, in the south valley of Albuquerque in Bernalillo county. The appropriation is contingent upon the city of Albuquerque contributing at least sixty thousand dollars (\$60,000) to the program.~~

~~Included in the general fund appropriation to the local government division of the department of finance and administration in the contractual services category is one hundred thousand dollars (\$100,000) to plan and design a new hospital in Guadalupe county; two hundred thousand dollars (\$200,000) for continued development of an inventory of irrigated lands within the middle Rio Grande conservancy district and to conduct an audit of funds expended to date on the project; fifty thousand dollars (\$50,000) to contract for the development and operation of an initiative designed to stimulate international trade with Mexico in Silver City located in Grant county; twenty-five thousand dollars (\$25,000) to contract for an array of social vocational rehabilitation services for women, including counseling, in Dona Ana county; one hundred thousand dollars (\$100,000) to contract with a grassroots community-oriented housing and economic development agency to implement a streetscape improvement and commercial revitalization initiative in the South Broadway neighborhoods of Albuquerque in Bernalillo county.]~~

Included in the general fund appropriation to the local government division of the department of finance and administration in the other costs category is fifty thousand dollars (\$50,000) for Pecos ambulance service in San Miguel county; ~~[two hundred thousand dollars (\$200,000) to provide start-up operating funds for a health clinic in Artesia located in Eddy county; ten thousand dollars (\$10,000) to provide assistance for the ninth Cleveland millfest in September 1995 in Mora county; fifty thousand dollars (\$50,000) to conduct a needs assessment and determine the resources available to enable the construction of a school-community center in the Eldorado school district in Santa Fe county; twenty-five thousand dollars (\$25,000) to purchase library equipment and materials for libraries in Las Vegas; ten thousand dollars (\$10,000) to provide for some municipal services for the village of Folsom in Union county; eighty-six thousand four hundred dollars (\$86,400) for operating costs associated with the renovation and expansion of the shelter for battered families located in Santa Fe county; fifty thousand dollars (\$50,000) to provide necessary staff, transportation and materials to enable Mora county to provide services to people with disabilities in Mora county;]~~ fifty thousand dollars (\$50,000) to provide operational and staffing funds for emergency medical services in the village of Cochiti Lake; ~~[seventy-five thousand dollars (\$75,000) to establish a cultural awareness program in Clovis, in cooperation with the Clovis cultural commission;]~~ twenty-five thousand dollars (\$25,000) to provide matching funds for the city of Lordsburg to obtain a federal grant for community-oriented policing services; ~~[fifty thousand dollars (\$50,000) to plan, create, conduct and evaluate a comprehensive domestic violence response program for Los Alamos;]~~ three hundred fifty thousand dollars (\$350,000) for water and wastewater facility studies, inventories and laboratory testing and analyses and improvements to the water and wastewater systems and treatment facilities for the village of Chama; ~~[three thousand dollars (\$3,000) to acquire athletic equipment for the Anthony community center in Dona Ana county; twenty-five thousand dollars (\$25,000) to acquire recreational and other equipment for a senior citizens center in Carlsbad;]~~ three hundred thousand dollars (\$300,000) for the Hagerman water system; and fifty thousand dollars (\$50,000) for the acequia commission.

~~[Fifty thousand dollars (\$50,000) of the general fund appropriation to the local government division in the Placitas hydrologic study category is for a hydrologic analysis of the village of Placitas to determine ground water availability, flow and chemistry. The division shall seek the advice of and use any pertinent reports of the state engineer's office, the interstate stream commission, the water quality control commission and the department of environment relevant to the hydrologic analysis. This appropriation is contingent on Sandoval county providing matching funds of at least ten thousand dollars (\$10,000) from sources other than the state.]~~

General
Item Fund Total

(6) Financial control division:

(a) Personal services 2,080.5 2,080.5

(b) Employee benefits 666.4 666.4

(c) Travel 7.2 7.2

(d) Maintenance and repairs 10.6 10.6

(e) Supplies and materials 85.2 85.2

(f) Contractual services 181.1 181.1

(g) Operating costs 1,659.9 1,659.9

(h) Capital outlay 74.9 74.9

(i) Out-of-state travel 7.2 7.2

~~Authorized FTE: 67.00 Permanent~~

The appropriation to the financial control division in the operating costs category includes one million five hundred thirty-six thousand one hundred dollars (\$1,536,100) for line item fifty-seven, information systems division services, to be expended for that purpose only.

Intrnl Svc
General Funds/Inter-
Item Fund Agency Trnsf Total

(7) Special appropriations/dues and membership

fees:

(a) National association of
state budget officers 6.9 6.9

(b) Council of state planning
agencies 4.9 4.9

(c) Council of state governments 28.1 28.1

(d) Western interstate
commission on higher education 78.2 78.2

(e) Education commission of the
states 35.8 35.8

(f) Rocky Mountain corporation
for public broadcasting 13.0 13.0

(g) National conference of
state legislatures 74.8 74.8

(h) Western governors'
association 35.6 35.6

(i) Cumbres and Toltec scenic
railroad commission 9.9 9.9

(j) Commission on inter-
governmental relations 4.9 4.9

(k) Governmental accounting
standards board 15.4 15.4

(l) National center for state
courts 56.6 56.6

(m) National governors'
association 46.5 46.5

(n) Citizens review board 224.9 70.5 295.4

(o) Emergency fund 346.5 346.5

(p) Emergency water fund 73.6 73.6

(q) Fiscal agent contract 1,001.3 884.7 1,886.0

(r) DWI grants 4,950.0 4,950.0

(s) Council of governments 281.5 281.5

(t) Leasehold community
assistance 110.9 110.9

Category transfers, division transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the department of finance and administration.

Subtotal 21,342.5

Intrnl Svc

Funds/Inter-
Item Agency Trnsf Total

PUBLIC SCHOOL INSURANCE AUTHORITY:

(1) Operations division:

(a) Personal services 389.2 389.2

(b) Employee benefits 124.1 124.1

(c) Travel 44.8 44.8

(d) Maintenance and repairs 24.9 24.9

(e) Supplies and materials 18.0 18.0

(f) Contractual services 96.5 96.5

(g) Operating costs 60.9 60.9

(h) Out-of-state travel 4.5 4.5

(i) Other financing uses .4 .4

~~Authorized FTE: 9.00 Permanent~~

Category transfers are specifically authorized for the operations division of the public school insurance authority.

Intrnl Svc
Funds/Inter-
Item Agency Trnsf Total

(2) Benefits division: 82,448.6 82,448.6

Budget increases from internal service funds/interagency transfers are specifically authorized for the benefits division of the public school insurance authority.

Intrnl Svc
Funds/Inter-
Item Agency Trnsf Total

(3) Risk division: 22,131.1 22,131.1

Budget increases from internal service funds/interagency transfers are specifically authorized for the risk division of the public school insurance authority.

~~The public school insurance authority shall spend no more than thirty thousand dollars (\$30,000) to contract for legal services.~~

Subtotal 105,343.0

Intrnl Svc
Funds/Inter-
Item Agency Trnsf Total

RETIREE HEALTH CARE AUTHORITY:

(1) Administration:

(a) Personal services 431.8 431.8

(b) Employee benefits 131.9 131.9

(c) Travel 40.9 40.9

(d) Maintenance and repairs 12.5 12.5

(e) Supplies and materials 30.0 30.0

(f) Contractual services 88.0 88.0

(g) Operating costs 242.6 242.6

(h) Capital outlay 16.0 16.0

(i) Out-of-state travel 14.0 14.0

~~Authorized FTE: 10.00 Permanent~~

Category transfers are specifically authorized for the administration component of the retiree health care authority.

Intrnl Svc
Funds/Inter-
Item Agency Trnsf Total

(2) Benefits division: 45,856.7 45,856.7

Budget increases from internal service funds/interagency transfers are specifically authorized for the benefits division of the retiree health care authority.

~~The retiree health care authority shall spend no more than thirty thousand dollars (\$30,000) to contract for legal services.~~

Subtotal 46,864.4

General

Item Fund Total

**COMMISSION ON INFORMATION AND COMMUNICATION
MANAGEMENT:**

(a) Personal services 114.0 114.0

(b) Employee benefits 34.9 34.9

(c) Travel 4.6 4.6

(d) Maintenance and repairs .2 .2

(e) Supplies and materials 5.0 5.0

(f) Contractual services 1.0 1.0

(g) Other financing uses .3 .3

~~Authorized FTE: 3.00 Permanent~~

To provide for staff support and meetings of the commission on information and communication management during the wind-up period as provided by Section 12-9-17 NMSA 1978.

Subtotal 160.0

Intrnl Svc

General Funds/Inter-
Item Fund Agency Trnsf Total

GENERAL SERVICES DEPARTMENT:

(1) Office of the secretary:

(a) Personal services 40.0 247.0 287.0

(b) Employee benefits 19.0 63.0 82.0

(c) Travel 1.4 4.7 6.1

(d) Maintenance and repairs .1 .5 .6

(e) Supplies and materials .4 1.1 1.5

(f) Operating costs 3.2 10.3 13.5

(g) Capital outlay 1.2 3.8 5.0

(h) Out-of-state travel .3 .9 1.2

(i) Other financing uses .2 .2

Authorized FTE: 6.00 Permanent

Intrnl Svc
General Funds/Inter-
Item Fund Agency Trnsf Total

(2) Administrative services division:

(a) Personal services 259.5 989.5 1,249.0

(b) Employee benefits 92.9 307.4 400.3

(c) Travel 2.7 8.7 11.4

(d) Maintenance and repairs 1.7 5.6 7.3

(e) Supplies and materials 8.6 28.3 36.9

(f) Contractual services 21.0 123.3 144.3

(g) Operating costs 73.3 242.4 315.7

(h) Capital outlay 66.6 66.6

(i) Out-of-state travel .5 1.5 2.0

(j) Other financing uses .3 .8 1.1

~~Authorized FTE: 38.00 Permanent~~

Other

General State

Item Fund Funds Total

(3) Telecommunications access fund:

(a) Contractual services 148.5 1,119.2 1,267.7

(b) Other financing uses 80.8 80.8

The general fund appropriation to the telecommunications access fund shall be used solely to provide necessary supplemental funds to pay for contractual services for establishment of the telecommunications relay system.

Budget increases from other state funds are specifically authorized for the telecommunications access fund administered by the general services department.

Other Intrnl Svc

General State Funds/Inter- Federal

Item Fund Funds Agency Trnsf Funds Total

(4) Purchasing division:

(a) Personal services 606.8 277.4 1,004.1 169.5 2,057.8

(b) Employee benefits 218.3 111.8 328.6 52.1 710.8

(c) Travel 7.7 51.5 3.6 20.3 83.1

(d) Maintenance and
repairs 3.0 27.6 142.7 1.6 174.9

- (e) Supplies and materials 5.2 16.6 705.7 6.4 733.9
- (f) Contractual services 43.4 .1 43.5
- (g) Operating costs 125.3 82.4 33.3 22.4 263.4
- (h) Capital outlay .2 93.0 200.0 .8 294.0
- (i) Out-of-state travel 3.0 15.0 .6 7.0 25.6
- (j) Other financing uses .6 99.3 245.7 .2 345.8

~~Authorized FTE: 71.00 Permanent; 6.00 Term~~

Budget increases from other state funds and internal services funds/interagency transfers are specifically authorized for the purchasing division of the general services department.

Intrnl Svc
Funds/Inter-
Item Agency Trnsf Total

- (5) Information systems division-regular:
 - (a) Personal services 7,486.1 7,486.1
 - (b) Employee benefits 2,327.9 2,327.9
 - (c) Travel 128.6 128.6
 - (d) Maintenance and repairs 2,666.6 2,666.6
 - (e) Supplies and materials 532.8 532.8
 - (f) Contractual services 4,957.9 4,957.9
 - (g) Operating costs 10,836.2 10,836.2
 - (h) Capital outlay 231.7 231.7
 - (i) Out-of-state travel 58.6 58.6
 - (j) Other financing uses 1,039.9 1,039.9

~~Authorized FTE: 213.00 Permanent; 3.00 Term~~

Budget increases from internal service funds/interagency transfers are specifically authorized for the information systems division-regular of the general services department.

Intrnl Svc
Funds/Inter-
Item Agency Trnsf Total

(6) Information systems division-funds:

(a) Data processing equipment
replacement 11,528.2 11,528.2

(b) Radio equipment replacement 1,005.1 1,005.1

(c) Communications equipment
replacement 2,275.0 2,275.0

Budget increases from the internal service funds/interagency transfers are specifically authorized for the information systems division-funds.

Intrnl Svc
General Funds/Inter-
Item Fund Agency Trnsf Total

(7) Risk management division--regular:

(a) Personal services 28.2 1,587.3 1,615.5

(b) Employee benefits 8.4 534.1 542.5

(c) Travel 52.4 52.4

(d) Maintenance and repairs 8.6 8.6

(e) Supplies and materials 41.6 41.6

(f) Contractual services 254.6 254.6

(g) Operating costs 362.2 362.2

(h) Other costs 359.4 359.4

- (i) Capital outlay 32.4 32.4
- (j) Out-of-state travel 6.7 6.7
- (k) Other financing uses 105.7 105.7

~~Authorized FTE: 46.00 Permanent~~

The appropriation from the general fund to the risk management division-regular of the general services department in the other costs category is to provide civil rights liability coverage for developmental disabilities providers and intermediate care facilities for the mentally retarded and to provide one permanent FTE position to administer and process civil rights claims made pursuant to 42 U.S.C. Section 1983 against nonprofit corporations providing developmental disabilities services and nonprofit intermediate care facilities for the mentally retarded.

Budget increases from internal service funds/interagency transfers are specifically authorized for the risk management division-regular of the general services department.

Intrnl Svc
Funds/Inter-
Item Agency Trnsf Total

(8) Risk management division--funds:

- (a) Public liability 18,811.4 18,811.4
- (b) Surety bond 145.1 145.1
- (c) Public property reserve 3,847.3 3,847.3
- (d) Local public bodies
unemployment compensation 682.6 682.6
- (e) Workers' compensation
retention 11,254.8 11,254.8
- (f) State unemployment
compensation 3,176.1 3,176.1

Budget increases from internal service funds/interagency transfers are specifically authorized for reserve funds administered by the risk management division of the general services department.

General
Item Fund Total

(9) Property control division:

(a) Personal services 900.1 900.1

(b) Employee benefits 287.4 287.4

(c) Travel 20.7 20.7

(d) Maintenance and repairs 71.6 71.6

(e) Supplies and materials 8.9 8.9

(f) Contractual services .2 .2

(g) Operating costs 62.5 62.5

(h) Capital outlay 742.9 742.9

(i) Other financing uses .9 .9

Authorized FTE: 28.00 Permanent

~~Included in the general fund appropriation to the property control division in the capital outlay category is seven hundred thirty four thousand three hundred dollars (\$734,300) for land acquisition for a national veterans' cemetery adjacent to the Vietnam veterans' memorial located in Eagle Nest, New Mexico.~~

General
Item Fund Total

(10) Building services division:

(a) Personal services 2,405.0 2,405.0

(b) Employee benefits 1,048.2 1,048.2

(c) Travel 16.6 16.6

(d) Maintenance and repairs 272.2 272.2

(e) Supplies and materials 16.7 16.7

- (f) Contractual services 35.6 35.6
- (g) Operating costs 1,834.5 1,834.5
- (h) Capital outlay 24.7 24.7
- (i) Other financing uses 3.9 3.9

Authorized FTE: 133.00 Permanent

Item	Intrnl Svc Funds/Inter- Agency Trnsf	Total
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(11) Motor pool division:

- (a) Personal services 355.4 355.4
- (b) Employee benefits 118.9 118.9
- (c) Travel 428.7 428.7
- (d) Maintenance and repairs 6.2 6.2
- (e) Supplies and materials 2.3 2.3
- (f) Contractual services 4.6 4.6
- (g) Operating costs 94.0 94.0
- (h) Capital outlay 408.5 408.5
- (i) Out-of-state travel 1.0 1.0
- (j) Other financing uses 201.1 201.1

Authorized FTE: 14.00 Permanent

Budget increases from internal service funds/interagency transfers are specifically authorized for the motor pool division of the general services department.

Item	Intrnl Svc Funds/Inter- Agency Trnsf	Total
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(12) State aircraft pool:

(a) Personal services 289.4 289.4

(b) Employee benefits 79.3 79.3

(c) Travel 727.8 727.8

(d) Maintenance and repairs 43.5 43.5

(e) Supplies and materials 1.9 1.9

(f) Contractual services 1.0 1.0

(g) Operating costs 78.2 78.2

(h) Out-of-state travel 4.7 4.7

(i) Other financing uses .2 .2

Authorized FTE: 7.00 Permanent

Notwithstanding the provision of the State Aircraft Act, Section 15-9-4 NMSA 1978, all fees collected for the state aircraft pool shall be retained for the operations in accordance with the legislative appropriation and not deposited in the general fund.

Budget increases from internal services funds/interagency transfers are specifically authorized for the state aircraft pool of the general services department.

Category transfers and division transfers are authorized for the general services department.

Subtotal 105,685.8

Other

State

Item Funds Total

EDUCATIONAL RETIREMENT BOARD:

(a) Personal services 1,161.9 1,161.9

(b) Employee benefits 370.1 370.1

(c) Travel 30.7 30.7

(d) Maintenance and repairs 34.7 34.7

(e) Supplies and materials 28.8 28.8

(f) Contractual services 367.0 367.0

(g) Operating costs 171.2 171.2

(h) Other costs 151.8 151.8

(i) Capital outlay 159.6 159.6

(j) Out-of-state travel 11.3 11.3

Authorized FTE: 39.00 Permanent

Included in the other state funds appropriation to the educational retirement board is thirty-two thousand dollars (\$32,000) for one FTE in the records management system technical staff to improve records management through optical imaging techniques and ten thousand dollars (\$10,000) for in-state travel for regional employees of the board.

The other state funds appropriation of one hundred fifty-one thousand eight hundred dollars (\$151,800) to the educational retirement board in the other costs category shall be transferred to the state board of finance to be expended only for custody services associated with the fiscal agent contract. Unexpended or unencumbered balances in the state board of finance remaining at the end of fiscal year 1996 from this appropriation shall revert to the educational retirement board fund.

The educational retirement board may increase its budget from other state funds in an amount not to exceed seventy-five thousand dollars (\$75,000) for design and expansion costs to renovate its building. Funds are contingent upon the agency providing a comprehensive design and plan subject to review and approval by the property control division of the general services department.

Category transfers and budget increases from other state funds are specifically authorized for the educational retirement board.

Subtotal 2,487.1

Other Intrnl Svc

General State Funds/Inter-
Item Fund Funds Agency Trnsf Total

PUBLIC DEFENDER DEPARTMENT:

- (a) Personal services 6,858.4 6,858.4
- (b) Employee benefits 2,192.5 2,192.5
- (c) Travel 175.8 175.8
- (d) Maintenance and repairs 18.2 60.0 78.2
- (e) Supplies and materials 91.7 91.7
- (f) Contractual services 4,371.0 20.0 4,391.0
- (g) Operating costs 1,533.9 1,533.9
- (h) Capital outlay 41.3 41.3
- (i) Out-of-state travel 5.3 5.3
- (j) Other financing uses 6.4 6.4

~~Authorized FTE: 220.00 Permanent~~

Category transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the public defender department.

Unexpended or unencumbered balances in the public defender department remaining at the end of fiscal year 1996 from appropriations made from the general fund shall not revert and shall be used exclusively for payment of contract attorney fees in the subsequent fiscal year.

None of the general fund appropriation to the public defender department shall be used for the establishment of a Las Vegas office. The public defender department shall provide legal services for the fourth judicial district through contract attorneys.

Included in the general fund appropriation to the public defender department is one hundred thousand dollars (\$100,000) for contract attorneys in the fourth judicial district in Las Vegas.

Subtotal 15,374.5

` General

Item Fund Total

GOVERNOR:

- (a) Personal services 1,205.8 1,205.8
- (b) Employee benefits 400.6 400.6
- (c) Travel 62.7 62.7
- (d) Maintenance and repairs 22.4 22.4
- (e) Supplies and materials 60.2 60.2
- (f) Contractual services 56.1 56.1
- (g) Operating costs 199.8 199.8
- (h) Other costs 128.2 128.2
- (i) Capital outlay 29.7 29.7
- (j) Out-of-state travel 62.4 62.4
- (k) Other financing uses 1.1 1.1

~~Authorized FTE: 33.00 Permanent~~

The general fund appropriation to the office of the governor in the other costs category includes fifty thousand dollars (\$50,000) to investigate the rights of the state, counties and municipalities with respect to federal lands not acquired pursuant to Article 1, Section 8 of the constitution of the United States.

Category transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the governor.

Subtotal 2,229.0

Other

General State
Item Fund Funds Total

CRIMINAL AND JUVENILE JUSTICE COORDINATING COUNCIL:

- (a) Contractual services 350.0 350.0

LIEUTENANT GOVERNOR:

(a) Personal services 242.7 242.7

(b) Employee benefits 63.9 63.9

(c) Travel 13.4 13.4

(d) Maintenance and repairs .7 .7

(e) Supplies and materials 4.9 4.9

(f) Contractual services 14.7 14.7

(g) Operating costs 22.9 22.9

(h) Capital outlay 2.5 2.5

(i) Out-of-state travel 11.6 11.6

~~Authorized FTE: 6.00 Permanent~~

Category transfers are specifically authorized for the lieutenant governor.

Subtotal 377.3

Other

State

Item Funds Total

PUBLIC EMPLOYEES RETIREMENT ASSOCIATION:

(1) Administrative division:

(a) Personal services 1,659.5 1,659.5

(b) Employee benefits 523.1 523.1

(c) Travel 19.6 19.6

(d) Maintenance and repairs 42.5 42.5

(e) Supplies and materials 36.0 36.0

(f) Contractual services 3,856.0 3,856.0

(g) Operating costs 462.2 462.2

(h) Capital outlay 74.0 74.0

(i) Out-of-state travel 16.5 16.5

(j) Other financing uses 355.5 355.5

~~Authorized FTE: 49.00 Permanent; 4.00 Term~~

Budget increases from other state funds are specifically authorized for investment manager fees in an amount not to exceed the fees specified in investment manager contracts approved by the public employees retirement board and department of finance and administration. Funding within the contractual services category of the administrative services division of the public employees retirement association for investment manager fees shall not be expended for any other purpose.

	State	Item	Other	Funds Total
(2) Maintenance division:				
(a)	Personal services	427.3	427.3	
(b)	Employee benefits	174.4	174.4	
(c)	Travel	4.6	4.6	
(d)	Maintenance and repairs	251.3	251.3	
(e)	Supplies and materials	2.7	2.7	
(f)	Contractual services	15.9	15.9	
(g)	Operating costs	424.1	424.1	
(h)	Capital outlay	10.1	10.1	
(i)	Out-of-state travel	1.0	1.0	

~~Authorized FTE: 23.00 Permanent~~

Budget increases from other state funds in an amount not to exceed three hundred thousand dollars (\$300,000) for building maintenance are specifically authorized for the public employees retirement association.

Other

State
Item Fund Total

(3) Deferred compensation:

(a) Personal services 27.9 27.9

(b) Employee benefits 7.6 7.6

(c) Travel 2.2 2.2

(d) Maintenance and repairs .2 .2

(e) Supplies and materials .3 .3

(f) Contractual services 2.1 2.1

(g) Operating costs 5.3 5.3

(h) Capital outlay 4.9 4.9

(i) Out-of-state travel 1.0 1.0

Authorized FTE: 1.00 Permanent

Category and division transfers are specifically authorized for the public employees retirement association.

Subtotal 8,407.8

Intrnl Svc

General Funds/Inter-
Item Fund Agency Trnsf Total

STATE COMMISSION OF PUBLIC RECORDS:

(a) Personal services 857.4 857.4

(b) Employee benefits 292.1 292.1

(c) Travel 8.8 4.0 12.8

(d) Maintenance and repairs 25.7 6.0 31.7

(e) Supplies and materials 4.8 14.0 18.8

(f) Contractual services 4.3 4.3

(g) Operating costs 150.7 15.0 165.7

(h) Other costs 28.1 28.1

(i) Capital outlay 67.4 12.2 79.6

(j) Out-of-state travel 4.0 4.0

Authorized FTE: 31.50 Permanent

Category transfers and budget increases from internal service funds/interagency transfers are specifically authorized for the state commission of public records.

Subtotal 1,494.5

General

Item Fund Total

SECRETARY OF STATE:

(a) Personal services 968.4 968.4

(b) Employee benefits 331.2 331.2

(c) Travel 16.9 16.9

(d) Maintenance and repairs 25.0 25.0

(e) Supplies and materials 41.3 41.3

(f) Contractual services 36.2 36.2

(g) Operating costs 516.2 516.2

(h) Other costs 79.2 79.2

(i) Capital outlay 11.4 11.4

(j) Out-of-state travel 9.8 9.8

Authorized FTE: 35.00 Permanent; 1.00 Term; 1.33 Temporary

Category transfers are specifically authorized for the secretary of state.

Subtotal 2,035.6

Intrnl Svc

General Funds/Inter-
Item Fund Agency Trnsf Total

PERSONNEL BOARD:

(a) Personal services 2,307.2 234.2 2,541.4

(b) Employee benefits 754.5 69.8 824.3

(c) Travel 28.3 16.4 44.7

(d) Maintenance and repairs 81.7 9.0 90.7

(e) Supplies and materials 33.5 24.2 57.7

(f) Contractual services 85.4 80.8 166.2

(g) Operating costs 384.8 203.3 588.1

(h) Capital outlay 79.6 8.9 88.5

(i) Out-of-state travel 12.1 2.8 14.9

(j) Other financing uses 2.4 2.4

~~Authorized FTE: 80.60 Permanent~~

The department of finance and administration is authorized to transfer to the personnel board from each executive branch agency an amount based on an assessment per authorized FTE to fund the four hundred eighty-seven thousand dollars (\$487,000) appropriated from internal service funds/interagency transfers for employee training programs and the one hundred sixty-two thousand four hundred dollars (\$162,400) appropriated from internal service funds/interagency transfers for the employee assistance program.

Category transfers are specifically authorized for the personnel board.

Subtotal 4,418.9

General

Item Fund Total

PUBLIC EMPLOYEE LABOR RELATIONS BOARD:

- (a) Personal services 112.1 112.1
- (b) Employee benefits 35.1 35.1
- (c) Travel 16.8 16.8
- (d) Maintenance and repairs 1.5 1.5
- (e) Supplies and materials 5.4 5.4
- (f) Contractual services 53.0 53.0
- (g) Operating costs 36.6 36.6
- (h) Capital outlay 5.7 5.7
- (i) Out-of-state travel 2.6 2.6
- (j) Other financing uses .1 .1

~~Authorized FTE: 3.00 Permanent~~

Category transfers are specifically authorized for the public employee labor relations board.

Subtotal 268.9

General

Item Fund Total

STATE TREASURER:

- (a) Personal services 1,442.0 1,442.0
- (b) Employee benefits 480.5 480.5
- (c) Travel 11.7 11.7
- (d) Maintenance and repairs 38.1 38.1
- (e) Supplies and materials 32.3 32.3

(f) Contractual services 79.0 79.0

(g) Operating costs 510.9 510.9

(h) Capital outlay 4.5 4.5

(i) Out-of-state travel 5.9 5.9

Authorized FTE: 41.00 Permanent

Category transfers are specifically authorized for the state treasurer.

Subtotal 2,604.9

Other Intrnl Svc

General State Funds/Inter- Federal

Item Fund Funds Agency Trnsf Funds Total

TOTAL GENERAL CONTROL 108,756.9 17,807.6 263,562.9 2,523.7 392,651.1

D. COMMERCE AND INDUSTRY

Other

State

Item Funds Total

BOARD OF EXAMINERS FOR ARCHITECTS:

(a) Personal services 106.0 106.0

(b) Employee benefits 36.7 36.7

(c) Travel 17.1 17.1

(d) Maintenance and repairs 3.6 3.6

(e) Supplies and materials 4.8 4.8

(f) Contractual services 26.7 26.7

(g) Operating costs 35.6 35.6

(h) Capital outlay 3.7 3.7

(i) Out-of-state travel 7.2 7.2

(j) Other financing uses 1.1 1.1

~~Authorized FTE: 4.00 Permanent~~

Category transfers and budget increases from other state funds are specifically authorized for the board of examiners for architects.

Subtotal 242.5

General

Item Fund Total

BORDER AUTHORITY:

(a) Personal services 102.5 102.5

(b) Employee benefits 34.2 34.2

(c) Travel 18.7 18.7

(d) Maintenance and repairs 2.1 2.1

(e) Supplies and materials 7.3 7.3

(f) Contractual services 22.0 22.0

(g) Operating costs 39.6 39.6

(h) Capital outlay 6.2 6.2

(i) Out-of-state travel 12.0 12.0

~~Authorized FTE: 2.50 Permanent~~

Category transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the border authority.

Subtotal 244.6

Intrnl Svc

General Funds/Inter-
Item Fund Agency Trnsf Total

TOURISM DEPARTMENT:

(1) Travel and marketing division:

(a) Personal services 516.9 606.2 1,123.1

(b) Employee benefits 164.1 238.2 402.3

(c) Travel 37.1 17.0 54.1

(d) Maintenance and repairs 8.5 15.0 23.5

(e) Supplies and materials 44.5 16.0 60.5

(f) Contractual services 152.2 30.0 182.2

(g) Operating costs 2,737.1 71.0 2,808.1

(h) Other costs 574.2 574.2

(i) Capital outlay 18.3 35.0 53.3

(j) Out-of-state travel 34.6 2.0 36.6

(k) Other financing uses 14.8 14.8

~~Authorized FTE: 48.50 Permanent~~

~~The general fund appropriation to the travel and marketing division of the tourism department in the other costs category includes thirty thousand dollars (\$30,000) for the promotion of tourism activities in Las Vegas in conjunction with the Las Vegas Hispano chamber of commerce.]~~

The internal service funds/interagency transfers appropriation of one million thirty thousand four hundred dollars (\$1,030,400) to the travel and marketing division shall be made from the state road fund for operation of the welcome centers.

Unexpended or unencumbered balances in the travel and marketing division remaining at the end of fiscal year 1996 from appropriations made from the state road fund shall revert to the state road fund.

Intrnl Svc

Funds/Inter-
Item Agency Trnsf Total

(2) New Mexico Magazine division:

- (a) Personal services 732.9 732.9
- (b) Employee benefits 251.9 251.9
- (c) Travel 9.1 9.1
- (d) Maintenance and repairs 6.8 6.8
- (e) Supplies and materials 33.1 33.1
- (f) Contractual services 847.2 847.2
- (g) Operating costs 2,437.9 2,437.9
- (h) Other costs 200.0 200.0
- (i) Capital outlay 23.0 23.0
- (j) Out-of-state travel 10.0 10.0

Authorized FTE: ~~24.00~~ Permanent

Category transfers and budget increases from internal service funds/interagency transfers are specifically authorized for the tourism department.

Subtotal 9,884.6

General

Item Fund Total

ECONOMIC DEVELOPMENT DEPARTMENT:

(1) Office of the secretary:

- (a) Personal services 230.3 230.3
- (b) Employee benefits 90.1 90.1
- (c) Travel 27.8 27.8
- (d) Maintenance and repairs .5 .5
- (e) Supplies and materials 7.3 7.3
- (f) Contractual services 354.3 354.3

(g) Operating costs 57.7 57.7

(h) Capital outlay 4.9 4.9

(i) Out-of-state travel 16.2 16.2

(j) Other financing uses .2 .2

Authorized FTE: 5.00 Permanent

~~The general fund appropriation to the office of the secretary of the economic development department in the contractual services category includes two hundred fifty thousand dollars (\$250,000) to conduct a statewide comprehensive economic strategic business plan and is contingent upon receipt of at least one hundred fifty thousand dollars (\$150,000) in matching funds from the private sector.~~

General Federal

Item Fund Funds Total

(2) Administrative services division:

(a) Personal services 807.5 26.2 833.7

(b) Employee benefits 262.3 9.6 271.9

(c) Travel 7.5 7.5

(d) Maintenance and repairs 32.2 32.2

(e) Supplies and materials 32.7 32.7

(f) Contractual services 78.4 78.4

(g) Operating costs 73.3 73.3

(h) Capital outlay 2.5 2.5

(i) Out-of-state travel 2.7 2.7

(j) Other financing uses .8 .8

~~Authorized FTE: 26.00 Permanent; 1.00 Term~~

(3) Economic development division:

General

Item Fund Total

- (a) Personal services 682.3 682.3
- (b) Employee benefits 225.1 225.1
- (c) Travel 62.3 62.3
- (d) Maintenance and repairs 5.9 5.9
- (e) Supplies and materials 25.4 25.4
- (f) Contractual services 594.3 594.3
- (g) Operating costs 580.0 580.0
- (h) Other costs 396.1 396.1
- (i) Capital outlay 3.4 3.4
- (j) Out-of-state travel 38.3 38.3
- (k) Other financing uses .6 .6

~~Authorized FTE: 19.50 Permanent~~

~~Included in the general fund appropriation to the economic development division of the economic development department in the contractual services category is thirty thousand dollars (\$30,000) to promote and research New Mexico wines and vineyards, seventy-five thousand dollars (\$75,000) to promote the more than two dozen local farmers' markets throughout the state to help provide information on education, nutrition and food safety issues; and in the other costs category is two hundred thousand dollars (\$200,000) to provide or contract for assistance to small businesses, minority-owned and women-owned businesses in northern New Mexico.~~

General

Item Fund Total

- (4) Film division:
- (a) Personal services 204.3 204.3
- (b) Employee benefits 65.2 65.2

- (c) Travel 10.4 10.4
- (d) Maintenance and repairs 6.0 6.0
- (e) Supplies and materials 9.6 9.6
- (f) Contractual services 158.4 158.4
- (g) Operating costs 146.8 146.8
- (h) Capital outlay 4.1 4.1
- (i) Out-of-state travel 15.9 15.9
- (j) Other financing uses .2 .2

~~Authorized FTE: 7.00 Permanent~~

~~Included in the general fund appropriation to the film division of the economic development department in the contractual services category is one hundred fifty thousand dollars (\$150,000) to provide or contract for a business plan for a multimedia technology center for filmmakers, writers, software authors and technologists to develop products for the entertainment, special effects and other technology markets.~~

General
Item Fund Total

- (5) Technology enterprise division:
- (a) Personal services 238.5 238.5
- (b) Employee benefits 88.1 88.1
- (c) Travel 13.3 13.3
- (d) Maintenance and repairs 5.1 5.1
- (e) Supplies and materials 5.8 5.8
- (f) Contractual services 2,177.8 2,177.8
- (g) Operating costs 46.3 46.3
- (h) Capital outlay .5 .5

(i) Out-of-state travel 11.7 11.7

(j) Other financing uses .2 .2

~~Authorized FTE: 6.00 Permanent~~

Included in the general fund appropriation to the technology enterprise division of the economic development department in the contractual services category is one million three hundred thousand dollars (\$1,300,000) to provide a pool of matching funds for technology-based proposals submitted to the federal government on behalf of the state.

General
Item Fund Total

(6) Space division:

(a) Personal services 121.3 121.3

(b) Employee benefits 53.0 53.0

(c) Travel 9.6 9.6

(d) Maintenance and repairs 2.0 2.0

(e) Supplies and materials 4.0 4.0

(f) Contractual services 1,154.4 1,154.4

(g) Operating costs 22.2 22.2

(h) Out-of-state travel 4.0 4.0

(i) Other financing uses .1 .1

~~Authorized FTE: 3.00 Permanent~~

Included in the general fund appropriation to the space division of the economic development department in the contractual services category is one million one hundred thousand dollars (\$1,100,000) to conduct an environmental impact study of the future site of the spaceport facility to be located in Dona Ana and Sierra counties.

Intrnl Svc
General Funds/Inter-

Item Fund Agency Trnsf Total

(7) Trade division:

(a) Personal services 231.9 231.9

(b) Employee benefits 73.1 73.1

(c) Travel 12.8 12.8

(d) Maintenance and repairs 6.9 6.9

(e) Supplies and materials 13.5 13.5

(f) Contractual services 229.3 15.0 244.3

(g) Operating costs 154.2 154.2

(h) Out-of-state travel 45.5 45.5

(i) Other financing uses .2 .2

Authorized FTE: 6.00 Permanent

Other

General State Federal

Item Fund Funds Funds Total

(8) State housing authority:

(a) Personal services 333.7 80.6 414.3

(b) Employee benefits 110.3 24.4 134.7

(c) Travel 13.6 3.8 11.6 29.0

(d) Maintenance and repairs 1.1 .9 1.5 3.5

(e) Supplies and materials 2.4 8.5 10.9

(f) Contractual services 10.9 18.0 28.9

(g) Operating costs 59.8 65.9 8.3 134.0

(h) Other costs 1,037.9 7,451.6 8,489.5

(i) Capital outlay 2.8 2.8

(j) Out-of-state travel 1.3 13.2 2.0 16.5

(k) Other financing uses .3 .3

~~Authorized FTE: 10.00 Permanent; 3.00 Term~~

General fund appropriations designated to match home investment partnerships program federal funds shall not revert.

Category transfers, division transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the economic development department.

Subtotal 19,364.3

Other Intrnl Svc

General State Funds/Inter-
Item Fund Funds Agency Trnsf Total

REGULATION AND LICENSING DEPARTMENT:

(1) Administrative services division:

(a) Personal services 931.4 .4 221.5 1,153.3

(b) Employee benefits 309.6 76.0 385.6

(c) Travel 3.5 4.0 7.5

(d) Maintenance and repairs 40.8 8.9 49.7

(e) Supplies and materials 16.3 2.1 18.4

(f) Contractual services 22.7 .8 23.5

(g) Operating costs 182.3 63.2 245.5

(h) Out-of-state travel 1.9 3.1 5.0

(i) Other financing uses .6 .4 1.0

~~Authorized FTE: 34.00 Permanent; 2.00 Term~~

Category transfers and budget increases from internal service funds/interagency transfers are specifically authorized for the boards and commissions section of the administrative services division of the regulation and licensing department. Transfers from the twenty-eight boards and commissions to the administrative services division of the regulation and licensing department for the indirect cost allocation of the computer enhancement fund and payroll are authorized.

General
Item Fund Total

(2) Construction industries division:

(a) Personal services 2,701.5 2,701.5

(b) Employee benefits 1,000.6 1,000.6

(c) Travel 312.5 312.5

(d) Maintenance and repairs 13.7 13.7

(e) Supplies and materials 42.9 42.9

(f) Contractual services 2.0 2.0

(g) Operating costs 384.2 384.2

(h) Out-of-state travel 2.0 2.0

(i) Other financing uses 24.7 24.7

Authorized FTE: 89.00 Permanent; 12.00 Term

General
Item Fund Total

(3) Manufactured housing division:

(a) Personal services 408.3 408.3

(b) Employee benefits 144.7 144.7

(c) Travel 40.1 40.1

(d) Maintenance and repairs 1.6 1.6

(e) Supplies and materials 6.3 6.3

(f) Operating costs 53.0 53.0

(g) Capital outlay 2.3 2.3

(h) Out-of-state travel 1.0 1.0

(i) Other financing uses 3.6 3.6

~~Authorized FTE: 14.00 Permanent~~

General

Item Fund Total

(4) Financial institutions division:

(a) Personal services 739.7 739.7

(b) Employee benefits 251.9 251.9

(c) Travel 98.8 98.8

(d) Maintenance and repairs 3.3 3.3

(e) Supplies and materials 8.0 8.0

(f) Operating costs 124.0 124.0

(g) Out-of-state travel 10.0 10.0

(h) Other financing uses .7 .7

~~Authorized FTE: 24.00 Permanent~~

Other

State

Item Funds Total

(5) New Mexico state board
of public accountancy: 253.6 253.6

~~Authorized FTE: 3.00 Permanent~~

Other
State
Item Funds Total

(6) Board of acupuncture and
oriental medicine: 59.6 59.6

~~Authorized FTE: 1.00 Permanent~~

Other
State
Item Funds Total

(7) New Mexico athletic commission: 40.4 40.4

~~Authorized FTE: .30 Permanent~~

Other
State
Item Funds Total

(8) Athletic trainer practice
board: 17.9 17.9

~~Authorized FTE: .20 Permanent~~

Other
State
Item Funds Total

(9) Board of barbers and
cosmetologists: 488.5 488.5

~~Authorized FTE: 8.00 Permanent~~

Other

State
Item Funds Total

(10) Chiropractic board: 77.4 77.4

~~Authorized FTE: 1.10 Permanent~~

Other
State
Item Funds Total

(11) New Mexico board of dental
health care: 231.1 231.1

~~Authorized FTE: 4.00 Permanent~~

Other
State
Item Funds Total

(12) Hearing aid advisory board: 22.7 22.7

~~Authorized FTE: .25 Permanent~~

Other
State
Item Funds Total

(13) Board of landscape architects: 29.6 29.6

~~Authorized FTE: .30 Permanent~~

Other
State
Item Funds Total

(14) Board of nursing home administrators: 37.2 37.2

~~Authorized FTE: .45 Permanent~~

Other
State
Item Funds Total

(15) Board of occupational
therapy practice: 33.9 33.9

~~Authorized FTE: .60 Permanent~~

Other
State
Item Funds Total

(16) Board of optometry: 41.2 41.2

~~Authorized FTE: .60 Permanent~~

Other
State
Item Funds Total

(17) Board of osteopathic medical
examiners: 58.8 58.8

~~Authorized FTE: .90 Permanent~~

Other
State
Item Funds Total

(18) Board of pharmacy: 844.3 844.3

~~Authorized FTE: 12.00 Permanent~~

Other
State
Item Funds Total

(19) Physical therapists' licensing
board: 77.8 77.8

~~Authorized FTE: 1.40 Permanent~~

Other
State

Item Funds Total

(20) Board of podiatry: 18.8 18.8

~~Authorized FTE: .20 Permanent~~

Other

State

Item Funds Total

(21) Board of private investigators and
polygraphers: 147.9 147.9

~~Authorized FTE: 2.70 Permanent~~

Other

State

Item Funds Total

(22) New Mexico state board of
psychologist examiners: 103.1 103.1

~~Authorized FTE: 1.30 Permanent~~

Other

State

Item Funds Total

(23) New Mexico real estate commission: 800.5 800.5

~~Authorized FTE: 13.00 Permanent~~

Other

State

Item Funds Total

(24) Advisory board of respiratory care
practitioners: 32.3 32.3

~~Authorized FTE: .45 Permanent~~

Other
State
Item Funds Total

(25) Speech-language, pathology and
audiology advisory board: 37.6 37.6

~~Authorized FTE: .55 Permanent~~

Other
State
Item Funds Total

(26) Board of thanatopractice: 66.0 66.0

~~Authorized FTE: .85 Permanent~~

Other
State
Item Funds Total

(27) Nutrition and dietetics practice
board: 24.6 24.6

~~Authorized FTE: .30 Permanent~~

Other
State
Item Funds Total

(28) Board of social work examiners: 165.0 165.0

~~Authorized FTE: 2.00 Permanent~~

Other
State
Item Funds Total

(29) Interior design board: 34.0 34.0

~~Authorized FTE: .40 Permanent~~

Item	State Funds	Other Total
(30) Real estate recovery fund:	250.0	250.0
(31) Real estate appraisers board:	111.0	111.0
Authorized FTE: 1.50 Permanent		

Item	State Funds	Other Total
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(32) Board of massage therapy:	133.3	133.3
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~~Authorized FTE: 2.15 Permanent~~

Item	State Funds	Other Total
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(33) Counseling and therapy practice board:	222.3	222.3
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~~Authorized FTE: 2.00 Permanent~~

Category transfers and budget increases from other state funds are specifically authorized for the boards and commissions listed in items (5) through (33).

Item	Fund	Total
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(34) Alcohol and gaming division:		
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(a) Personal services	529.4	529.4
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(b) Employee benefits	182.8	182.8
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(c) Travel	10.6	10.6
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(d) Maintenance and repairs	8.2	8.2
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(e) Supplies and materials	17.2	17.2
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(f) Contractual services	28.7	28.7
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(g) Operating costs 109.0 109.0

(h) Out-of-state travel 2.9 2.9

(i) Other financing uses .5 .5

~~Authorized FTE: 19.00 Permanent~~

General
Item Fund Total

(35) Securities division:

(a) Personal services 622.8 622.8

(b) Employee benefits 203.7 203.7

(c) Travel 2.6 2.6

(d) Maintenance and repairs 3.2 3.2

(e) Supplies and materials 9.4 9.4

(f) Contractual services 3.0 3.0

(g) Operating costs 112.5 112.5

(h) Out-of-state travel 3.9 3.9

(i) Other financing uses .6 .6

~~Authorized FTE: 19.00 Permanent~~

Other
State
Item Funds Total

(36) Securities division education and
training fund:

(a) Travel 4.9 4.9

(b) Supplies and materials 3.0 3.0

(c) Contractual services 30.0 30.0

(d) Operating costs 15.5 15.5

(e) Capital outlay 2.0 2.0

Category transfers and division transfers are specifically authorized for the regulation and licensing department.

Subtotal 14,637.7

Other Intrnl Svc

General State Funds/Inter-
Item Fund Funds Agency Trnsf Total

STATE CORPORATION COMMISSION:

(1) Administration division:

(a) Personal services 935.8 168.0 1,103.8

(b) Employee benefits 280.5 82.0 362.5

(c) Travel 6.4 6.4

(d) Maintenance and repair 20.9 20.9

(e) Supplies and materials 12.9 12.9

(f) Contractual services 92.1 92.1

(g) Operating costs 368.6 77.3 445.9

(h) Capital outlay 2.0 2.0

(i) Out-of-state travel 10.9 10.9

(j) Other financing uses .8 .8

Authorized FTE: 31.00 Permanent

Budget increases from internal service funds/interagency transfers are specifically authorized for the administration division of the state corporation commission.

General

Item Fund Total

(2) Corporations division:

(a) Personal services 507.7 507.7

(b) Employee benefits 200.8 200.8

(c) Travel .5 .5

(d) Maintenance and repairs 5.2 5.2

(e) Supplies and materials 6.2 6.2

(f) Contractual services 2.0 2.0

(g) Operating costs 335.0 335.0

(h) Capital outlay 5.4 5.4

(i) Out-of-state travel 1.0 1.0

(j) Other financing uses .6 .6

Authorized FTE: 22.00 Permanent

General

Item Fund Total

(3) Telecommunications division:

(a) Personal services 318.1 318.1

(b) Employee benefits 103.8 103.8

(c) Travel 4.0 4.0

(d) Maintenance and repairs 1.0 1.0

(e) Supplies and materials 2.0 2.0

(f) Contractual services 1.0 1.0

(g) Operating costs 44.7 44.7

(h) Capital outlay 4.9 4.9

(i) Out-of-state travel 4.9 4.9

(j) Other financing uses .2 .2

~~Authorized FTE: 10.00 Permanent~~

Intrnl Svc
General Funds/Inter-
Item Fund Agency Trnsf Total
(4) Transportation division:

(a) Personal services 79.2 593.3 672.5

(b) Employee benefits 24.7 231.5 256.2

(c) Travel 44.5 24.5 69.0

(d) Maintenance and repairs 4.6 4.6

(e) Supplies and materials 3.5 3.5

(f) Contractual services 2.0 2.0

(g) Operating costs 206.6 206.6

(h) Capital outlay 8.5 8.5

(i) Out-of-state travel 2.0 2.0

(j) Other financing uses .7 .7

~~Authorized FTE: 25.00 Permanent~~

~~The general fund appropriation to the transportation division of the state corporation commission includes one hundred forty-eight thousand four hundred dollars (\$148,400) for a track inspector and a hazardous materials inspector.~~

The internal service funds/interagency transfers appropriation of one million seventy-seven thousand two hundred dollars (\$1,077,200) to the transportation division of the state corporation commission shall be made from the state road fund.

Unexpended or unencumbered balances in the state corporation commission remaining at the end of fiscal year 1996 from appropriations made from the state road fund shall revert to the state road fund.

General Federal
Item Fund Funds Total

(5) Pipeline division:

(a) Personal services 85.7 86.6 172.3

(b) Employee benefits 31.8 32.1 63.9

(c) Travel 7.7 7.8 15.5

(d) Maintenance and repairs 1.4 1.4 2.8

(e) Supplies and materials 3.9 3.8 7.7

(f) Contractual services .5 .5 1.0

(g) Operating costs 22.6 22.8 45.4

(h) Capital outlay 1.7 1.8 3.5

(i) Out-of-state travel 2.1 2.2 4.3

(j) Other financing uses .1 .1

~~Authorized FTE: 5.00 Permanent~~

Other
State
Item Funds Total

(6) State fire marshal:

(a) Personal services 492.6 492.6

(b) Employee benefits 169.4 169.4

(c) Travel 70.2 70.2

(d) Maintenance and repairs 7.4 7.4

(e) Supplies and materials 17.0 17.0

(f) Contractual services 2.0 2.0

(g) Operating costs 225.9 225.9

(h) Capital outlay 27.0 27.0

(i) Out-of-state travel 3.6 3.6

(j) Other financing uses .5 .5

~~Authorized FTE: 18.00 Permanent~~

Other
State
Item Funds Total

(7) Firefighter training academy:

(a) Personal services 362.9 362.9

(b) Employee benefits 124.0 124.0

(c) Travel 20.9 20.9

(d) Maintenance and repairs 77.4 77.4

(e) Supplies and materials 60.0 60.0

(f) Contractual services 55.0 55.0

(g) Operating costs 95.9 95.9

(h) Other costs 25.9 25.9

(i) Capital outlay 11.0 11.0

(j) Out-of-state travel 1.6 1.6

(k) Other financing uses .3 .3

~~Authorized FTE: 13.00 Permanent~~

Other
General State
Item Fund Funds Total

(8) Department of insurance:

(a) Personal services 1,941.0 134.6 2,075.6

(b) Employee benefits 696.9 38.0 734.9

(c) Travel 14.3 12.3 26.6

(d) Maintenance and repairs 4.7 8.9 13.6

(e) Supplies and materials 15.6 15.0 30.6

(f) Contractual services 50.4 676.1 726.5

(g) Operating costs 358.2 198.8 557.0

(h) Other costs 7,000.0 7,000.0

(i) Capital outlay 28.8 .9 29.7

(j) Out-of-state travel 14.8 10.0 24.8

(k) Other financing uses 1.8 .1 1.9

~~Authorized FTE: 72.00 Permanent~~

Budget increases from other state funds are specifically authorized for the department of insurance.

The other state funds appropriation to the department of insurance includes twenty thousand dollars (\$20,000) from the insurance examination fund, forty thousand two hundred dollars (\$40,200) from the insurance licensee continuing education fund, two hundred seventeen thousand seven hundred dollars (\$217,700) from the title insurance maintenance fund, five million three hundred five thousand three hundred dollars (\$5,305,300) from the patients' compensation fund and two million five hundred eleven thousand five hundred dollars (\$2,511,500) from the subsequent injury fund.

Category transfers and division transfers are specifically authorized for the state corporation commission.

Subtotal 18,221.0

State

Other

Item Funds Total

NEW MEXICO BOARD OF MEDICAL EXAMINERS:

- (a) Personal services 264.8 264.8
- (b) Employee benefits 97.8 97.8
- (c) Travel 13.8 13.8
- (d) Maintenance and repairs 3.1 3.1
- (e) Supplies and materials 5.3 5.3
- (f) Contractual services 170.5 170.5
- (g) Operating costs 38.6 38.6
- (h) Capital outlay 3.0 3.0
- (i) Out-of-state travel 3.2 3.2
- (j) Other financing uses 2.7 2.7

Authorized FTE: 10.00 Permanent

Category transfers and budget increases from other state funds are specifically authorized for the New Mexico board of medical examiners.

Subtotal 602.8

Other

State

Item Funds Total

BOARD OF NURSING:

- (a) Personal services 261.3 261.3
- (b) Employee benefits 86.7 86.7
- (c) Travel 15.3 15.3
- (d) Maintenance and repairs 5.4 5.4

(e) Supplies and materials 9.0 9.0

(f) Contractual services 78.4 78.4

(g) Operating costs 108.6 108.6

(h) Other costs 2.3 2.3

(i) Out-of-state travel 3.1 3.1

(j) Other financing uses 3.2 3.2

~~Authorized FTE: 9.00 Permanent~~

Category transfers and budget increases from other state funds are specifically authorized for the board of nursing.

Subtotal 573.3

State

Item Funds Total

Other

STATE FAIR COMMISSION:

(a) Personal services 3,346.8 3,346.8

(b) Employee benefits 983.4 983.4

(c) Travel 63.2 63.2

(d) Maintenance and repairs 440.0 440.0

(e) Supplies and materials 123.0 123.0

(f) Contractual services 3,272.2 3,272.2

(g) Operating costs 1,630.7 1,630.7

(h) Other costs 3,772.0 3,772.0

(i) Capital outlay 240.0 240.0

(j) Out-of-state travel 11.5 11.5

~~Authorized FTE: 48.00 Permanent; 186.00 Temporary~~

Notwithstanding the personnel agreement with the state personnel board, fifty of the authorized temporary positions may be filled for up to one year.

Category transfers and budget increases from other state funds are specifically authorized for the state fair commission.

Subtotal 13,882.8

Other

State
Item Funds Total

**STATE BOARD OF REGISTRATION FOR PROFESSIONAL
ENGINEERS AND SURVEYORS:**

- (a) Personal services 98.9 98.9
- (b) Employee benefits 35.2 35.2
- (c) Travel 15.3 15.3
- (d) Maintenance and repairs 4.7 4.7
- (e) Supplies and materials 5.5 5.5
- (f) Contractual services 68.9 68.9
- (g) Operating costs 101.8 101.8
- (h) Capital outlay 6.7 6.7
- (i) Out-of-state travel 9.9 9.9
- (j) Other financing uses 1.9 1.9

~~Authorized FTE: 5.00 Permanent~~

Category transfers and budget increases from other state funds are specifically authorized for the state board of registration for professional engineers and surveyors.

Subtotal 348.8

General

Item Fund Total

NEW MEXICO RACING COMMISSION:

- (a) Personal services 607.3 607.3
- (b) Employee benefits 215.0 215.0
- (c) Travel 56.0 56.0
- (d) Maintenance and repairs 4.1 4.1
- (e) Supplies and materials 17.0 17.0
- (f) Contractual services 557.2 557.2
- (g) Operating costs 102.8 102.8
- (h) Capital outlay 1.6 1.6
- (i) Out-of-state travel 5.6 5.6
- (j) Other financing uses .5 .5

~~Authorized FTE: 16.43 Permanent; 1.71 Term~~

Thirty-seven thousand nine hundred dollars (\$37,900) of the general fund appropriation to the New Mexico racing commission is contingent on the New Mexico racing commission's approval, prior to July 1, 1995, of the opening of the San Juan downs during fiscal year 1996.

Category transfers are specifically authorized for the New Mexico racing commission.

Subtotal 1,567.1

General

Item Fund Total

APPLE COMMISSION:

- (a) Travel 5.9 5.9
- (b) Supplies and materials 1.0 1.0

(c) Contractual services 52.5 52.5

(d) Operating costs 9.9 9.9

(e) Other costs 4.9 4.9

Category transfers are specifically authorized for the apple commission.

Subtotal 74.2

Other

State

Item Funds Total

BOARD OF VETERINARY MEDICINE:

(a) Personal services 76.4 76.4

(b) Employee benefits 26.3 26.3

(c) Travel 11.5 11.5

(d) Maintenance and repairs 1.0 1.0

(e) Supplies and materials 1.5 1.5

(f) Contractual services 4.0 4.0

(g) Operating costs 20.0 20.0

(h) Capital outlay 1.5 1.5

(i) Out-of-state travel 4.8 4.8

(j) Other financing uses .7 .7

~~Authorized FTE: 2.00 Permanent~~

Category transfers and budget increases from other state funds are specifically authorized for the board of veterinary medicine.

Subtotal 147.7

Other Intrnl Svc

General State Funds/Inter- Federal

Item Fund Funds Agency Trnsf Funds Total

TOTAL COMMERCE AND

INDUSTRY 34,265.2 30,533.9 7,304.5 7,687.8 79,791.4

E. AGRICULTURE, ENERGY AND NATURAL RESOURCES

Other

General State

Item Fund Funds Total

OFFICE OF CULTURAL AFFAIRS:

(1) Administrative services
division:

(a) Personal services 766.6 766.6

(b) Employee benefits 245.7 245.7

(c) Travel 14.6 14.6

(d) Maintenance and repairs 12.7 12.7

(e) Supplies and materials 16.6 16.6

(f) Contractual services 189.0 69.1 258.1

(g) Operating costs 32.3 40.9 73.2

(h) Capital outlay 6.9 6.9

(i) Out-of-state travel 4.4 4.4

~~Authorized FTE: 23.00 Permanent~~

~~Included in the general fund appropriation to the administrative services division of the office of cultural affairs in the contractual services category is ninety-nine thousand dollars (\$99,000) to contract for the development of a New Mexico history book; fifteen thousand dollars (\$15,000) to commemorate the fiftieth anniversary of the founding of the United Nations; and seventy-five thousand dollars (\$75,000) to gather both a written and an audiovisual history of the southwest valley of Albuquerque and for preserving that history in the old Armijo school museum in the southwest valley of Albuquerque.]~~

General
Item Fund Total

(2) Hispanic cultural division:

(a) Personal services 282.1 282.1

(b) Employee benefits 39.9 39.9

(c) Travel 11.4 11.4

(d) Maintenance and repairs 1.0 1.0

(e) Supplies and materials 9.9 9.9

(f) Contractual services 103.9 103.9

(g) Operating costs 37.6 37.6

(h) Capital outlay 4.9 4.9

(i) Out-of-state travel 1.2 1.2

[Authorized FTE: 5.00 Permanent

~~Included in the general fund appropriation to the Hispanic cultural division of the office of cultural affairs in the personal services category is one hundred fifty thousand dollars (\$150,000) for commemoration activities honoring New Mexico's first families cuatrocennial commemoration 1598-1998.~~

~~Included in the general fund appropriation to the Hispanic cultural division in the contractual services category is seventy-five thousand dollars (\$75,000) to provide or contract for development and promotion of a statewide fiesta de la cultura Hispanica de las Americas.]~~

Other

General State
Item Fund Funds Total

(3) Museum division:

(a) Personal services 4,245.8 4,245.8

(b) Employee benefits 1,617.1 1,617.1

(c) Travel 30.0 30.0

(d) Maintenance and repairs 369.8 369.8

(e) Supplies and materials 130.0 130.0

(f) Contractual services 50.0 90.0 140.0

(g) Operating costs 7.8 620.1 627.9

(h) Other costs 250.0 250.0

(i) Capital outlay 200.0 200.0

(j) Out-of-state travel 7.5 7.5

~~Authorized FTE: 153.00 Permanent; 13.50 Term~~

~~Included in the general fund appropriation to the museum division of the office of cultural affairs in the contractual services category is fifty thousand dollars (\$50,000) to conduct a feasibility study on establishing a narrow gauge railroad museum in Chama.~~

Intrnl Svc
Funds/Inter-
Item Agency Trnsf Total

(4) Contract archeology:

(a) Personal services 846.4 846.4

(b) Employee benefits 311.4 311.4

(c) Travel 112.2 112.2

(d) Maintenance and repairs 20.3 20.3

(e) Supplies and materials 53.0 53.0

(f) Contractual services 309.0 309.0

(g) Operating costs 45.9 45.9

(h) Capital outlay 32.0 32.0

(i) Out-of-state travel 3.5 3.5

~~Authorized FTE: 32.50 Term~~

Other
General State Federal
Item Fund Funds Funds Total

(5) Natural history museum:

(a) Personal services 1,335.9 214.8 89.9 1,640.6

(b) Employee benefits 478.1 66.6 28.1 572.8

(c) Travel 21.7 21.7

(d) Maintenance and repairs 133.9 133.9

(e) Supplies and materials 81.2 81.2

(f) Contractual services 110.0 110.0

(g) Operating costs 207.5 164.6 372.1

(h) Other costs 148.5 148.5

(i) Capital outlay 25.0 25.0

(j) Out-of-state travel 5.5 5.5

Authorized FTE: ~~51.50 Permanent; 12.75 Term~~

Other
General State Federal
Item Fund Funds Funds Total

(6) Arts division:

(a) Personal services 190.6 240.0 430.6

(b) Employee benefits 100.3 52.0 152.3

(c) Travel 31.1 31.1

(d) Maintenance and repairs 2.7 2.7

(e) Supplies and materials 15.6 15.6

(f) Contractual services 19.8 150.0 20.0 189.8

(g) Operating costs 111.6 111.6

(h) Other costs 1,322.2 15.0 373.0 1,710.2

(i) Capital outlay 6.9 50.0 56.9

(j) Out-of-state travel 4.5 4.5

~~Authorized FTE: 12.50 Permanent; 4.50 Term~~

Included in the general fund appropriation to the arts division of the office of cultural affairs in the other costs category is three hundred thousand dollars (\$300,000) to provide touring services of symphonic music to communities throughout the state.

Other

General State Federal

Item Fund Funds Funds Total

(7) Library division:

(a) Personal services 1,380.5 259.8 1,640.3

(b) Employee benefits 464.7 100.2 564.9

(c) Travel 18.9 67.8 86.7

(d) Maintenance and repairs 45.7 7.6 53.3

(e) Supplies and materials 24.5 1.3 9.0 34.8

(f) Contractual services 713.8 72.0 785.8

(g) Operating costs 244.0 3.7 90.7 338.4

(h) Other costs 247.5 306.0 553.5

(i) Capital outlay 54.8 33.3 88.1

(j) Out-of-state travel 1.0 5.0 6.0

~~Authorized FTE: 44.00 Permanent; 15.00 Term~~

Included in the general fund appropriation to the library division of the office of cultural affairs in the personal services category is twenty-five thousand dollars (\$25,000) for services for the native American library project in ~~Crownpoint in McKinley county.~~

~~Included in the general fund appropriation to the library division in the contractual services category is twenty thousand dollars (\$20,000) to contract with nonprofit service organizations to conduct a literacy program in Bernalillo county. As a condition to the contract, the nonprofit organization shall provide a fifty percent in-kind services and cash match to the contract; and one hundred thousand dollars (\$100,000) to provide technical assistance and training on electronic information resources for libraries statewide.~~

Other
General State Federal
Item Fund Funds Funds Total

(8) Historic preservation division:

(a) Personal services 427.6 27.6 200.5 655.7

(b) Employee benefits 137.5 6.3 78.8 222.6

(c) Travel 13.6 13.6

(d) Maintenance and repairs 25.0 25.0

(e) Supplies and materials 21.2 21.2

(f) Contractual services 209.4 209.4

(g) Operating costs 4.6 35.3 39.9

(h) Other costs 285.0 285.0

(i) Capital outlay 18.1 18.1

(j) Out-of-state travel 6.0 6.0

Authorized FTE: 10.00 Permanent; 10.00 Term

~~Included in the general fund appropriation to the historic preservation division of the office of cultural affairs in the contractual services category is one hundred fifty thousand dollars (\$150,000) to provide historical institutes and humanities programs and activities throughout the state.~~

Other
General State
Item Fund Funds Total
(9) Space center:

- (a) Personal services 634.5 96.8 731.3
- (b) Employee benefits 236.5 28.7 265.2
- (c) Travel 13.6 13.6
- (d) Maintenance and repairs 29.0 61.2 90.2
- (e) Supplies and materials 2.7 99.7 102.4
- (f) Contractual services 7.6 7.6
- (g) Operating costs 102.8 113.0 215.8
- (h) Capital outlay 19.8 19.8
- (i) Out-of-state travel 2.0 2.0

Authorized FTE: 25.00 Permanent; 5.00 Term

General
Item Fund Total
(10) Farm and ranch heritage museum:

- (a) Personal services 163.3 163.3
- (b) Employee benefits 59.7 59.7
- (c) Travel 19.5 19.5
- (d) Maintenance and repairs 4.9 4.9
- (e) Supplies and materials 11.9 11.9
- (f) Contractual services 24.7 24.7
- (g) Operating costs 63.9 63.9
- (h) Capital outlay 7.9 7.9

(i) Out-of-state travel 1.2 1.2

Authorized FTE: 5.00 Permanent

Category transfers, division transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the office of cultural affairs.

Unexpended or unencumbered balances in the office of cultural affairs remaining at the end of fiscal year 1996 from appropriations made from the general fund shall not revert.

Subtotal 24,512.3

Other

General State Federal
Item Fund Funds Funds Total

NEW MEXICO LIVESTOCK BOARD:

(a) Personal services 225.2 1,660.6 243.8 2,129.6

(b) Employee benefits 83.1 623.4 91.5 798.0

(c) Travel 33.3 249.4 36.6 319.3

(d) Maintenance and repairs .5 3.5 .5 4.5

(e) Supplies and materials 11.2 84.0 12.3 107.5

(f) Contractual services 23.4 175.7 25.8 224.9

(g) Operating costs 15.9 120.0 17.6 153.5

(h) Other costs 65.0 65.0

(i) Capital outlay 18.6 140.1 20.6 179.3

(j) Out-of-state travel .8 6.3 1.1 8.2

Authorized FTE: 78.80 Permanent

The general fund appropriation to the New Mexico livestock board for its meat inspection program, including administrative costs, is contingent upon a dollar-for-dollar match of federal funds for that program.

Category transfers and budget increases from other state funds are specifically authorized for the New Mexico livestock board.

Subtotal 3,989.8

Other
General State Federal
Item Fund Funds Funds Total

DEPARTMENT OF GAME AND FISH:

(1) Administration:

(a) Personal services 5,416.9 2,674.1 8,091.0

(b) Employee benefits 1,977.6 976.3 2,953.9

(c) Travel 749.6 370.1 1,119.7

(d) Maintenance and repairs 243.5 120.1 363.6

(e) Supplies and materials 653.6 322.6 976.2

(f) Contractual services 25.7 1,143.5 562.5 1,731.7

(g) Operating costs 1,329.6 656.2 1,985.8

(h) Other costs 655.9 323.8 979.7

(i) Capital outlay 417.9 206.3 624.2

(j) Out-of-state travel 34.9 17.2 52.1

(k) Other financing uses 350.0 350.0

~~Authorized FTE: 235.00 Permanent; 12.00 Term; 9.50 Temporary~~

~~The general fund appropriation to the administration division of the department of game and fish in the contractual services category includes twenty-five thousand seven hundred dollars (\$25,700) to conduct a study of the fish flow habitat in the upper Rio Grande.~~

Category transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the department of game and fish.

Other

State Federal
Item Funds Funds Total

(2) Share with wildlife program: 58.0 12.0 70.0

Category transfers and budget increases from other state funds are specifically authorized for the share with wildlife program.

General Federal
Item Fund Funds Total

(3) Endangered species program:

(a) Personal services 42.9 123.9 166.8

(b) Employee benefits 14.4 43.5 57.9

(c) Travel 7.2 21.8 29.0

(d) Maintenance and repairs .4 1.1 1.5

(e) Supplies and materials 1.8 5.5 7.3

(f) Contractual services 18.7 41.2 59.9

(g) Operating costs 3.7 11.2 14.9

(h) Capital outlay 4.5 13.7 18.2

(i) Out-of-state travel .7 2.0 2.7

~~Authorized FTE: 5.00 Permanent~~

Category transfers and budget increases from other state funds are specifically authorized for the endangered species program.

Subtotal 19,656.1

Other

General State
Item Fund Funds Total

**ENERGY, MINERALS AND NATURAL RESOURCES
DEPARTMENT:**

(1) Office of the secretary:

(a) Personal services 481.4 36.1 517.5

(b) Employee benefits 159.8 12.4 172.2

(c) Travel 19.8 11.5 31.3

(d) Maintenance and repairs 2.8 2.8

(e) Supplies and materials 10.0 8.0 18.0

(f) Contractual services 368.3 1,105.1 1,473.4

(g) Operating costs 120.1 13.9 134.0

(h) Capital outlay 13.9 8.8 22.7

(i) Out-of-state travel 25.5 1.0 26.5

(j) Other financing uses .2 .2

Authorized FTE: 12.00 Permanent

General Federal
Item Fund Funds Total

(2) Administrative services division:

(a) Personal services 1,218.7 136.9 1,355.6

(b) Employee benefits 462.5 44.4 506.9

(c) Travel 4.1 16.9 21.0

(d) Maintenance and repairs 15.8 8.4 24.2

(e) Supplies and materials 19.4 24.5 43.9

(f) Contractual services 17.8 1.5 19.3

(g) Operating costs 223.4 130.4 353.8

(h) Capital outlay 49.5 50.0 99.5

(i) Out-of-state travel 2.0 2.0 4.0

(j) Other financing uses 1.1 1.1

~~Authorized FTE: 38.00 Permanent; 5.00 Term~~

General Federal
Item Fund Funds Total

(3) Energy conservation and management division:

(a) Personal services 650.7 240.2 890.9

(b) Employee benefits 193.9 85.2 279.1

(c) Travel 2.9 36.1 39.0

(d) Maintenance and repairs 2.3 3.4 5.7

(e) Supplies and materials 8.5 10.4 18.9

(f) Contractual services 990.0 2,115.8 3,105.8

(g) Operating costs 77.6 81.6 159.2

(h) Other costs 110.0 110.0

(i) Capital outlay 2.8 25.8 28.6

(j) Out-of-state travel 5.6 7.3 12.9

(k) Other financing uses .1 .4 .5

~~Auhorized FTE: 15.00 Permanent; 9.00 Term~~

~~The general fund appropriation to the energy conservation and management division of the energy, minerals and natural resources department includes five hundred thousand dollars (\$500,000) to contract for the weatherization of homes for persons whose incomes are at or below one hundred twenty-five percent of the federal income poverty level.~~

Other

General State Federal
Item Fund Funds Funds Total

(4) Forestry division:

(a) Personal services 1,266.9 54.0 313.1 1,634.0

(b) Employee benefits 498.5 4.9 92.8 596.2

(c) Travel 66.2 18.0 86.3 170.5

(d) Maintenance and repairs 18.7 3.3 4.0 26.0

(e) Supplies and materials 11.9 21.6 30.0 63.5

(f) Contractual services 58.3 .3 282.0 340.6

(g) Operating costs 195.0 5.0 143.0 343.0

(h) Other costs 321.8 133.2 23.0 478.0

(i) Capital outlay 230.9 7.0 61.0 298.9

(j) Out-of-state travel 1.5 1.0 7.8 10.3

(k) Other financing uses 1.4 1.4

~~[Authorized FTE: 40.00 Permanent; 11.00 Term; 2.00 Temporary]~~

The general fund appropriation to the forestry division of the energy, minerals and natural resources department in the other costs category includes two hundred sixty-five thousand dollars (\$265,000) to conduct soil and water conservation district activities and projects; and ~~twenty thousand dollars (\$20,000) to establish the Tierra y Montes tree plantation using effluent water.~~

~~Included in the general fund appropriation to the forestry division of the energy, minerals and natural resources department in the capital outlay category is seventy-five thousand dollars (\$75,000) for the purpose of statewide implementation of the New Mexico Forest Re-leaf Act, including the acquisition of equipment and purchase, planting and maintenance of trees.~~

Other
General State Federal
Item Fund Funds Funds Total

(5) State park and recreation division:

(a) Personal services 3,508.6 1,945.6 142.2 5,596.4

(b) Employee benefits 1,461.8 804.9 59.4 2,326.1

(c) Travel 267.3 138.5 21.1 426.9

(d) Maintenance and repairs 528.5 325.7 8.3 862.5

(e) Supplies and materials 199.3 103.2 42.2 344.7

(f) Contractual services 144.3 74.8 289.4 508.5

(g) Operating costs 874.7 453.3 1,328.0

(h) Other costs 10.1 5.3 15.4

(i) Capital outlay 588.0 507.5 90.0 1,185.5

(j) Out-of-state travel 2.6 1.4 4.0 8.0

(k) Other financing uses 104.1 2.6 106.7

~~Authorized FTE: 174.00 Permanent; 40.00 Term; 54.00 Temporary~~

The general fund appropriation to the state park and recreation division of the energy, minerals and natural resources department for other financing uses includes one hundred thousand dollars (\$100,000) to provide money to Sierra county for additional public safety and medical services resulting from the impacts from use of Elephant Butte Lake state park.

Other Intrnl Svc

General State Funds/Inter- Federal

Item Fund Funds Agency Trnsf Funds Total

(6) Mining and minerals division:

(a) Personal services 283.9 297.6 662.3 1,243.8

(b) Employee benefits 91.5 132.8 233.8 458.1

(c) Travel 18.4 35.8 58.3 112.5

- (d) Maintenance and repairs 1.4 .6 6.6 8.6
- (e) Supplies and materials 4.4 6.5 21.9 32.8
- (f) Contractual services 8.9 17.5 1,575.5 1,601.9
- (g) Operating costs 35.7 42.7 112.8 191.2
- (h) Capital outlay 9.1 8.4 52.1 69.6
- (i) Out-of-state travel 1.8 3.7 11.5 17.0
- (j) Other financing uses .3 .3 545.9 .4 546.9

~~[Authorized FTE: 16.00 Permanent; 21.00 Term]~~

Other Intrnl Svc
 General State Funds/Inter- Federal
 Item Fund Funds Agency Trnsf Funds Total

(7) Oil conservation division:

- (a) Personal services 1,956.8 21.2 50.5 157.2 2,185.7
- (b) Employee benefits 701.6 6.8 15.1 52.5 776.0
- (c) Travel 67.3 5.7 5.5 14.0 92.5
- (d) Maintenance and repairs 42.7 .9 5.8 49.4
- (e) Supplies and materials 38.9 1.1 2.2 6.9 49.1
- (f) Contractual services 177.3 500.0 3.2 680.5
- (g) Operating costs 584.1 15.1 9.7 7.5 616.4
- (h) Capital outlay 122.8 122.8
- (i) Out-of-state travel 17.0 2.5 3.3 22.8
- (j) Other financing uses 1.8 102.3 104.1

~~Authorized FTE: 64.00 Permanent; 4.00 Term~~

The unexpended or unencumbered balance of the appropriation of fifty thousand dollars (\$50,000) to the state park and recreation division of the energy, minerals and natural resources department for capital improvements at Caprock amphitheater in Quay county set forth in Subsection C of Section 45 of Chapter 148 of Laws 1994 shall not be expended for that purpose but is appropriated to contract for services to operate the Caprock amphitheater. Any unexpended or unencumbered balance remaining at the end of fiscal year 1996 shall revert to the general fund.

Category transfers, division transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the energy, minerals and natural resources department.

Subtotal 35,131.3

Other

General State
Item Fund Funds Total

INTER-TRIBAL INDIAN CEREMONIAL ASSOCIATION:

(a) Personal services 74.2 32.1 106.3

(b) Employee benefits 24.7 13.4 38.1

(c) Travel 3.0 3.5 6.5

(d) Maintenance and repairs 2.7 2.7

(e) Supplies and materials 3.2 37.8 41.0

(f) Contractual services 4.9 131.8 136.7

(g) Operating costs 95.3 95.3

(h) Other costs 231.0 231.0

(i) Capital outlay .8 .8

(j) Out-of-state travel 1.4 1.4

(k) Other financing uses .2 .2

Authorized FTE: 3.00 Permanent; 2.60 Temporary

Category transfers and budget increases from other state funds are specifically authorized for the inter-tribal Indian ceremonial association.

Subtotal 660.0

	State	Other
Item Funds Total		

COMMISSIONER OF PUBLIC LANDS:

(a) Personal services 4,568.8 4,568.8

(b) Employee benefits 1,478.2 1,478.2

(c) Travel 102.5 102.5

(d) Maintenance and repairs 133.0 133.0

(e) Supplies and materials 98.4 98.4

(f) Contractual services 461.3 461.3

(g) Operating costs 516.5 516.5

(h) Capital outlay 196.2 196.2

(i) Out-of-state travel 75.7 75.7

(j) Other financing uses 714.0 714.0

~~Authorized FTE: 144.00 Permanent; 2.00 Term; 4.00 Temporary~~

Included in the other state funds appropriation to the commissioner of public lands in the contractual services category is sixteen thousand dollars (\$16,000) for surveying and mapping pre-historic archeological sites on state trust lands in northern New Mexico.

Category transfers and budget increases from other state funds are specifically authorized for the commissioner of public lands.

Subtotal 8,344.6

	State	Other
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Item Funds Total

NEW MEXICO PEANUT COMMISSION:

- (a) Travel .6 .6
- (b) Maintenance and repairs 2.0 2.0
- (c) Supplies and materials 1.0 1.0
- (d) Contractual services 10.0 10.0
- (e) Operating costs 2.8 2.8
- (f) Other costs 2.4 2.4
- (g) Capital outlay 6.0 6.0
- (h) Out-of-state travel 10.5 10.5

The appropriation to the New Mexico peanut commission is contingent upon compliance with the Open Meetings Act.

Category transfers and budget increases from other state funds are specifically authorized for the New Mexico peanut commission.

Subtotal 35.3

Other

General State
Item Fund Funds Total

STATE ENGINEER:

(1) Administration:

- (a) Personal services 4,825.1 94.4 4,919.5
- (b) Employee benefits 1,602.4 31.3 1,633.7
- (c) Travel 135.0 3.7 138.7
- (d) Maintenance and repairs 53.3 53.3
- (e) Supplies and materials 104.6 3.0 107.6
- (f) Contractual services 1,022.4 1,022.4

(g) Operating costs 715.9 17.0 732.9

(h) Capital outlay 71.3 71.3

(i) Out-of-state travel 29.5 29.5

(j) Other financing uses 4.5 4.5

Authorized FTE: 149.00 Permanent; .69 Temporary

~~Eighty thousand dollars (\$80,000) of the general fund appropriation to the state engineer is to study or contract for services to study the most efficient options to preserve the flow of the Penasco river through the region west of Hope in Eddy county, including whether to construct a pipeline around sinkholes or to grout, line or seal the area; conducting field work that includes measuring the water flow in critical areas and implementing water flow pilot projects; and providing funding source information and economic analyses for the project.~~

In addition to the other state funds appropriation to administration, all receipts from the Pecos valley artesian onservancy district for repayment of the cost of the Roswell basin water master to the state engineer for expenditure in accordance with the budget submitted pursuant to the provisions of the decree in State ex rel. Reynolds v. Lewis (Chaves county cause nos. 20294 and 22600 consolidated) are appropriated to the state engineer.

(2) Special litigation fund:

General

Item Fund Total

(a) Personal services 539.6 539.6

(b) Employee benefits 165.3 165.3

(c) Travel 11.1 11.1

(d) Maintenance and repairs .5 .5

(e) Supplies and materials 9.3 9.3

(f) Contractual services 447.5 447.5

(g) Operating costs 37.2 37.2

(h) Capital outlay 7.7 7.7

(i) Out-of-state travel 6.3 6.3

(j) Other financing uses .5 .5

~~Authorized FTE: 16.00 Permanent~~

General
Item Fund Total

(3) Interstate stream commission:

(a) Personal services 540.0 540.0

(b) Employee benefits 153.4 153.4

(c) Travel 9.9 9.9

(d) Maintenance and repairs 2.0 2.0

(e) Supplies and materials 4.9 4.9

(f) Contractual services 9.9 9.9

(g) Operating costs 242.6 242.6

(h) Capital outlay 7.9 7.9

(i) Out-of-state travel 11.9 11.9

(j) Other financing uses .3 .3

~~Authorized FTE: 13.00 Permanent; 1.00 Term~~

~~Included in the general fund appropriation to the state engineer for the interstate stream commission is one hundred thousand dollars (\$100,000) for a permanent position and operating costs to establish the Rio Grande bosque advisory council for coordination of government resource management actions in the middle Rio Grande bosque.~~

Intrnl Svc
Funds/Inter-
Item Agency Trnsf Total
(4) Ute dam operation:

(a) Personal services 25.6 25.6

- (b) Employee benefits 9.4 9.4
- (c) Travel 1.7 1.7
- (d) Maintenance and repairs 2.1 2.1
- (e) Supplies and materials .6 .6
- (f) Contractual services 33.7 33.7
- (g) Operating costs 12.7 12.7
- (h) Capital outlay 4.0 4.0
- (i) Out-of-state travel .6 .6

~~Authorized FTE: 1.00 Permanent~~

The internal service funds/interagency transfers appropriation to the state engineer for Ute dam operation includes ninety thousand four hundred dollars (\$90,400) from the game protection fund.

Intrnl Svc	
Funds/Inter-	
Item Agency Trnsf Total	

(5) Irrigation works construction fund programs:

- (a) Contractual services 575.0 575.0
- (b) Other costs 1,500.0 1,500.0

The appropriation for the irrigation works construction fund programs includes two hundred thousand dollars (\$200,000) to construct, improve, repair and protect from floods the dams, reservoirs, ditches, flumes and other works of community ditch associations in the state; provided that not more than twenty-five percent of the total cost of any one project shall be paid out of this appropriation and not more than twenty thousand dollars (\$20,000) shall be granted to any one community ditch. The state engineer is authorized to enter into cooperative agreements with the commissioners of ditch associations to ensure that the work will be done in the most efficient and economical manner and may contract with the federal government or any of its agencies or instrumentalities to provide matching funds or assistance for these purposes.

Intrnl Svc
Funds/Inter-
Item Agency Trnsf Total

(6) Improvement of Rio Grande income fund
programs: 1,152.0 1,152.0

Unexpended or unencumbered balances in the irrigation works construction fund and the improvement of the Rio Grande income fund are appropriated for the purpose of those funds, subject to the approval of the department of finance and administration.

None of the money appropriated to the state engineer for operating or trust purposes shall be expended for primary clearing of vegetation in a phreatophyte removal project, except insofar as is required to meet the terms of the Pecos river compact between Texas and New Mexico. However, this prohibition shall not apply to removal of vegetation incidental to the construction, operation or maintenance of works for flood control or carriage of water or both.

Category transfers, division transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the state engineer.

Subtotal 14,238.6

General

Item Fund Total

PUBLIC UTILITY COMMISSION:

(a) Personal services 2,142.4 2,142.4

(b) Employee benefits 702.5 702.5

(c) Travel 24.6 24.6

(d) Maintenance and repairs 132.4 132.4

(e) Supplies and materials 32.0 32.0

(f) Contractual services 258.6 258.6

(g) Operating costs 170.3 170.3

(h) Capital outlay 2.0 2.0

(i) Out-of-state travel 33.7 33.7

(j) Other financing uses 1.6 1.6

Authorized FTE: 53.00 Permanent

The general fund appropriation to the public utility commission in the contractual services category includes seventy-two thousand five hundred dollars (\$72,500) for court reporting and shall not be expended for any other purpose; ~~and eighty thousand dollars (\$80,000) for the gasoline database project.~~

Category transfers are specifically authorized for the public utility commission.

Subtotal 3,500.1

Other

General State
Item Fund Funds Total

NEW MEXICO ORGANIC COMMODITY COMMISSION:

(a) Personal services 26.5 26.5

(b) Employee benefits 5.8 3.0 8.8

(c) Travel 5.9 5.9

(d) Supplies and materials 1.0 1.0

(e) Contractual services 9.9 5.0 14.9

(f) Operating costs 8.3 5.0 13.3

(g) Capital outlay .3 .3

(h) Out-of-state travel 1.3 1.3

Authorized FTE: 1.00 Permanent

Category transfers are specifically authorized for the New Mexico organic commodity commission.

Subtotal 72.0

Other Intrnl Svc

General State Funds/Inter- Federal

Item Fund Funds Agency Trnsf Funds Total

TOTAL AGRICULTURE, ENERGY
AND NATURAL RESOURCES 51,811.6 35,037.5 5,684.1 17,606.9 110,140.1

F. HEALTH, HOSPITALS AND HUMAN SERVICES

General

Item Fund Total

COMMISSION ON THE STATUS OF WOMEN:

(a) Personal services 286.9 286.9

(b) Employee benefits 65.3 65.3

(c) Travel 12.3 12.3

(d) Maintenance and repairs 2.0 2.0

(e) Supplies and materials 7.8 7.8

(f) Contractual services 52.5 52.5

(g) Operating costs 68.4 68.4

(h) Capital outlay .5 .5

(i) Out-of-state travel 1.0 1.0

(j) Other financing uses .2 .2

Authorized FTE: 8.00 Permanent

~~Included in the general fund appropriation to the commission on the status of women in the personal services category is seventy-five thousand dollars (\$75,000) to create a micro-business loan program for parents who receive assistance from the aid to families with dependent children program.~~

~~Included in the general fund appropriation to the commission on the status of women in the contractual services category is fifty thousand dollars (\$50,000) to commemorate women's suffrage diamond jubilee. Appropriation is contingent upon House Bill 426 of the forty-second legislature, first session, becoming law.~~

Category transfers are specifically authorized for the commission on the status of women.

Subtotal 496.9

General

Item Fund Total

COMMISSION FOR DEAF AND HARD OF HEARING PERSONS:

(a) Personal services 171.0 171.0

(b) Employee benefits 57.6 57.6

(c) Travel 12.8 12.8

(d) Maintenance and repairs 3.8 3.8

(e) Supplies and materials 9.0 9.0

(f) Contractual services 15.1 15.1

(g) Operating costs 66.0 66.0

(h) Other costs 2.5 2.5

(i) Capital outlay 4.9 4.9

(j) Out-of-state travel 4.2 4.2

~~Authorized FTE: 6.00 Permanent~~

Category transfers and budget increases from internal service funds/interagency transfers are specifically authorized for the commission for deaf and hard of hearing persons.

Subtotal 346.9

General

Item Fund Total

MARTIN LUTHER KING, JR. COMMISSION:

(a) Personal services 58.5 58.5

(b) Employee benefits 18.1 18.1

- (c) Travel 9.1 9.1
- (d) Maintenance and repairs 1.5 1.5
- (e) Supplies and materials 3.0 3.0
- (f) Contractual services 12.1 12.1
- (g) Operating costs 55.3 55.3
- (h) Other costs 79.2 79.2
- (i) Capital outlay 1.0 1.0
- (j) Out-of-state travel 2.5 2.5

~~Authorized FTE: 2.00 Permanent~~

~~Included in the general fund appropriation for the Martin Luther King, Jr. commission in the other costs category is thirty thousand dollars (\$30,000) for the youth-at-risk program and in the operating costs category is twenty thousand dollars (\$20,000) for operational expenses.~~

Category transfers are specifically authorized for the Martin Luther King, Jr. commission.

Subtotal 240.3

Other

General State Federal
Item Fund Funds Funds Total

COMMISSION FOR THE BLIND:

- (a) Personal services 590.9 303.9 1,626.9 2,521.7
- (b) Employee benefits 204.6 668.8 873.4
- (c) Travel 25.1 82.0 107.1
- (d) Maintenance and repairs 11.3 37.0 48.3
- (e) Supplies and materials 34.5 112.9 147.4
- (f) Contractual services 26.7 87.3 114.0

- (g) Operating costs 90.5 295.7 386.2
- (h) Other costs 461.4 750.0 488.8 1,700.2
- (i) Capital outlay 43.7 142.7 186.4
- (j) Out-of-state travel 3.7 12.1 15.8
- (k) Other financing uses .8 2.4 3.2

~~Authorized FTE: 108.50 Permanent; 3.00 Term; 1.20 Temporary~~

Category transfers and budget increases from other state funds are specifically authorized for the commission for the blind.

Unexpended or unencumbered balances in the commission for the blind remaining at the end of fiscal year 1996 from appropriations made from the general fund shall not revert.

Subtotal 6,103.7

Intrnl Svc

General Funds/Inter-
Item Fund Agency Trnsf Total

OFFICE OF INDIAN AFFAIRS:

- (a) Personal services 395.5 395.5
- (b) Employee benefits 118.0 118.0
- (c) Travel 27.3 27.3
- (d) Maintenance and repairs 1.7 1.7
- (e) Supplies and materials 7.8 7.8
- (f) Contractual services 56.4 56.4
- (g) Operating costs 36.4 36.4
- (h) Other costs 575.4 894.0 1,469.4
- (i) Capital outlay 15.6 15.6

(j) Out-of-state travel 5.9 5.9

Authorized FTE: 10.00 Permanent

The general fund appropriation to the office of Indian affairs in the other costs category includes ~~four thousand dollars (\$4,000) to restore Santa Clara pueblo lands and clear them of refuse and debris;~~ fifty thousand dollars (\$50,000) for a pueblo youth program for the pueblo of Cochiti in Sandoval county; three hundred thousand dollars (\$300,000) for emergency management services on the Navajo nation; ~~seventy-five thousand dollars (\$75,000) to fund an earth shuttle New Mexico demonstration project for disadvantaged youth; and fifty thousand dollars (\$50,000) to provide alcohol and drug abuse prevention services for the communities of Cudei and Tohkoheh.~~

~~The general fund appropriation to the office of Indian affairs in the contractual services category includes fifty thousand dollars (\$50,000) to conduct cultural awareness and sensitivity training and exchanges for public school students.~~

Category transfers and budget increases from internal service funds/interagency transfers are specifically authorized for the office of Indian affairs.

Subtotal 2,134.0

Item	Fund	Funds	Total	General	Federal
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STATE AGENCY ON AGING:

(1) Administration:

(a) Personal services 512.5 280.3 792.8

(b) Employee benefits 169.6 96.5 266.1

(c) Travel 20.7 29.7 50.4

(d) Maintenance and repairs 1.5 .6 2.1

(e) Supplies and materials 8.3 4.4 12.7

(f) Contractual services 11.0 11.2 22.2

(g) Operating costs 39.2 41.0 80.2

(h) Capital outlay 16.9 2.9 19.8

(i) Out-of-state travel 2.6 3.0 5.6

(j) Other financing uses .7 .7

Authorized FTE: 24.00 Permanent

General Federal
Item Fund Funds Total

(2) Special programs:

(a) Personal services 165.3 176.8 342.1

(b) Employee benefits 62.3 48.4 110.7

(c) Travel 17.0 14.1 31.1

(d) Supplies and materials 3.4 4.8 8.2

(e) Contractual services 4.9 4.9

(f) Operating costs 14.2 44.7 58.9

(g) Other costs 50.2 20.5 70.7

(h) Out-of-state travel 9.8 9.8

(i) Other financing uses .3 .3

Authorized FTE: 9.00 Permanent; 2.00 Term

General Federal
Item Fund Funds Total

(3) Employment programs: 758.9 389.6 1,148.5

(4) Community programs: 10,551.2 5,292.1 15,843.3

The general fund appropriation to community programs in the state agency on aging includes ~~one hundred thousand dollars (\$100,000) for Alzheimer's disease services; two hundred fifty thousand dollars (\$250,000) for a pilot all-inclusive elderly care program based on the PACE model; seventy-five thousand dollars (\$75,000) to support and expand senior olympics programs; and thirty thousand dollars (\$30,000) for the Clovis senior citizens center.~~

The amount from the general fund for community programs included in the appropriation to the state agency on aging to supplement federal Older Americans Act

programs shall be contracted to the designated area agencies on aging.

General

Item Fund Total

(5) Volunteer programs: 2,536.8 2,536.8

Category transfers, division transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the state agency on aging.

Unexpended or unencumbered balances in the state agency on aging remaining at the end of fiscal year 1996 from appropriations made from the general fund shall revert to the general fund sixty days after fiscal year 1996 audit reports have been approved by the state auditor.

Subtotal 21,417.9

Other

General State Federal

Item Fund Funds Funds Total

HUMAN SERVICES DEPARTMENT:

(1) Administrative services division:

(a) Personal services 2,408.2 281.3 3,225.6 5,915.1

(b) Employee benefits 774.0 90.5 1,036.7 1,901.2

(c) Travel 17.3 7.2 38.3 62.8

(d) Maintenance and repairs 100.8 13.2 139.0 253.0

(e) Supplies and materials 111.4 13.0 149.1 273.5

(f) Contractual services 872.2 112.9 1,200.3 2,185.4

(g) Operating costs 3,804.3 598.2 5,272.0 9,674.5

(h) Other costs 5.2 .6 7.1 12.9

(i) Capital outlay 13.5 5.0 27.9 46.4

(j) Out-of-state travel .5 .8 2.7 4.0

(k) Other financing uses 2.3 .2 3.0 5.5

~~Authorized FTE: 187.50 Permanent; 12.00 Term~~

Notwithstanding the provisions of Section 2 of Chapter 147 of Laws of 1994, unexpended or unencumbered balances from the appropriation made in Paragraph U of Section 2 to the administrative services division of the human services department for the interface with the new accounting system and improve purchasing and voucher systems are appropriated for fiscal year 1996 for the same purpose.

Other
General State Federal
Item Fund Funds Funds Total

(2) Child support enforcement division:

(a) Personal services 1,879.7 3,496.3 5,376.0

(b) Employee benefits 622.4 1,157.3 1,779.7

(c) Travel 31.3 57.7 89.0

(d) Maintenance and repairs 5.3 9.8 15.1

(e) Supplies and materials 59.8 111.2 171.0

(f) Contractual services 313.3 96.2 758.6 1,168.1

(g) Operating costs 29.2 521.8 1,027.8 1,578.8

(h) Other costs 5.2 9.8 15.0

~~Authorized FTE: 223.00 Permanent~~

Included in the general fund appropriation to the child support enforcement division of the human services department in the operating costs category is twenty-nine thousand two hundred dollars (\$29,200) for additional rental costs of the Las Cruces office.

Intrnl Svc
General Funds/Inter- Federal
Item Fund Agency Trnsf Funds Total

(3) Medical assistance division:

(a) Personal services 846.3 241.9 1,113.7 2,201.9

- (b) Employee benefits 274.1 78.3 360.8 713.2
- (c) Travel 9.1 2.7 12.0 23.8
- (d) Maintenance and repairs 6.6 1.8 8.7 17.1
- (e) Supplies and materials 38.3 11.0 50.5 99.8
- (f) Contractual services 3,343.8 6,188.4 9,532.2
- (g) Operating costs 397.5 135.6 547.5 1,080.6
- (h) Other financing uses 4.5 3,749.5 3,754.0

Authorized FTE: 74.00 Permanent

Included in the general fund appropriation to the medical assistance division of the human services department in the contractual services category is seventy thousand dollars (\$70,000) to contract for services or otherwise provide for operational efficiencies in the medicaid program , ~~for waiver application to the federal government under the federal Social Security Act and for administrative or operational expenses necessary to implement any waivers obtained for the medicaid program.~~

Intrnl Svc
General Funds/Inter- Federal
Item Fund Agency Trnsf Funds Total

(4) Medicaid payments:

- (a) Other costs 169,132.4 30,142.5 556,758.1 756,033.0
- (b) Other financing uses 18,915.6 50,935.8 69,851.4

Included in the general fund appropriation for medicaid payments in the human services department in the other costs category is one million dollars (\$1,000,000) for case management services ~~for persons with diabetes who are medicaid eligible~~ and four million dollars (\$4,000,000) ~~to increase reimbursement rates for medicaid providers, to provide for increased payments as a modifier add-on to physicians serving medicaid patients in medically under-served areas and to increase reimbursement to dentists in the medicaid program.~~

The human services department shall pursue all reasonably available means, including seeking appropriate waivers under Title XIX of the federal Social Security Act, and expanded use of interagency transfers from state agencies and/or local governments to

ensure that the medicaid program operates efficiently and, subject to the availability of funds, to provide benefits in the medicaid program to the maximum number of children and adults.

Any balance remaining from the appropriation described in Section 4, Chapter 6 of Laws 1994, pages 101, lines 10 through 14, is hereby authorized for use to fund revenue shortages in the human services department which may occur in fiscal year 1995.

Intrnl Svc

General Funds/Inter- Federal
Item Fund Agency Trnsf Funds Total

(5) Income support division:

(a) Personal services 11,296.7 335.8 12,098.3 23,730.8

(b) Employee benefits 4,158.5 124.0 4,454.7 8,737.2

(c) Travel 307.9 311.1 619.0

(d) Maintenance and repairs 195.1 197.0 392.1

(e) Supplies and materials 448.0 452.4 900.4

(f) Contractual services 2,942.0 4,169.5 7,111.5

(g) Operating costs 3,090.9 3,123.5 6,214.4

(h) Other costs 44,777.3 5,784.0 135,665.5 186,226.8

(i) Capital outlay 206.4 208.5 414.9

(j) Out-of-state travel 14.9 15.1 30.0

(k) Other financing uses 9,975.9 9,975.9

Authorized FTE: 978.00 Permanent; 9.00 Term; 25.00 Temporary

~~Included in the general fund appropriation to the income support division of the human services department in the personal services and employee benefits category is two hundred twenty-five thousand dollars (\$225,000) to expand the project forward program in Luna, Taos, Colfax, Socorro, Sierra and Lincoln counties.~~

Included in the general fund appropriation to the income support division of the human services department in the contractual services category is ~~two hundred twenty~~

~~thousand dollars (\$220,000) to provide a contract for increased referral, job placement, housing, and related social services to military veterans and their families, particularly homeless military veterans; two hundred thousand dollars (\$200,000) to contract for parenting and child care services for children of homeless parents in Bernalillo county; one hundred thousand dollars (\$100,000) to contract with nonprofit legal service providers who regularly offer legal representation in social security matters to assist low-income families in obtaining supplemental security income for their disabled children; three hundred thousand dollars (\$300,000) to contract for community-based programs that provide a continuum of care for homeless people; five hundred thousand dollars (\$500,000) for community action programs; and one hundred fifty thousand dollars (\$150,000) to provide funding for indigent programs statewide.~~

Included in the general fund appropriation to the income support division of the human services department in the other costs category is one million dollars (\$1,000,000) to raise the aid to families with dependent children standard of need.

Notwithstanding the provisions of Section 6 of Chapter 147 of Laws of 1994, unexpended or unencumbered balances from the appropriation made in Paragraph XXXX to the income support division of the human services department for water and sewer hook-ups for low income or indigent New Mexicans is appropriated for fiscal year 1996 for the same purpose.

Notwithstanding the provisions of Paragraph A of Section 7 of Chapter 147 of Laws 1994, unexpended or unencumbered balances from the appropriations made in Paragraph CC, Subsection 5 to income support division of the human services department for assisting low-income disabled children to obtain federal supplemental security income benefits is appropriated for fiscal year 1996 for the same purpose.

Category transfers, division transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the human services department.

Subtotal 1,118,187.0

Intrnl Svc

Funds/Inter- Federal
Item Agency Trnsf Funds Total

LABOR DEPARTMENT:

(1) Office of the secretary:

(a) Personal services 728.7 728.7

(b) Employee benefits 235.9 235.9

(c) Travel 13.8 13.8

- (d) Maintenance and repairs 7.1 7.1
- (e) Supplies and materials 1.9 11.3 13.2
- (f) Contractual services 5.5 5.5
- (g) Operating costs 114.8 114.8
- (h) Other costs 12.8 12.8
- (i) Capital outlay 9.7 9.7
- (j) Out-of-state travel 16.3 16.3

~~Authorized FTE: 20.00 Permanent; 1.00 Term; 1.00 Temporary~~

Other
State Federal
Item Funds Funds Total

- (2) Administrative services division:
- (a) Personal services 101.7 2,337.0 2,438.7
- (b) Employee benefits 7.8 814.4 822.2
- (c) Travel 15.4 15.4
- (d) Maintenance and repairs 329.9 329.9
- (e) Supplies and materials 8.3 56.1 64.4
- (f) Contractual services 205.0 256.8 461.8
- (g) Operating costs 55.4 599.7 655.1
- (h) Other costs 87.2 87.2
- (i) Capital outlay 235.1 97.0 332.1
- (j) Out-of-state travel 20.0 20.0
- (k) other financing uses 21.2 21.2

~~Authorized FTE: 85.00 Permanent; 1.00 Term; 9.46 Temporary~~

Federal

Item Funds Total

(3) Employment security division:

(a) Personal services 12,237.6 12,237.6

(b) Employee benefits 4,328.4 4,328.4

(c) Travel 247.0 247.0

(d) Maintenance and repairs 253.9 253.9

(e) Supplies and materials 335.8 335.8

(f) Contractual services 480.6 480.6

(g) Operating costs 1,269.8 1,269.8

(h) Other costs 7,623.1 7,623.1

(i) Capital outlay 225.0 225.0

(j) Out-of-state travel 59.6 59.6

Authorized FTE: 500.00 Permanent; 2.00 Term; 10.00 Temporary

General Federal

Item Fund Funds Total

(4) Job training division:

(a) Personal services 1,431.0 1,431.0

(b) Employee benefits 481.7 481.7

(c) Travel 46.6 46.6

(d) Maintenance and repairs 13.2 13.2

(e) Supplies and materials 27.4 27.4

(f) Contractual services 75.0 584.8 659.8

(g) Operating costs 296.1 296.1

(h) Other costs 1.7 6,493.0 6,494.7

(i) Capital outlay 24.0 24.0

(j) Out-of-state travel 45.8 45.8

(k) Other financing uses 586.2 586.2

Authorized FTE: 47.00 Permanent; 1.00 Temporary

Included in the general fund appropriation to the job training division of the labor department in the other financing uses category is seventy thousand dollars (\$70,000) for a retail sales, school-to-work initiative; and in the contractual services category is seventy-five thousand dollars (\$75,000) for supporting an at-risk youth program for job retraining, education and business skill development in the south valley of Albuquerque in Bernalillo county.

Other

General State

Item Fund Funds Total

(5) Labor and industrial division:

(a) Personal services 474.3 253.0 727.3

(b) Employee benefits 133.2 116.3 249.5

(c) Travel 46.2 46.2

(d) Maintenance and repairs 6.3 6.3

(e) Supplies and materials 7.1 7.1

(f) Contractual services 4.5 4.5

(g) Operating costs 136.4 136.4

(h) Capital outlay 27.9 27.9

(i) Out-of-state travel 2.9 2.9

Authorized FTE: 24.00 Permanent

Included in the general fund appropriation to the labor and industrial division of the labor department in the personal services category is thirty-six thousand dollars (\$36,000) to plan and develop a program involving adolescents in home renovation and construction projects while continuing their education.

Item	Fund	General Funds	State Funds	Other Federal Total
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(6) Human rights division:

(a) Personal services 170.4 266.4 106.6 543.4

(b) Employee benefits 63.2 120.5 46.0 229.7

(c) Travel 31.4 .1 31.5

(d) Maintenance and repairs 2.2 4.9 7.1

(e) Supplies and materials 2.7 1.5 4.2

(f) Contractual services 156.7 5.2 4.0 165.9

(g) Operating costs 101.4 40.9 142.3

(h) Out-of-state travel 1.2 4.7 5.9

~~Authorized FTE: 19.00 Permanent~~

~~Included in the general fund appropriation to the human rights division of the labor department is one hundred fifty thousand dollars (\$150,000) to establish a program of economic equity and social justice in the Afro-American community in Albuquerque. The program shall provide job training, employment, career development and education resource services, in addition to advocacy, conflict resolution and research aimed at assisting Afro-Americans to achieve social and economic equity.~~

Category transfers and division transfers are specifically authorized for the labor department.

Subtotal 45,911.2

Item	State Funds	Other Federal Total
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WORKERS' COMPENSATION ADMINISTRATION:

(1) Office of the director:

(a) Personal services 1,542.2 1,542.2

(b) Employee benefits 507.1 507.1

- (c) Travel 69.3 69.3
- (d) Maintenance and repairs 8.4 8.4
- (e) Supplies and materials 29.0 29.0
- (f) Contractual services 318.0 318.0
- (g) Operating costs 131.5 131.5
- (h) Capital outlay 69.2 69.2
- (i) Out-of-state travel 10.1 10.1
- (j) Other financing uses 1.4 1.4

~~Authorized FTE: 48.00 Permanent~~

Included in the other state funds appropriation to the workers' compensation administration for the contractual services category is two hundred fifty thousand dollars (\$250,000) for peer utilization review of chiropractic and physical therapy services ordered for injured workers with back, neck, head, upper extremities and shoulder injuries.

Other
State
Item Funds Total

(2) Operations division:

- (a) Personal services 1,707.2 1,707.2
- (b) Employee benefits 569.7 569.7
- (c) Travel 42.5 42.5
- (d) Maintenance and repairs 158.3 158.3
- (e) Supplies and materials 49.7 49.7
- (f) Contractual services 61.3 61.3
- (g) Operating costs 732.6 732.6
- (h) Capital outlay 96.4 96.4

(i) Out-of-state travel 5.0 5.0

(j) Other financing uses 1.8 1.8

~~Authorized FTE: 63.00 Permanent~~

Other
State
Item Funds Total

(3) Regulations division:

(a) Personal services 901.6 901.6

(b) Employee benefits 300.3 300.3

(c) Travel 18.4 18.4

(d) Maintenance and repairs 4.9 4.9

(e) Supplies and materials 11.0 11.0

(f) Contractual services 700.0 700.0

(g) Operating costs 127.9 127.9

(h) Capital outlay 4.9 4.9

(i) Out-of-state travel 8.0 8.0

(j) Other financing uses 1.0 1.0

~~Authorized FTE: 33.00 Permanent~~

Category transfers, division transfers and budget increases from other state funds are specifically authorized for the workers' compensation administration.

Unexpended or unencumbered balances in the workers' compensation administration remaining at the end of fiscal year 1996 from appropriations made from the workers' compensation fund shall revert to the workers' compensation fund.

Subtotal 8,188.7

General Federal

Item Fund Funds Total

DIVISION OF VOCATIONAL REHABILITATION:

(1) Rehabilitative services unit:

(a) Personal services 1,034.4 4,583.6 5,618.0

(b) Employee benefits 353.4 1,514.6 1,868.0

(c) Travel 43.8 205.3 249.1

(d) Maintenance and repairs 33.2 131.7 164.9

(e) Supplies and materials 37.7 162.2 199.9

(f) Contractual services 651.9 1,219.8 1,871.7

(g) Operating costs 394.1 1,714.3 2,108.4

(h) Other costs 1,571.9 6,426.7 7,998.6

(i) Capital outlay 50.5 202.4 252.9

(j) Out-of-state travel 5.3 48.7 54.0

~~Authorized FTE: 184.00 Permanent; 18.00 Term~~

The division of vocational rehabilitation may apply an indirect cost rate of up to five percent for administering and monitoring independent living projects.

Intrnl Svc

Funds/Inter- Federal

Item Agency Trnsf Funds Total

(2) Disability determination unit:

(a) Personal services 9.4 2,712.9 2,722.3

(b) Employee benefits 3.1 904.2 907.3

(c) Travel 15.8 15.8

(d) Maintenance and repairs 80.5 80.5

(e) Supplies and materials 35.9 35.9

(f) Contractual services 729.7 729.7

(g) Operating costs 795.5 795.5

(h) Other costs 3,033.1 3,033.1

(i) Capital outlay 459.8 459.8

(j) Out-of-state travel 22.3 22.3

~~Authorized FTE: 95.00 Permanent~~

Category transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the division of vocational rehabilitation.

Unexpended or unencumbered balances in the division of vocational rehabilitation remaining at the end of fiscal year 1996 from appropriations made from the general fund shall not revert.

Subtotal 29,187.7

Intrnl Svc

General Funds/Inter-
Item Fund Agency Trnsf Total

**GOVERNOR'S COMMITTEE ON CONCERNS OF
THE HANDICAPPED:**

(a) Personal services 229.0 39.1 268.1

(b) Employee benefits 75.4 10.1 85.5

(c) Travel 10.1 3.8 13.9

(d) Maintenance and repairs 2.0 1.1 3.1

(e) Supplies and materials 11.1 2.0 13.1

(f) Contractual services 22.4 10.7 33.1

(g) Operating costs 28.8 3.5 32.3

(h) Other costs 1.4 1.4

- (i) Capital outlay 55.4 55.4
- (j) Out-of-state travel 5.8 5.8
- (k) Other financing uses .2 .2

~~Authorized FTE: 7.00 Permanent; 1.50 Term~~

Category transfers and budget increases from internal service funds/interagency transfers are specifically authorized for the governor's committee on concerns of the handicapped.

Subtotal 511.9

Intrnl Svc

General Funds/Inter- Federal
Item Fund Agency Trnsf Funds Total

DEVELOPMENTAL DISABILITIES PLANNING COUNCIL:

- (a) Personal services 148.2 10.0 88.0 246.2
- (b) Employee benefits 49.3 2.1 31.6 83.0
- (c) Travel 10.0 18.5 28.5
- (d) Maintenance and repairs .3 .3
- (e) Supplies and materials 2.4 4.5 6.9
- (f) Contractual services 22.3 5.6 27.9
- (g) Operating costs 15.4 38.1 53.5
- (h) Other costs 336.2 336.2
- (i) Capital outlay 5.0 5.0
- (j) Out-of-state travel 3.5 2.5 6.0

~~Authorized FTE: 6.00 Permanent; 2.00 Term~~

Category transfers are specifically authorized for the developmental disabilities planning council.

Subtotal 793.5

Item	Funds	Funds	Total	Other State Federal
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MINERS' HOSPITAL:

- (a) Personal services 4,896.0 47.0 4,943.0
- (b) Employee benefits 1,770.6 21.0 1,791.6
- (c) Travel 50.5 50.5
- (d) Maintenance and repairs 345.5 345.5
- (e) Supplies and materials 1,388.9 1,388.9
- (f) Contractual services 786.5 57.0 843.5
- (g) Operating costs 591.0 591.0
- (h) Other costs 5.0 5.0
- (i) Capital outlay 200.0 200.0
- (j) Out-of-state travel 11.0 11.0

~~Authorized FTE: 187.50 Permanent; 13.50 Term~~

Category transfers and budget increases from other state funds are specifically authorized for miners' hospital.

Subtotal 10,170.0

Item	Fund	Total	General
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DEPARTMENT OF HEALTH:

- (1) Office of the secretary:

(a) Personal services 304.7 304.7

(b) Employee benefits 94.2 94.2

(c) Travel 8.8 8.8

(d) Maintenance and repairs .5 .5

(e) Supplies and materials 4.2 4.2

(f) Contractual services 16.6 16.6

(g) Operating costs 20.4 20.4

(h) Out-of-state travel 4.9 4.9

(i) Other financing uses .2 .2

~~Authorized FTE: 6.00 Permanent; 1.00 Term~~

Intrnl Svc

General Funds/Inter- Federal

Item Fund Agency Trnsf Funds Total

(2) Administrative services division:

(a) Personal services 2,012.6 58.8 848.1 2,919.5

(b) Employee benefits 694.1 18.2 299.8 1,012.1

(c) Travel 10.7 6.2 16.9

(d) Maintenance and repairs 22.8 11.6 34.4

(e) Supplies and materials 33.8 4.0 13.0 5.8

(f) Contractual services 199.0 70.2 269.2

(g) Operating costs 776.2 .4 238.0 1,014.6

(h) Capital outlay 35.4 6.0 15.1 56.5

(i) Out-of-state travel 3.1 2.0 2.2 7.3

(j) Other financing uses 3.0 3.0

~~Authorized FTE: 94.00 Permanent; 6.00 Term~~

General
Item Fund Total

(3) Internal audit:

(a) Personal services 139.4 139.4

(b) Employee benefits 45.5 45.5

(c) Travel 11.9 11.9

(d) Maintenance and repairs 1.3 1.3

(e) Supplies and materials 2.4 2.4

(f) Operating costs 38.1 38.1

(g) Capital outlay 5.9 5.9

(h) Out-of-state travel 4.0 4.0

(i) Other financing uses .1 .1

~~Authorized FTE: 5.00 Permanent~~

General
Item Fund Total

(4) General counsel:

(a) Personal services 445.3 445.3

(b) Employee benefits 138.0 138.0

(c) Travel 9.7 9.7

(d) Maintenance and repairs 2.0 2.0

(e) Supplies and materials 6.0 6.0

(f) Contractual services 4.9 4.9

(g) Operating costs 45.0 45.0

(h) Capital outlay 6.4 6.4

(i) Out-of-state travel 1.0 1.0

(j) Other financing uses .3 .3

~~Authorized FTE: 11.00 Permanent~~

General Federal

Item Fund Funds Total

DEPARTMENT OF HEALTH:

(5) Epidemiology, evaluation and planning:

(a) Personal services 668.2 246.9 915.1

(b) Employee benefits 173.8 77.3 251.1

(c) Travel 11.9 5.8 17.7

(d) Maintenance and repairs 3.4 3.9 7.3

(e) Supplies and materials 9.6 7.5 17.1

(f) Contractual services 83.4 192.8 276.2

(g) Operating costs 139.3 36.6 175.9

(h) Capital outlay 50.6 50.6

(i) Out-of-state travel 10.4 4.5 14.9

(j) Other financing uses .6 .6

~~Authorized FTE: 12.00 Permanent; 8.50 Term~~

Intrnl Svc

Funds/Inter-
Item Agency Trnsf Total

(6) Reproduction services:

(a) Personal services 18.7 18.7

- (b) Employee benefits 4.5 4.5
- (c) Maintenance and repairs 39.6 39.6
- (d) Supplies and materials 81.1 81.1
- (e) Operating costs 253.5 253.5

Intrnl Svc
General Fund/Inter-
Item Fund Agency Trnsf Total

(7) Long-term care and restorative services
division:

- (a) Personal services 421.0 268.5 689.5
- (b) Employee benefits 128.9 91.1 220.0
- (c) Travel 14.1 14.2 28.3
- (d) Maintenance and repairs 3.0 2.1 5.1
- (e) Supplies and materials 7.1 8.3 15.4
- (f) Contractual services 778.3 25.2 803.5
- (g) Operating costs 27.0 60.7 87.7
- (h) Other costs 99.0 99.0
- (i) Capital outlay 3.4 8.8 12.2
- (j) Out-of-state travel 2.9 3.1 6.0
- (k) Other financing uses .6 .6

Authorized FTE: 10.00 Permanent; 12.00 Term

~~Included in the general fund appropriation to the long-term care and restorative services division of the department of health in the contractual services category is four hundred eighty thousand dollars (\$480,000) to contract for or to provide services for persons eligible for the disabled and elderly medicaid waiver program and one hundred fifty thousand dollars (\$150,000) to establish a pilot program in rural areas of the state with a direct pay component for family members or other caregivers providing in-home care to persons having a chronic illness or disability. The department of health shall establish the program statewide and shall promulgate regulations for the program, including~~

~~eligibility requirements and a maximum grant amount of two thousand dollars (\$2,000) per eligible client.~~

Notwithstanding the provisions of Subsection D of Section 3 of Chapter 6 of Laws 1994, unexpended or unencumbered balances from the appropriation made in Subsection F of Section 4 of Chapter 6 of Laws 1994 to the long-term care and restorative services division of the department of health for individual plans of care in the current disabled and elderly waiver program or separate waiver program for individuals between the ages of eighteen and fifty-five who are not currently in need of medical care are appropriated for fiscal year 1996 for the purpose of reducing the waiting list, without consideration for age, for disabled and elderly waivers.

DEPARTMENT OF HEALTH

(8) Scientific laboratory division:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(a) Personal services	2,214.5	171.2	719.4	10.0	3,115.1
(b) Employee benefits	696.6	43.3	244.5	3.1	987.5
(c) Travel	18.3				18.3
(d) Maintenance and repairs	172.7	11.7	100.5		284.9
(e) Supplies and materials	538.3	139.4	348.4		1,026.1
(f) Contractual services	166.5	160.5	280.6		607.6
(g) Operating costs	25.4	24.9	223.7		274.0
(h) Other costs		62.0	62.0		
(i) Capital outlay	148.5	148.5			
(j) Out-of-state travel	19.8		19.8		

(k) Other financing uses 3.0 3.0

Authorized FTE: 79.00 Permanent; 23.00 Term

DEPARTMENT OF HEALTH:

	General	Other	Intrnl Svc	Federal	Total
Item	Fund	State	Funds/Inter-	Funds	
		Funds	Agency Trnsf		
(9) Community health systems:					
(a) Personal services					
	462.9	22.4	450.9		936.2
(b) Employee benefits					
	147.5	7.6	163.5		318.6
(c) Travel					
	40.0		4.6	21.0	65.6
(d) Maintenance and repairs					
	1.2	.4	2.9	4.5	
(e) Supplies and materials					
	20.4	6.3	14.9		41.6
(f) Contractual services					
	10,156.7		40.5	782.0	314.6 11,293.8
(g) Operating costs					
	599.3		12.7	.7	96.4 709.1
(h) Other costs					
	2,905.5	6.0			2,911.5
(i) Capital outlay					
	18.8	18.8			
(j) Out-of-state travel					
	3.7	6.5			10.2
(k) Other financing uses					
	.9	.9			

Authorized FTE: 15.00 Permanent; 15.00 Term

The general fund appropriation to the community health systems division of the department of health in the contractual services category includes one hundred twenty-five thousand dollars (\$125,000) for the purpose of providing operational funding to the village of Cuba for ambulance services in Sandoval county; two hundred twenty-five thousand dollars (\$225,000) to contract for primary and acute health services from an acute health care provider in Sierra county; three hundred fifty thousand dollars (\$350,000) to contract for services for community development of pregnancy prevention plans that shall include abstinence and safe sex components; and one million dollars (\$1,000,000) to carry out the purposes of the Rural Primary Health Care Act.

~~Included in the general fund appropriation to the community health systems division in the other costs category is one hundred eighty thousand dollars (\$180,000) to pay commitment stipends to potential health professionals, as provided in the Health Service Corps Act.~~

DEPARTMENT OF HEALTH:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(10) Public health division:					
(a) Personal services					
14,506.4		97.4	833.5	4,585.9	20,023.2
(b) Employee benefits					
4,943.7		33.4	286.2	1,574.6	6,837.9
(c) Travel					
730.9	9.8	88.0	222.3		1,051.0
(d) Maintenance and repairs					
155.9	.8	5.4	22.7		184.8
(e) Supplies and materials					
3,038.8		205.9	11.7	446.0	3,702.4
(f) Contractual services					
13,256.6		7.1	2,997.2		16,260.9
(g) Operating costs					
2,989.4	65.8	147.2	565.3		3,767.7
(h) Other costs					
3,360.9	23.5	925.0	3,808.1		8,117.5

(i) Capital outlay		
236.0		236.0

(j) Out-of-state travel		
45.3	1.4 .3	38.4 85.4

(k) Other financing uses		
19.4		19.4

Authorized FTE: 437.50 Permanent; 237.00 Term

Included in the general fund appropriation to the public health division of the department of health is: a) five hundred thousand dollars (\$500,000) to provide for six full-time equivalent staff and operating costs in district health offices to advise and consult with local school districts regarding school health services; b) two hundred fifty thousand dollars (\$250,000) to provide operational expenses and contractual services for healthier schools' model sites; c) seven hundred fifty thousand dollars (\$750,000) for operational expenses and contractual services for school-based health center programs; and d) one million three hundred thousand dollars (\$1,300,000) for operational expenses and contractual services for primary health care for children.

The general fund appropriation to the public health division of the department of health in the contractual services category includes three hundred twenty-five thousand dollars (\$325,000) for comprehensive programs for infants and families affected by alcohol or controlled substances; eighty-four thousand dollars (\$84,000) to provide or contract for prevention and education programs and services for persons at risk for contraction of acquired immune deficiency syndrome; one hundred six thousand dollars (\$106,000) to provide or contract for direct services to persons with acquired immune deficiency syndrome or human immunodeficiency virus, including early intervention, insurance assistance, home care and case management, peer advocacy, housing vouchers, hospice service programs and transportation to health care appointments; thirty-three thousand dollars (\$33,000) to provide or contract for direct services to persons with acquired immune deficiency syndrome or human immunodeficiency virus, including practical and emotional support, mental health and substance abuse treatment and planning; fifty thousand dollars (\$50,000) to provide or contract for adolescent pregnancy prevention and intervention activities, including male involvement programs and parental education programs in juvenile incarceration facilities; fifty thousand dollars (\$50,000) to provide or contract for comprehensive community-based cancer patient support services that include education, one-to-one matching with cancer veterans, survivorship mentoring, patient library services and an annual conference; ten thousand dollars (\$10,000) for contracting with state universities having medical and health science resources for a collaborative approach to statewide rural education for professionals, paraprofessionals and mental health care providers, including substance abuse counselors; three hundred twenty-five thousand dollars (\$325,000) to fund additional maternal and child health councils; seventy-five thousand dollars (\$75,000) for the maternity and infant care program; two hundred thousand dollars (\$200,000) to initiate a community-based

~~regional program to conduct preschool and infant evaluations for Sierra and Dona Ana counties; fifty thousand dollars (\$50,000) to contract for adolescent pregnancy prevention and intervention activities; two hundred thousand dollars (\$200,000) for early intervention services for children from birth through age two with or at risk for developmental delay and for their families; ten thousand dollars (\$10,000) to provide or contract for clinical and treatment services for persons with acquired immune deficiency syndrome or human immunodeficiency virus; four hundred thousand dollars (\$400,000) for the border health office to contract for services to increase routine and special monitoring of the Rio Grande south of Elephant Butte lake for volatile organic compounds, heavy metals and pesticides, to monitor ground water throughout the New Mexico-Mexico border area, for ground water remediation activities at contaminated sites already identified in the New Mexico-Mexico border area, to monitor private wells in Dona Ana county for volatile organic compounds, heavy metals and pesticides and to develop water quality databases for the southern region of the state; one hundred fifty thousand dollars (\$150,000) to increase support of dental clinics in Albuquerque; one hundred fifty thousand dollars (\$150,000) to increase support of dental clinics in Silver City; ten thousand dollars (\$10,000) to operate a healthier communities capacity mapping project in Sandoval county; fifty thousand dollars (\$50,000) for the Espanola battered women's shelter; and seventy-five thousand dollars (\$75,000) for the creation of a cultural diversity workshop model and for the administration of the workshop to health and human service providers to promote recognition of cultural diversity and to increase effectiveness in working with a diverse population.~~

~~Included in the general fund appropriation to the public health division in the other costs category is sixty-nine thousand dollars (\$69,000) to establish a health program that will coordinate and facilitate access to breast cancer prevention information and services and to provide staff, contractual services and operational expenses for the breast cancer prevention program.~~

DEPARTMENT OF HEALTH:

	General Item Fund	Other State Funds	Intrnl Svc Funds/Inter- Agency Trnsf	Federal Funds	Total
(11) Southern New Mexico rehabilitation center:					
(a) Personal services	1,260.3	1,746.4	3,006.7		
(b) Employee benefits	516.5	572.4	1,088.9		
(c) Travel	5.9	5.8	11.8	23.5	
(d) Maintenance and repairs	37.7	31.1	83.2	152.0	

(e) Supplies and materials	75.3	37.4	122.9	235.6
(f) Contractual services	151.9		137.6	67.4 356.9
(g) Operating costs	114.6		190.8	305.4
(h) Other costs	4.4	7.7	12.1	
(i) Capital outlay	64.5	11.2	75.7	
(j) Out-of-state travel	5.7	2.2	7.9	
(k) Other financing uses	3.4	3.4		

Authorized FTE: 108.00 Permanent; 8.00 Term

DEPARTMENT OF HEALTH:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(12) Northern New Mexico rehabilitation center:					
(a) Personal services	859.7	681.5	419.6	1,960.8	
(b) Employee benefits	347.6	275.5	169.5	792.6	
(c) Travel	17.3	13.7	8.4	39.4	
(d) Maintenance and repairs	18.8	14.9	9.2	42.9	
(e) Supplies and materials	41.4	32.7	20.2	94.3	

(f) Contractual services
79.5 62.9 38.8 181.2

(g) Operating costs
40.3 32.0 19.7 92.0

(h) Other costs
3.3 2.6 1.6 7.5

(i) Capital outlay
9.4 7.4 4.6 21.4

(j) Out-of-state travel
1.2 1.0 .6 2.8

(k) Other financing uses
1.1 .9 .5 2.5

~~Authorized FTE: 76.00 Permanent; 8.00 Term~~

DEPARTMENT OF HEALTH:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(13) Women, infants and children program:					
(a) Personal services	253.6	199.1	3,373.0	3,825.7	
(b) Employee benefits	91.8	72.0	1,220.4	1,384.2	
(c) Travel			140.1	140.1	
(d) Maintenance and repairs				45.5	45.5
(e) Supplies and materials	895.4	24,520.0	25,415.4		
(f) Contractual services	331.1	2,686.7	3,017.8		
(g) Operating costs				710.6	710.6
(h) Capital outlay				600.0	600.0

(i) Out-of-state travel	31.7 31.7
(j) Other financing uses	6.5 6.5

Authorized FTE: 160.00 Term

~~Included in the general fund appropriation to the women, infants and children program of the department of health in the contractual services category is one hundred fifty thousand dollars (\$150,000) to provide nutrition, education and food for under-served women, infants and children.~~

DEPARTMENT OF HEALTH:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(14) Community coordinated in-home care waivers:	6,559.8	6,559.8			

~~Included in the appropriation to the community coordinated in-home care waivers is five hundred thousand dollars (\$500,000) for individual plans of care in the current disabled and elderly waiver program or separate waiver program for individuals between the ages of eighteen and fifty-five who are not currently in need of medical care and currently residing in institutions or at risk of institutionalization.~~

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(15) Community programs--substance abuse:					
(a) Contractual services	6,492.8	4,035.5	10,528.3		
(b) Other costs	133.6	2,657.6	626.9	3,418.1	
(c) Other financing uses	1,162.5	1,044.5	2,207.0		

Authorized FTE: 4.00 Term

~~The general fund appropriation to community programs--substance abuse of the department of health in the contractual services category includes nineteen thousand five hundred dollars (\$19,500) for the Palmer drug abuse program in Carlsbad; nineteen thousand five hundred dollars (\$19,500) for the Palmer drug abuse program in Hobbs;~~

~~and one hundred sixty-five thousand dollars (\$165,000) to contract or provide for individualized substance abuse treatment for chronic substance abuse.~~

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter- Agency Trnsf	Federal Funds	Total
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(16) Community programs--mental health:

(a) Contractual services
19,682.2 1,788.7 21,470.9

(b) Other financing uses
863.3 863.3

~~The general fund appropriation to community programs--mental health of the department of health in the contractual services category includes two hundred thousand dollars (\$200,000) to contract for mental health services and funding to provide or contract for residential support services for seriously disabled mentally ill persons, including services to communities with a small population of mentally ill persons.~~

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter- Agency Trnsf	Federal Funds	Total
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(17) Community programs--developmental

disabilities:

(a) Contractual services
25,554.0 25,554.0

(b) Other costs
1,782.0 1,782.0

(c) Other financing uses
1,900.8 1,900.8

~~The general fund appropriation to community programs--developmental disabilities of the department of health includes nine hundred fifty thousand dollars (\$950,000) to be used to maximize the developmental disabilities medicaid waiver and nine hundred fifty thousand dollars (\$950,000) to be used to provide early intervention services to eligible children who become three years of age during the school year.~~

DEPARTMENT OF HEALTH:

General	Other	Intrnl Svc	Federal	Total
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Item	Fund	State Funds	Funds/Inter- Agency Trnsf	Funds
(18) Behavioral health services division:				
(a) Personal services	555.7	101.9	657.6	
(b) Employee benefits	163.2	35.0	198.2	
(c) Travel	4.6	17.1	21.7	
(d) Maintenance and repairs				9.0 9.0
(e) Supplies and materials	1.0	14.0	15.0	
(f) Contractual services				20.0 20.0
(g) Operating costs				77.4 77.4
(h) Out-of-state travel				4.4 4.4
(i) Other financing uses	.4	.2	.6	

Authorized FTE: 16.00 Permanent; 3.00 Term

DEPARTMENT OF HEALTH:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter- Agency Trnsf	Federal Funds	Total
(19) Mental health division:					
(a) Personal services	2,079.0	100.0	36.5	2,215.5	
(b) Employee benefits	299.3	30.0	10.7	340.0	
(c) Travel	9.9	10.7	2.2	22.8	

(d) Maintenance and repairs

2.1 .5 2.6

(e) Supplies and materials

9.9 5.0 14.9

(f) Contractual services

232.6 232.6

(g) Operating costs

69.3 7.3 76.6

(h) Out-of-state travel

3.5 3.5

(i) Other financing uses

.8 .8

Authorized FTE: 24.00 Permanent; 3.00 Term

The general fund appropriation to the mental health division of the department of health in the personal services category includes ~~four hundred thousand dollars (\$400,000) to expand the mental health in the 90's program, including expansion to communities with a small population of mentally ill persons;~~ four hundred thousand dollars (\$400,000) to alleviate statewide waiting lists of seriously disabled mentally ill persons; ~~four hundred thousand dollars (\$400,000) to contract for or to provide outpatient mental health services, including services for the under-served native American community.~~

Included in the general fund appropriation to the mental health division in the contractual services category is one hundred eighty thousand dollars (\$180,000) to provide residential support services for seriously disabled mentally ill persons.

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(20) Developmental disabilities division:					

(a) Personal services

1,905.0 457.1 67.5 2,529.6

(b) Employee benefits

610.1 137.6 54.6 802.3

(c) Travel	31.3	28.5	8.5	68.3
(d) Maintenance and repairs	10.4	2.7	1.5	14.6
(e) Supplies and materials	40.3	9.6	4.3	54.2
(f) Contractual services	3,052.4	150.6	236.7	3,439.7
(g) Operating costs	314.6	72.5	17.9	405.0
(h) Other costs	13.0	1.8	14.8	
(i) Capital outlay	7.4	5.0	12.4	
(j) Out-of-state travel	6.1	6.0	12.1	
(k) Other financing uses	2.6	2.6		

Authorized FTE: 50.00 Permanent; 37.00 Term

The general fund appropriation to the developmental disabilities division of the department of health in the contractual services category includes ~~one hundred thousand dollars (\$100,000) to provide or contract for community-based prevention and training, data collection, coordination of prevention efforts and child safety seat initiatives; one million one hundred thirty thousand dollars (\$1,130,000) to provide community service providers with fair rates of reimbursement for services; one hundred forty thousand dollars (\$140,000) to provide training to community service provider program staff; seventy thousand dollars (\$70,000) to expand the medication aides program to train and certify medication aides who will serve income-eligible participants in the developmental disabilities medicaid waiver program; and sixty thousand dollars (\$60,000) to provide or contract for supported living services to families with a multiple diagnosed head of household.~~

DEPARTMENT OF HEALTH:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(21) Las Vegas medical center:					
(a) Personal services	14,886.7	1,409.7	6,787.8	23,084.2	
(b) Employee benefits	5,775.4	546.9	2,633.3	8,955.6	
(c) Travel	71.8	6.8	32.8	111.4	
(d) Maintenance and repairs	380.7	36.1	173.6	590.4	
(e) Supplies and materials	979.6	92.8	446.7	1,519.1	
(f) Contractual services	1,146.5	108.6	522.8	1,777.9	
(g) Operating costs	1,075.3	101.8	490.3	1,667.4	
(h) Other costs	235.4	22.3	107.3	365.0	
(i) Capital outlay	82.6	7.8	37.6	128.0	
(j) Out-of-state travel	6.8	.6	3.1	10.5	
(k) Other financing uses	18.6	1.7	8.5	28.8	

Authorized FTE: 938.00 Permanent; 49.00 Term

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(22) Adolescent residential treatment					

facility:

(a) Personal services
1,125.6 1,994.4 3,120.0

(b) Employee benefits
355.3 629.6 984.9

(c) Travel
12.7 22.5 35.2

(d) Maintenance and repairs
19.3 34.2 53.5

(e) Supplies and materials
119.4 33.8 211.5 364.7

(f) Contractual services
67.6 119.8 187.4

(g) Operating costs
63.9 113.2 177.1

(h) Other costs
7.0 12.4 19.4

(i) Capital outlay
15.8 28.2 44.0

(j) Out-of-state travel
1.9 3.3 5.2

(k) Other financing uses
1.3 2.6 3.9

~~Authorized FTE: 131.50 Permanent~~

DEPARTMENT OF HEALTH:

	General	Other	Intrnl Svc	Federal	Total
Item	Fund	State	Funds/Inter-	Funds	
		Funds	Agency Trnsf		

(23) Fort Bayard medical center:

(a) Personal services
1,423.7 993.4 4,683.5 208.2 7,308.8

(b) Employee benefits
589.0 564.5 1,764.5 69.6 2,987.6

(c) Travel
9.5 40.0 49.5

(d) Maintenance and repairs
55.3 216.6 3.3 6.5 281.7

(e) Supplies and materials
239.7 956.3 16.6 64.0 1,276.6

(f) Contractual services
14.8 63.4 2.2 4.5 84.9

(g) Operating costs
107.2 5.5 422.2 17.4 552.3

(h) Other costs
3.4 19.6 1.2 1.8 26.0

(i) Capital outlay
21.1 84.7 1.1 2.9 109.8

(j) Out-of-state travel
3.6 3.6

(k) Other financing uses
10.2 10.2

~~Authorized FTE: 325.00 Permanent; 25.00 Term~~

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(24) Turquoise lodge:					
(a) Personal services	1,045.5	227.9	1,273.4		
(b) Employee benefits	353.9	87.4	441.3		

(c) Travel	9.3	2.0	2.0	13.3
(d) Maintenance and repairs			41.4	41.4
(e) Supplies and materials	83.2	7.2	25.0	115.4
(f) Contractual services	96.2	10.6	139.7	246.5
(g) Operating costs	60.9	8.1	16.8	85.8
(h) Other costs		1.4	1.4	
(i) Capital outlay	8.6	10.5	19.1	
(j) Out-of-state travel	2.6	3.1	5.7	
(k) Other financing uses	1.3	1.3		

~~Authorized FTE: 44.00 Permanent; 1.00 Term~~

	General Item Fund	Other State Funds	Intrnl Svc Funds/Inter- Agency Trnsf	Federal Funds	Total
(25) Los Lunas hospital:					
(a) Personal services	5,229.2	7,062.0	20.0	12,311.2	
(b) Employee benefits	2,033.5	3,943.0	7.0	5,983.5	
(c) Travel	78.6	78.6			
(d) Maintenance and repairs		264.7	7.2	271.9	

(e) Supplies and materials	7.2	812.0	819.2
(f) Contractual services	1,836.2	1,836.2	
(g) Operating costs	677.4	208.4	885.8
(h) Other costs	47.2	244.7	291.9
(i) Capital outlay	86.1	86.1	
(j) Out-of-state travel	6.2	6.2	
(k) Other financing uses	16.7	16.7	

Authorized FTE: 555.00 Permanent

DEPARTMENT OF HEALTH:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(26) Fort Stanton hospital:					
(a) Personal services	459.4		459.4		
(b) Employee benefits	35.6	35.6			

Notwithstanding the provisions of Subsection B of Section 1 of Chapter 148 of Laws 1994, unexpended or unencumbered balances from the appropriation made in Subsection H of Section 13 of Chapter 148 of Laws 1994 to the general services department to remodel and make other needed modifications and improvements to convert the Socorro cottage at the Fort Stanton hospital and training school to a long-term care nursing facility located in Lincoln county are appropriated for fiscal year 1996 to remodel and make other modifications and improvements to the same Socorro cottage.

DEPARTMENT OF HEALTH:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(27) New Mexico veterans' center:					

(a) Personal services	955.8	969.0	1,058.2	867.2	3,850.2
(b) Employee benefits	344.1	281.7	461.5	310.7	1,398.0
(c) Travel	7.4	5.0	6.8	5.9	25.1
(d) Maintenance and repairs	25.5	64.6	89.2	53.4	232.7
(e) Supplies and materials	205.2	71.2	273.7	167.8	717.9
(f) Contractual services	15.9	37.5	51.9	100.2	205.5
(g) Operating costs	130.3	124.5	171.9	2.6	429.3
(h) Other costs			10.0	10.0	
(i) Capital outlay	103.6		.4	104.0	
(j) Out-of-state travel	1.5	1.5			
(k) Other financing uses	5.1		5.1		

Authorized FTE: 142.00 Permanent; 34.00 Term

Notwithstanding the provisions of Section 2 of Chapter 147 of Laws 1994, unexpended or unencumbered balances from the appropriation made in Subsection BB of Section 2 of Chapter 147 of Laws 1994 to the department of health for the scientific laboratory integrated database and medicaid waivers information systems are appropriated for fiscal year 1996 for the same purpose.

Category transfers, division transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the department of health.

Subtotal 311,447.8

DEPARTMENT OF ENVIRONMENT:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter- Agency Trnsf	Federal Funds	Total
(1) Office of the secretary:					
(a) Personal services	443.7	437.5	43.9	925.1	
(b) Employee benefits	159.6	146.9	13.6	320.1	
(c) Travel	12.5	7.1	.8	20.4	
(d) Maintenance and repairs	1.6	1.7	.3	3.6	
(e) Supplies and materials	4.6	5.2	.7	10.5	
(f) Contractual services	25.4	25.0	2.3	52.7	
(g) Operating costs	27.4	28.9	3.4	59.7	
(h) Capital outlay	1.2	.8	2.0		
(i) Out-of-state travel	2.8	4.5	.7	8.0	
(j) Other financing uses	.1	.3	.1	.5	

~~Authorized FTE: 21.50 Permanent; 1.50 Term~~

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter- Agency Trnsf	Federal Funds	Total
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	Funds	Agency Trnsf
(2) Administrative services division:		
(a) Personal services	601.9	662.4 918.3 2,182.6
(b) Employee benefits	198.9	217.2 299.5 715.6
(c) Travel	4.9	3.4 12.2 20.5
(d) Maintenance and repairs	61.4	91.3 92.9 245.6
(e) Supplies and materials	7.6	8.4 17.7 33.7
(f) Contractual services	95.5	69.4 144.6 309.5
(g) Operating costs	44.5	52.7 80.0 177.2
(h) Other costs	61.0	61.0
(i) Capital outlay	83.6	108.2 191.8
(j) Out-of-state travel	.3	.7 14.0 15.0
(k) Other financing uses	148.8	.8 2.3 151.9

~~Authorized FTE: 55.00 Permanent; 13.00 Term~~

~~The general fund appropriation to the administrative services division of the department of environment in the other financing uses category includes one hundred forty-eight thousand five hundred dollars (\$148,500) to be expended only for the construction programs bureau of the administrative services division to enter into a contract for that amount with the infrastructure development assistance program at the university of New Mexico for work on community infrastructure needs.~~

~~Included in the general fund appropriation to the administrative services division of the department of environment for the contractual services category is twenty thousand dollars (\$20,000) to plan and design water and sewer system improvements for the~~

~~Desert Aire mutual domestic water association in Dona Ana county and fifty thousand dollars (\$50,000) for a feasibility study of a wastewater system at Chamita in Rio Arriba county.~~

DEPARTMENT OF ENVIRONMENT:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(3) Environmental protection division:					
(a) Personal services	1,740.8	2,478.5	1,693.1	5,912.4	
(b) Employee benefits	552.9	802.2	551.5	1,906.6	
(c) Travel	80.0	218.8	43.1	341.9	
(d) Maintenance and repairs	7.3	23.2	6.7	37.2	
(e) Supplies and materials	30.5	186.4	20.9	237.8	
(f) Contractual services	255.8	6,000.0	182.0	18.8	6,456.6
(g) Operating costs	180.9	661.3	138.5	980.7	
(h) Other costs		9,682.8		9,682.8	
(i) Capital outlay	26.3	277.4	39.6	343.3	
(j) Out-of-state travel	10.7	76.5	14.3	101.5	
(k) Other financing uses	49.0	6,008.5	321.8	65.8	6,445.1

~~Authorized FTE: 70.00 Permanent; 127.00 Term~~

Budget increases from other state funds and internal service funds/interagency

transfers are specifically authorized for the environmental protection division of the department of environment.

~~Included in the general fund appropriation to the environmental protection division of the department of environment in the contractual services category is two hundred thousand dollars (\$200,000) for Native American training related to environmental laws and regulations at northern pueblos.~~

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(4) Field operations division:					
(a) Personal services	3,009.0	1,002.6	294.8	4,306.4	
(b) Employee benefits	991.9	309.4	99.1	1,400.4	
(c) Travel	118.3	94.0	14.1	226.4	
(d) Maintenance and repairs	17.5	6.9	2.1	26.5	
(e) Supplies and materials	42.8	55.4	32.5	130.7	
(f) Contractual services	4.1	2,016.2	28.1	2,048.4	
(g) Operating costs	485.1	369.6	89.9	944.6	
(h) Capital outlay	19.4	55.1	43.1	117.6	
(i) Out-of-state travel	8.5	28.7	5.7	42.9	
(j) Other financing uses	3.1	4,063.5	27.2	20.3	4,114.1

Authorized FTE: 110.00 Permanent; 26.00 Term]

Budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the field operations division of the department of environment.

DEPARTMENT OF ENVIRONMENT:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(5) Water and waste management division:					
(a) Personal services	2,185.4	3.9	261.7	3,041.2	5,492.2
(b) Employee benefits	665.8	1.0	79.6	992.5	1,738.9
(c) Travel	100.5	.7	13.6	202.5	317.3
(d) Maintenance and repairs	8.1	3.1	27.3	38.5	
(e) Supplies and materials	56.0	12.4	143.0	211.4	
(f) Contractual services	256.0	.5	104.0	1,043.3	1,403.8
(g) Operating costs	211.0	.6	51.1	309.7	572.4
(h) Capital outlay	32.9	15.8	280.3	329.0	
(i) Out-of-state travel	28.2	.3	12.8	94.2	135.5
(j) Other financing uses	41.5	368.6	90.8	152.2	653.1

~~Authorized FTE: 69.00 Permanent; 107.00 Term~~

Budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the water and waste management division of the department of environment.

Category transfers are specifically authorized for the department of environment.

Subtotal 62,203.0

OFFICE OF THE NATURAL RESOURCES TRUSTEE:

	General Item Fund	Other State Funds	Intrnl Svc Funds/Inter- Agency Trnsf	Federal Funds	Total
(a) Personal services	145.5	145.5			
(b) Employee benefits	50.9	50.9			
(c) Travel	1.0	7.3	8.3		
(d) Maintenance and repairs		.5	.5		
(e) Supplies and materials	1.0	2.5	3.5		
(f) Contractual services		28.1	28.1		
(g) Operating costs	7.7	9.6	17.3		
(h) Out-of-state travel		2.0	2.0		

Authorized FTE: 3.00 Permanent

Category transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the office of the natural resources trustee.

Subtotal 256.1

HEALTH POLICY COMMISSION:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(a) Personal services	555.4	555.4			
(b) Employee benefits	128.7		128.7		
(c) Travel	31.6		31.6		
(d) Maintenance and repairs	2.0		2.0		
(e) Supplies and materials	14.5		14.5		
(f) Contractual services	735.6		735.6		
(g) Operating costs	229.6		229.6		
(h) Capital outlay	9.9		9.9		
(i) Out-of-state travel	5.4		5.4		
(j) Other financing uses	.3		.3		

~~Authorized FTE: 13.00 Permanent; 1.00 Term~~

The unexpended or unencumbered balances from the general fund appropriation to the health policy commission in the contractual services category in paragraph (7) of the health policy commission appropriation under the department of health in Subsection F of Section 4 of Chapter 6 of Laws 1994 for the health information alliance shall not revert to the general fund at the end of fiscal year 1995 and are appropriated for expenditure by the health policy commission for the health information alliance in fiscal year 1996.

Category transfers are specifically authorized for the health policy commission.

Subtotal 1,713.0

VETERANS' SERVICE COMMISSION:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(a) Personal services	704.9				704.9
(b) Employee benefits	264.8				264.8
(c) Travel	42.7	8.0			50.7
(d) Maintenance and repairs	9.7	9.7			
(e) Supplies and materials	10.8	10.8			
(f) Contractual services	225.0				225.0
(g) Operating costs	86.5	86.5			
(h) Other costs	2.7	2.7			
(i) Capital outlay	6.4	6.4			
(j) Out-of-state travel	2.6	2.6			
(k) Other financing uses			1.0	1.0	

Authorized FTE: 28.00 Permanent

Category transfers are specifically authorized for the veterans' service commission.

Subtotal 1,365.1

CHILDREN, YOUTH AND FAMILIES DEPARTMENT:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(1) Office of the secretary:					
(a) Personal services	1,261.5	65.0	1,326.5		
(b) Employee benefits	379.3	20.0	399.3		
(c) Travel	44.5	14.0	58.5		
(d) Maintenance and repairs	2.5	2.5			
(e) Supplies and materials	26.2	1.5	27.7		
(f) Contractual services	26.1	122.6	148.7		
(g) Operating costs	226.2	12.0	238.2		
(h) Other costs	743.6	145.5	478.9	1,368.0	
(i) Capital outlay	3.0	3.0			
(j) Out-of-state travel	4.7	2.0	6.7		

~~Authorized FTE: 29.00 Permanent; 5.00 Term~~

~~The general fund appropriation to the office of the secretary of the children, youth and families department in the other costs category includes four hundred eighty thousand dollars (\$480,000) to contract for a statewide domestic violence prevention curriculum,~~

~~facility improvements statewide and increased salaries and one hundred fifty thousand dollars (\$150,000) to purchase computer equipment for an alternative education youth program in Albuquerque in Bernalillo county.~~

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(2) Managed care pool:					
(a) Personal services	759.3	400.0	36.0	1,195.3	
(b) Employee benefits	223.4	120.0	11.0	354.4	
(c) Travel	43.9	20.0	2.0	65.9	
(d) Maintenance and repairs	7.9	2.0	9.9		
(e) Supplies and materials	38.6	10.0	1.0	49.6	
(f) Contractual services	981.0	271.1	125.0	1,377.1	
(g) Operating costs	8.6	155.1	163.7		
(h) Other costs	3,315.5	3,315.5			
(i) Capital outlay	30.7	30.7			
(j) Out-of-state travel	11.9	20.0	31.9		

~~Authorized FTE: 29.00 Permanent; 9.00 Term~~

The general fund appropriation to the managed care pool of the children, youth and families department in the contractual services category includes ~~[fifty thousand dollars (\$50,000) to develop pilot projects for mental health in schools that may include family resource centers, transition programs for fifth and sixth graders and school-based~~

~~multidisciplinary consultation teams for at-risk children and~~ seventy-five thousand dollars (\$75,000) to contract or provide for adult daycare statewide.

The general fund appropriation to the managed care pool in the other costs category includes ~~two hundred fifty thousand dollars (\$250,000) for a pilot project providing comprehensive mental health services in schools to high-risk students;~~ and one hundred fifty thousand dollars (\$150,000) to provide respite services and family and advocacy programs for families with children who have serious emotional, neurobiological or behavioral disorders.

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(3) Administrative services division:					
(a) Personal services	1,444.8	1,459.4	2,904.2		
(b) Employee benefits	450.1	454.6	904.7		
(c) Travel	28.3	28.6	56.9		
(d) Maintenance and repairs	25.9	26.2	52.1		
(e) Supplies and materials	27.4	27.7	55.1		
(f) Contractual services	66.8	67.5	134.3		
(g) Operating costs	709.0	762.0	1,471.0		
(h) Out-of-state travel	2.8	1.2	4.0		

~~Authorized FTE: 83.00 Permanent; 9.00 Term~~

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
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	Funds	Agency Trnsf
(4) Institutional care division director:		
(a) Personal services		
300.2	300.2	
(b) Employee benefits		
70.9		70.9
(c) Travel		
23.6	23.6	
(d) Maintenance and repairs		
.5	.5	
(e) Supplies and materials		
5.2	5.2	
(f) Contractual services		
32.4	32.4	
(g) Operating costs		
38.2	38.2	
(h) Capital outlay		
.8	.8	
(i) Out-of-state travel		
1.7	1.7	

Authorized FTE: 5.00 Permanent

Included in the general fund appropriation to the institutional care division of the children, youth and families department in the personal services category is fifty thousand dollars (\$50,000) to expand community corrections statewide [~~and sixty-eight thousand dollars (\$68,000) to reimburse providers for room and board payments for adolescents for whom the department has not been awarded custody.~~]

CHILDREN, YOUTH AND FAMILIES DEPARTMENT:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(5) Juvenile reintegration centers:					

(a) Personal services
1,471.2 800.0 2,271.2

(b) Employee benefits
676.3 240.0 916.3

(c) Travel
67.4 67.4

(d) Maintenance and repairs
109.3 109.3

(e) Supplies and materials
220.1 81.5 301.6

(f) Contractual services
65.3 15.0 80.3

(g) Operating costs
396.4 27.9 424.3

(h) Other costs
12.9 12.9

(i) Capital outlay
31.2 31.2

(j) Out-of-state travel
1.9 1.9

Authorized FTE: ~~75.00 Permanent; 21.00 Term~~

Included in the appropriation for the juvenile reintegration centers is four hundred sixty-six thousand dollars (\$466,000) and thirteen FTE positions to continue operating the Eagle Nest reintegration center.

CHILDREN, YOUTH AND FAMILIES DEPARTMENT:

	General	Other	Intrnl Svc	Federal	Total
Item	Fund	State	Funds/Inter-	Funds	
		Funds	Agency Trnsf		
(6) New Mexico boys' school:					

(a) Personal services
5,459.7 200.0 75.0 5,734.7

(b) Employee benefits
2,156.4 73.0 29.6 2,259.0

(c) Travel
112.6 112.6

(d) Maintenance and repairs
248.7 248.7

(e) Supplies and materials
531.4 240.0 13.7 785.1

(f) Contractual services
270.4 270.4

(g) Operating costs
450.1 450.1

(h) Other costs
45.0 34.2 79.2

(i) Capital outlay
75.9 75.9

(j) Out-of-state travel
4.0 4.0

~~Authorized FTE: 246.00 Permanent~~

CHILDREN, YOUTH AND FAMILIES DEPARTMENT:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
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(7) Youth diagnostic and development center:

(a) Personal services
3,754.7 150.0 45.0 3,949.7

(b) Employee benefits
1,243.8 45.1 13.0 1,301.9

(c) Travel	34.9	34.9
(d) Maintenance and repairs	113.1	113.1
(e) Supplies and materials	418.1	134.0 552.1
(f) Contractual services	159.6	159.6
(g) Operating costs	341.3	341.3
(h) Other costs	21.7	11.1 32.8
(i) Capital outlay	52.3	52.3
(j) Out-of-state travel	2.9	2.9

Authorized FTE: ~~162.00 Permanent; 6.00 Temporary~~

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(8) Community residential services					
division director:					
(a) Personal services	4,575.7	1,412.5	5,988.2		
(b) Employee benefits	1,502.6	434.6	1,937.2		
(c) Travel	276.1	12.0	288.1		
(d) Maintenance and repairs	33.0	1.8	34.8		

(e) Supplies and materials

134.1 7.0 141.1

(f) Contractual services

3,474.4 12.1 10.0 3,496.5

(g) Operating costs

542.9 17.0 559.9

(h) Other costs

377.4 13.0 390.4

(i) Capital outlay

133.3 13.0 146.3

(j) Out-of-state travel

8.4 8.4

Authorized FTE: 183.00 Permanent; 46.00 Term

The general fund appropriation to the community residential services division of the children, youth and families department in the contractual services category includes sixty thousand dollars (\$60,000) to provide or contract for increased adult protective services personnel; one hundred sixty-eight thousand dollars (\$168,000) for independent living programs to provide transitional services for adolescents; ~~two hundred eighty-five thousand dollars (\$285,000) to contract for community-based intervention, including victim offender mediation and adolescent shelter beds;~~ one hundred twenty thousand dollars (\$120,000) to provide increased personnel for a home care program; ~~one hundred and five thousand dollars (\$105,000) for start-up costs associated with new community programs for under-served areas of the state;~~ ~~seventeen thousand dollars (\$17,000) for community residential programs for pregnant and parenting teens;~~ ~~ninety thousand dollars (\$90,000) to restructure the attendant care program;~~ ~~sixty-seven thousand dollars (\$67,000) to provide or contract for statewide expansion of a school-based mediation program;~~ and ~~eighty-two thousand dollars (\$82,000) for community prevention programs that encourage positive behavior by involving adolescents in skill and leadership building opportunities, provided that the community matches the state contribution with a fifty percent in-kind or cash match;~~ ~~three hundred thousand dollars (\$300,000) for residential treatment facilities providing room and board to adolescents for whom the department has not been awarded custody;~~and three hundred thousand dollars (\$300,000) for the availability statewide of preventive and diversionary case management services for adolescents in need of informal probation services.

~~Included in the general fund appropriation to the community residential services division director of the children, youth and families department in the personal services and employee benefits categories is sufficient funding to provide a juvenile probation officer for each county in the thirteenth judicial district.~~

CHILDREN, YOUTH AND FAMILIES DEPARTMENT:

(9) Juvenile community corrections

1,990.9 1,990.9

~~Authorized FTE: 2.00 Permanent~~

~~The general fund appropriation to the juvenile community corrections program of the children, youth and families department includes fifty thousand dollars (\$50,000) for two new positions in the fourth judicial district for juvenile probation officers; and one hundred thousand dollars (\$100,000) to establish a regional system of nonsecure alternatives to detention for juveniles.~~

	General Item Fund	Other State Funds	Intrnl Svc Funds/Inter- Agency Trnsf	Federal Funds	Total
(10) Intensive supervision:					
(a) Personal services	475.4	29.4	504.8		
(b) Employee benefits	137.5	9.0	146.5		
(c) Travel	22.6	22.6			
(d) Supplies and materials	16.6	16.6			
(e) Operating costs	28.0	28.0			

~~Authorized FTE: 13.00 Permanent; 6.50 Term~~

	General Item Fund	Other State Funds	Intrnl Svc Funds/Inter- Agency Trnsf	Federal Funds	Total
(11) Risk reduction services division:					
(a) Personal services	361.7	361.7			

(b) Employee benefits	109.4	109.4
(c) Travel	38.8	38.8
(d) Maintenance and repairs	.7	.7
(e) Supplies and materials	14.5	14.5
(f) Contractual services	4,446.5	4,446.5
(g) Operating costs	63.0	63.0
(h) Other costs	3,379.4	3,379.4
(i) Capital outlay	8.2	8.2
(j) Out-of-state travel	8.4	8.4

Authorized FTE: 11.00 Permanent

~~The general fund appropriation to the risk reduction services division of the children, youth and families department in the contractual services category includes one hundred sixty-eight thousand dollars (\$168,000) to expand comprehensive substance abuse services for adolescents; fifty thousand dollars (\$50,000) to provide a match for the medicaid program for adolescents diagnosed with a serious emotional disturbance; four hundred thousand dollars (\$400,000) to contract for services for preschool and after school learning programs, custodial care programs, academic long-term suspended student opportunity programs, family and community socialization programs and gang intervention and mentorship programs for African American and other minority children and families in Bernalillo county; one hundred thousand dollars (\$100,000) to provide tutorial and social services to youth in Las Cruces and Hatch who have been disenrolled, suspended or dropped from school to enable them to return to school successfully; fifty thousand dollars (\$50,000) to provide youth activities in Sunland park in Dona Ana county; one hundred forty-five thousand dollars (\$145,000) to contract for youth crime prevention initiatives; including gang prevention programs, wilderness programs and youth services; one hundred thousand dollars (\$100,000) for early intervention mental health community-based programs for young children who have or are at risk for serious emotional disturbances and neurobiological disorders and for their~~

families; one hundred twenty-five thousand dollars (\$125,000) to provide or contract for a pilot project that makes available comprehensive mental health services in schools to high-risk students; ten thousand dollars (\$10,000) for youth services in the northern part of the state for a continuum of youth programs; one hundred twenty-five thousand dollars (\$125,000) to provide a family support program at Wilson middle school located in Bernalillo county. The family support program shall include elements that address communication and listening skills, conflict resolution skills, problem solving skills, decision making skills, parenting skills and alcohol and drug education; one hundred thousand dollars (\$100,000) to contract for the performance of a children's musical to provide environmental education to elementary school-aged children in the Albuquerque area and in selected locations around the state; one hundred thousand dollars (\$100,000) to contract for services to provide a social, physical and educational youth development program after school and on weekends for children six to eighteen years old in Alamogordo; and one hundred thousand dollars (\$100,000) to contract for the operation and expansion of a family preservation and youth service center in the south valley of Albuquerque. The purpose of the center is to lower the incidence of violent behavior, prevent youth crime and divert youngsters from Albuquerque high school, Rio Grande high school and Belen high school from the juvenile justice system.

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(12) Preventive services division director:					
(a) Personal services	291.0	27.0	318.0		
(b) Employee benefits	88.4	8.1	96.5		
(c) Travel	20.5	2.3	22.8		
(d) Maintenance and repairs	.9	.2	1.1		
(e) Supplies and materials	27.6	3.2	30.8		
(f) Contractual services	939.9	92.4	1,032.3		
(g) Operating costs	53.3	6.0	59.3		

(h) Capital outlay
3.8 .8 4.6

(i) Out-of-state travel
2.5 2.5

~~Authorized FTE: 8.00 Permanent; 1.00 Term~~

~~Included in the general fund appropriation to the preventive services division director in the contractual services category is one hundred twenty-five thousand dollars (\$125,000) for early childhood education; thirty thousand dollars (\$30,000) to implement an adult abuse prevention program; and eighty-four thousand dollars (\$84,000) for substance abuse prevention programs and crisis counseling.~~

CHILDREN, YOUTH AND FAMILIES DEPARTMENT:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(13) Child care bureau:					
(a) Personal services	439.7	222.1	721.8	462.7	1,846.3
(b) Employee benefits	224.8	80.7	196.8	168.2	670.5
(c) Travel	20.7	7.9	23.5	13.1	65.2
(d) Maintenance and repairs	2.5	2.0	5.0	4.5	14.0
(e) Supplies and materials	17.1	7.4	19.4	17.3	61.2
(f) Contractual services	658.4	8.5	26.4		693.3
(g) Operating costs	110.0	76.4	125.0	84.7	396.1
(h) Other costs	7,970.4	8,851.0	7,911.4		24,732.8
(i) Capital outlay	9.9	3.8	10.0	7.2	30.9

(j) Out-of-state travel
2.8 .9 2.7 6.4

Authorized FTE: 59.00 Permanent; 17.00 Term

Included in the general fund appropriation to the child care bureau of the children, youth and families department in the contractual services category is four hundred thousand dollars (\$400,000) to increase the availability of child care for income-eligible parents and to extend transitional child care coverage for an additional twelve months; and two hundred fifty thousand dollars (\$250,000) to provide child care services for new project forward enrollees.

Included in the general fund appropriation to the child care bureau in the other costs category is fifty thousand dollars (\$50,000) for child care resources and referrals and one hundred thousand dollars (\$100,000) to create family and child development centers statewide to provide comprehensive educational programs.

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(14) Family nutrition bureau:					
(a) Personal services				662.8	662.8
(b) Employee benefits			225.9		225.9
(c) Travel	40.7				40.7
(d) Maintenance and repairs			10.0		10.0
(e) Supplies and materials			29.0		29.0
(f) Contractual services			91.3		91.3
(g) Operating costs		225.6			225.6
(h) Other costs	42,414.7				42,414.7
(i) Capital outlay		43.6			43.6
(j) Out-of-state travel			18.1		18.1

Authorized FTE: 25.00 Term]

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter- Agency Trnsf	Federal Funds	Total
(15) Children's trust fund	155.0		72.0	227.0	
(16) Child care licensure bureau:					
(a) Personal services	571.9				571.9
(b) Employee benefits	190.3				190.3
(c) Travel	58.4				58.4
(d) Maintenance and repairs	3.9				3.9
(e) Supplies and materials	18.3				18.3
(f) Contractual services	31.7				31.7
(g) Operating costs	101.0				101.0
(h) Capital outlay	9.1				9.1
(i) Out-of-state travel	.9				.9

Authorized FTE: 20.00 Permanent

CHILDREN, YOUTH AND FAMILIES DEPARTMENT:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter- Agency Trnsf	Federal Funds	Total
(17) Social services division:					

(a) Personal services
9,968.3 813.5 2,684.7 9,219.1 22,685.6

(b) Employee benefits
3,396.4 274.5 916.9 3,139.7 7,727.5

(c) Travel
683.1 55.7 183.9 631.5 1,554.2

(d) Maintenance and repairs
53.7 4.3 14.4 49.7 122.1

(e) Supplies and materials
169.7 13.8 45.6 156.9 386.0

(f) Contractual services
3,363.4 274.4 905.5 3,109.1 7,652.4

(g) Operating costs
1,920.2 156.7 516.9 1,775.1 4,368.9

(h) Other costs
8,719.3 711.4 2,347.3 8,060.2 19,838.2

(i) Capital outlay
56.5 4.6 15.2 52.3 128.6

(j) Out-of-state travel
14.4 1.2 3.8 13.2 32.6

(k) Other financing uses
30.9 2.5 8.3 28.5 70.2

Authorized FTE: ~~776.70 Permanent; 72.00 Term~~]

The secretary of children, youth and families department is authorized to submit the department's fiscal year 1996 operating budget in a format that includes the department's reorganization plan as outlined in executive order 95-04.

Category transfers, division transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the children, youth and families department.

Subtotal 200,761.6

TOTAL HEALTH, HOSPITALS AND HUMAN SERVICES
572,651.7 103,337.0 104,202.1 1,041,245.5 1,821,436.3

G. PUBLIC SAFETY

DEPARTMENT OF MILITARY AFFAIRS:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(a) Personal services	831.7	366.5	1,198.2		
(b) Employee benefits	277.7	216.8	494.5		
(c) Travel	74.1	10.6	84.7		
(d) Maintenance and repairs	192.6	3.0	195.6		
(e) Supplies and materials	8.7	8.7			
(f) Contractual services	6.3	6.3			
(g) Operating costs	176.4	239.4	415.8		
(h) Other costs	2.5	2.5			
(i) Out-of-state travel	6.9	2.6	9.5		

Authorized FTE: 25.00 Permanent; 17.00 Term

The general fund appropriation to the department of military affairs in the personal services category includes sixty-four thousand four hundred thirty-six dollars (\$64,436) for the adjutant general's salary and forty-seven thousand seven hundred twenty-nine dollars (\$47,729) for the deputy adjutant general's salary in fiscal year 1996.

~~[One hundred thousand dollars (\$100,000) of the general fund appropriation to the department of military affairs is to purchase office equipment and supplies, repair, renovate and equip an office building and hire personnel for the New Mexico state defense force of the national guard.]~~

Category transfers are specifically authorized for the department of military affairs.

Subtotal 2,415.8

STATE ARMORY BOARD:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(a) Personal services	231.8	1,438.7	1,670.5		
(b) Employee benefits	92.2	584.0	676.2		
(c) Travel	15.7	19.7	35.4		
(d) Maintenance and repairs	340.0	466.8	806.8		
(e) Supplies and materials	9.9	4.1	14.0		
(f) Contractual services	6.3	221.8	228.1		
(g) Operating costs	301.1	481.8	306.2	1,089.1	
(h) Out-of-state travel	3.0	48.8	51.8		

~~Authorized FTE: 7.00 Permanent; 68.00 Term~~

Category transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the state armory board.

Authorization for fifty-four term FTE positions for the state armory board European repair site program is contingent upon receipt of federal funding for that program.

Subtotal 4,571.9

CRIME STOPPERS COMMISSION:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(a) Personal services	42.0	42.0			
(b) Employee benefits	14.4	14.4			
(c) Travel	5.9	5.9			
(d) Maintenance and repairs	.1	.1			
(e) Contractual services	3.7	3.7			
(f) Operating costs	5.0	5.0			

Authorized FTE: 1.00 Permanent

Subtotal 71.1

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
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**TRANSPORTATION AND EXTRADITION
OF PRISONERS:**

350.0 350.0

PAROLE BOARD:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
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(a) Personal services	374.2	374.2
(b) Employee benefits	131.2	131.2
(c) Travel	15.9	15.9
(d) Maintenance and repairs	1.0	1.0
(e) Supplies and materials	4.9	4.9
(f) Contractual services	4.9	4.9
(g) Operating costs	59.7	59.7
(h) Capital outlay	4.7	4.7
(i) Out-of-state travel	3.8	3.8
(j) Other financing uses	.3	.3

Authorized FTE: 10.00 Permanent

Category transfers are specifically authorized for the parole board.

Subtotal 600.6

JUVENILE PAROLE BOARD:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(a) Personal services	151.9				151.9

(b) Employee benefits	54.8	54.8
(c) Travel	20.4	20.4
(d) Maintenance and repairs	1.1	1.1
(e) Supplies and materials	5.9	5.9
(f) Contractual services	3.4	3.4
(g) Operating costs	46.1	46.1

Authorized FTE: 6.00 Permanent

Category transfers are specifically authorized for the juvenile parole board.

Subtotal 283.6

CORRECTIONS DEPARTMENT:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(1) Administrative services division:					
(a) Personal services	2,259.3	2,259.3			
(b) Employee benefits	765.9	765.9			
(c) Travel	37.0	37.0			
(d) Maintenance and repairs	70.3	70.3			

(e) Supplies and materials	25.6	25.6
(f) Contractual services	305.9	305.9
(g) Operating costs	410.7	1,175.7 154.5 1,740.9
(h) Capital outlay	8.9	8.9
(i) Out-of-state travel	3.5	3.5
(j) Other financing uses	2.0	2.0

Authorized FTE: 69.00 Permanent

The other state funds appropriation to the administrative services division of the corrections department is appropriated to the corrections department building fund.

~~Included in the general fund appropriation to the administrative services division of the corrections department in the contractual services category is two hundred thousand dollars (\$200,000) to provide or contract for a substance abuse treatment pilot program for persons convicted of a felony sentenced to participate in a residential custody program of the corrections department. Any person who refuses to participate in such a substance abuse treatment program shall not receive any reduction in his sentence for good time earned.~~

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(2) Training academy division:					
(a) Personal services	1,121.1				1,121.1
(b) Employee benefits	523.1				523.1

(c) Travel	19.0	19.0
(d) Maintenance and repairs	36.5	36.5
(e) Supplies and materials	100.2	100.2
(f) Contractual services	40.6	40.6
(g) Operating costs	63.6	63.6
(h) Other costs	3.8	3.8
(i) Capital outlay	6.2	6.2
(j) Other financing uses	.5	.5

Authorized FTE: 19.00 Permanent

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(3) Field services:					
(a) Personal services	6,338.9	892.7	7,231.6		
(b) Employee benefits	2,348.9	218.2	2,567.1		
(c) Travel	181.2	8.6	189.8		
(d) Maintenance and repairs	38.6	39.8	78.4		

(e) Supplies and materials
101.1 5.0 106.1

(f) Operating costs
1,116.5 65.0 1,181.5

(g) Other costs
1,089.0 80.0 1,169.0

(h) Capital outlay
55.4 55.4

(i) Out-of-state travel
4.0 4.0

(j) Other financing uses
7.6 7.6

~~Authorized FTE: 263.00 Permanent~~

	General Item Fund	Other State Funds	Intrnl Svc Funds/Inter- Agency Trnsf	Federal Funds	Total
(4) Department community corrections:					
(a) Personal services	735.7	735.7			
(b) Employee benefits	231.7	231.7			
(c) Travel	36.1	36.1			
(d) Supplies and materials	5.8	5.8			
(e) Operating costs	22.3	22.3			
(f) Other costs	59.4	59.4			

~~Authorized FTE: 27.00 Permanent~~

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter- Agency Trnsf	Federal Funds	Total
(5) Vendor community corrections:	1,313.1	100.0	1,413.1		

The funding for vendor-operated community corrections programs is appropriated to the community corrections grant fund.

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter- Agency Trnsf	Federal Funds	Total
(6) Adult institutions division director:					
(a) Personal services	719.8	719.8			
(b) Employee benefits	273.3	273.3			
(c) Travel	6.9	6.9			
(d) Maintenance and repairs	1.0	1.0			
(e) Supplies and materials	4.5	4.5			
(f) Contractual services	198.0	198.0			
(g) Operating costs	32.1	32.1			
(h) Other costs	9,684.7	9,684.7			
(i) Out-of-state travel	2.0	2.0			
(j) Other financing uses	.5	.5			

~~Authorized FTE: 18.00 Permanent~~

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(7) Roswell correctional center:					
(a) Personal services	1,166.0	18.8	56.5	1,241.3	
(b) Employee benefits	469.6	6.0	18.1	493.7	
(c) Travel	58.0	58.0			
(d) Maintenance and repairs	100.8	100.8			
(e) Supplies and materials	356.6	78.0	434.6		
(f) Contractual services	8.4	8.4			
(g) Operating costs	123.6	123.6			
(h) Other costs	76.7	115.1	5.5	197.3	
(i) Capital outlay	87.0	87.0			
(j) Out-of-state travel	1.0	1.0			
(k) Other financing uses	1.4	1.4			

~~Authorized FTE: 47.00 Permanent; 3.00 Term~~

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(8) Camp Sierra Blanca:					
(a) Personal services	731.8	37.7	769.5		
(b) Employee benefits	312.4	12.1	324.5		
(c) Travel	23.0	23.0			
(d) Maintenance and repairs	51.6	51.6			
(e) Supplies and materials	144.4	41.9	186.3		
(f) Contractual services	8.9	8.9			
(g) Operating costs	81.1	81.1			
(h) Other costs	44.8	49.8	2.7	97.3	
(i) Capital outlay	8.9	8.9			
(j) Other financing uses	.9	.9			

~~Authorized FTE: 29.00 Permanent; 2.00 Term~~

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(9) Central New Mexico correctional facility - main:					
(a) Personal services	7,656.6	24.4	131.9	7,812.9	

(b) Employee benefits	3,584.3	7.5	42.3	3,634.1
(c) Travel	62.2	62.2		
(d) Maintenance and repairs	363.3	363.3		
(e) Supplies and materials	1,803.4	1.9	1,805.3	
(f) Contractual services	37.6	37.6		
(g) Operating costs	1,021.8	1,021.8		
(h) Other costs	172.6	145.2	11.0	328.8
(i) Capital outlay	91.1	91.1		
(j) Out-of-state travel	1.2	1.2		
(k) Other financing uses	9.7	9.7		

Authorized FTE: ~~326.00 Permanent; 9.00 Term~~

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(10) Central New Mexico correctional facility - minimum:					
(a) Personal services	1,614.4	1,614.4			
(b) Employee benefits	643.3	643.3			

(c) Travel	45.9	45.9	
(d) Maintenance and repairs	121.5	121.5	
(e) Supplies and materials	606.0	52.2	658.2
(f) Operating costs	213.8	213.8	
(g) Other costs	68.1	96.8	164.9
(h) Capital outlay	55.4	55.4	
(i) Other financing uses	1.8	1.8	

Authorized FTE: 65.00 Permanent

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(11) Southern New Mexico correctional facility:					
(a) Personal services	6,556.7	6,556.7			
(b) Employee benefits	2,975.2	2,975.2			
(c) Travel	86.2	86.2			
(d) Maintenance and repairs	360.8	360.8			
(e) Supplies and materials	1,784.1	3.5	1,787.6		

(f) Contractual services	48.9	48.9		
(g) Operating costs	1,039.4	1,039.4		
(h) Other costs	126.2	233.9	360.1	
(i) Capital outlay	312.0	312.0		
(j) Out-of-state travel	3.2	3.2		
(k) Other financing uses	9.1	9.1		

Authorized FTE: 315.00 Permanent

Item	General Fund	Other State Funds	Intrnl Svc Funds	Federal Funds Agency Trnsf	Total
(12) Western New Mexico correctional facility:					
(a) Personal services	4,690.9	18.8	84.8	4,794.5	
(b) Employee benefits	2,221.6	6.0	27.2	2,254.8	
(c) Travel	84.0	84.0			
(d) Maintenance and repairs	192.3	192.3			
(e) Supplies and materials	1,068.3	5.2	1,073.5		
(f) Contractual services	41.1	41.1			

(g) Operating costs	772.5		772.5		
(h) Other costs	32.6	130.0		5.5	168.1
(i) Capital outlay	55.4	55.4			
(j) Out-of-state travel	1.6	1.6			
(k) Other financing uses	6.1	6.1			

~~Authorized FTE: 206.00 Permanent; 6.00 Term~~

	General Item Fund	Other State Funds	Intrnl Svc Funds/Inter- Agency Trnsf	Federal Funds	Total
(13) Penitentiary of New Mexico:					
(a) Personal services	18,615.3	150.8		18,766.1	
(b) Employee benefits	8,017.4	48.2	8,065.6		
(c) Travel	106.1	106.1			
(d) Maintenance and repairs	935.5	935.5			
(e) Supplies and materials	731.6	2,486.7	160.3	3,378.6	
(f) Contractual services	50.5	50.5			
(g) Operating costs		1,973.0	1,973.0		

(h) Other costs		647.0	647.0
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(i) Capital outlay	143.1	143.1	
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(j) Out-of-state travel	2.0	2.0	
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(k) Other financing uses	21.5	21.5	
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Authorized FTE: 736.00 Permanent; 8.00 Term

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(14) Adult health services:					
(a) Personal services	1,943.6	1,943.6			
(b) Employee benefits	680.4	680.4			
(c) Travel	8.0	8.0			
(d) Maintenance and repairs	16.4	16.4			
(e) Supplies and materials	69.9	69.9			
(f) Contractual services	9,581.5	9,581.5			
(g) Operating costs	37.9	37.9			
(h) Other costs	1.0	1.0			

(i) Capital outlay
17.8 17.8

(j) Out-of-state travel
1.6 1.6

(k) Other financing uses
1.9 1.9

~~Authorized FTE: 66.00 Permanent~~

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(15) Adult education:					
(a) Personal services	3,262.4	21.2	3,283.6		
(b) Employee benefits	750.1	6.3	756.4		
(c) Travel	20.9 .3	21.2			
(d) Maintenance and repairs	14.3 14.3				
(e) Supplies and materials	284.6	2.4	287.0		
(f) Contractual services	262.3	262.3			
(g) Operating costs	233.2	233.2			
(h) Other costs	2.7 2.7				
(i) Capital outlay	42.6 42.6				

(j) Out-of-state travel
2.6 2.6

(k) Other financing uses
3.1 3.1

~~Authorized FTE: 105.00 Permanent~~

	General Item Fund	Other State Funds	Intrnl Svc Funds/Inter- Agency Trnsf	Federal Funds	Total
(16) Corrections industries:					
(a) Personal services	113.9 12.0	989.7	1,115.6		
(b) Employee benefits		511.9	511.9		
(c) Travel	82.5 82.5				
(d) Maintenance and repairs			62.7 62.7		
(e) Supplies and materials		57.7	57.7		
(f) Contractual services		56.2	56.2		
(g) Operating costs	70.7 70.7				
(h) Other costs	1,670.0	1,670.0			
(i) Capital outlay	198.0 35.0	233.0			
(j) Out-of-state travel		8.5	8.5		
(k) Other financing uses	1.2	1.2			

~~Authorized FTE: 38.00 Permanent; 3.00 Term; 2.00 Temporary~~

The general fund appropriation to the corrections industries division of the corrections department in the capital outlay category is for the purchase of [printing] equipment.

Category transfers, division transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the corrections department.

Subtotal 134,348.7

CRIME VICTIMS REPARATION COMMISSION:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(a) Personal services	287.2	287.2			
(b) Employee benefits	93.8	93.8			
(c) Travel	14.8	14.8			
(d) Maintenance and repairs	1.3	1.3			
(e) Supplies and materials	5.8	5.8			
(f) Contractual services	137.0	137.0			
(g) Operating costs	46.5	46.5			
(h) Other costs	1,074.2	300.0	727.4	2,101.6	
(i) Capital outlay	7.9	7.9			
(j) Out-of-state travel	3.6	3.6			
(k) Other financing uses	252.6	252.6			

Authorized FTE: 11.00 Permanent

Forty-six thousand dollars (\$46,000) of the general fund appropriation to the crime victims reparation commission in the contractual services category is to contract for services to operate a statewide domestic violence legal help line to provide victims of domestic violence toll-free telephone access to information concerning their legal rights and responsibilities.

Category transfers and budget increases from restitution funds for victim reparation payments are specifically authorized for the crime victims reparation commission.

Subtotal 2,952.1

DEPARTMENT OF PUBLIC SAFETY:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(1) Administrative services division:					
(a) Personal services	2,265.5	101.9	581.2	2,948.6	
(b) Employee benefits	851.7	32.0	154.5	1,038.2	
(c) Travel	29.9	.9	112.0	142.8	
(d) Maintenance and repairs	851.9	9.1	38.0	899.0	
(e) Supplies and materials	63.4	3.0	31.0	97.4	
(f) Contractual services	49.4	2.4	353.0	404.8	
(g) Operating costs	893.6	57.3	215.3	1,166.2	
(h) Other costs	1.0	5,605.8	5,606.8		
(i) Capital outlay	11.1	.8	11.9		

(j) Out-of-state travel
16.2 10.5 55.3 82.0

(k) Other financing uses
2.8 1,823.0 1,825.8

~~Authorized FTE: 75.00 Permanent; 20.00 Term~~

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(2) Special investigations division:					
(a) Personal services	803.3	114.5			917.8
(b) Employee benefits	373.4	23.1			396.5
(c) Travel	99.3	12.3			111.6
(d) Maintenance and repairs	.8	.8			
(e) Supplies and materials	20.2	1.6			21.8
(f) Contractual services	202.3				202.3
(g) Operating costs	24.0	7.1			31.1
(h) Other costs	12.4	81.2			93.6
(i) Capital outlay	5.2	.7			5.9
(j) Out-of-state travel	11.3	8.0			19.3
(k) Other financing uses	1.0	1.0			

~~Authorized FTE: 25.00 Permanent; 2.50 Term~~

Of the appropriations to the department of public safety, no more than five thousand dollars (\$5,000) shall be used for the expenses of the governor's organized crime prevention commission.

~~Included in the general fund appropriation to the special investigations division of the department of public safety in the contractual services category is two hundred thousand dollars (\$200,000) to enhance the forensic interview program for alleged sexually abused children, currently operating in four counties, and to expand the program to additional counties.~~

	General Item Fund	Other State Funds	Intrnl Svc Funds/Inter- Agency Trnsf	Federal Funds	Total
(3) Training and recruiting division:					
(a) Personal services					
	911.7	18.3			930.0
(b) Employee benefits					
	301.6	8.2			309.8
(c) Travel					
	92.8				92.8
(d) Maintenance and repairs					
	8.2				8.2
(e) Supplies and materials					
	216.9				216.9
(f) Contractual services					
	303.2	252.4			555.6
(g) Operating costs					
	72.2				72.2
(h) Other costs					
	14.3				14.3
(i) Capital outlay					
	45.8				45.8

(j) Out-of-state travel
22.4 22.4

(k) Other financing uses
.6 .6

~~Authorized FTE: 21.00 Permanent; 1.00 Term~~

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(4) State police division:					
(a) Personal services	18,041.6	25.5	82.4		18,149.5
(b) Employee benefits	7,371.3				7,371.3
(c) Travel	2,762.1	313.0	37.6		3,112.7
(d) Maintenance and repairs	244.9				244.9
(e) Supplies and materials	686.0	49.1			735.1
(f) Contractual services	128.8				128.8
(g) Operating costs	399.6				399.6
(h) Other costs	51.5	150.0			201.5
(i) Capital outlay	5.5	83.5			89.0
(j) Out-of-state travel	27.0				27.0
(k) Other financing uses	14.4				14.4

(l) Peace officer survivors' fund
500.0 500.0

~~Authorized FTE: 591.00 Permanent~~

The general fund appropriation to the state police division of the department of public safety in the peace officers' survivors fund category to implement the provisions of the peace officers' survivors supplemental benefits act is contingent upon either House Bill 127 or Senate Bill 161 of the forty-second legislature, first session, becoming law.

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(5) Technical and emergency support division:					
(a) Personal services	1,842.4	179.4	69.7	386.6	2,478.1
(b) Employee benefits	699.0	17.5	14.8	112.7	844.0
(c) Travel	52.5	2.0	19.0	49.6	123.1
(d) Maintenance and repairs	12.8	.3	.5	27.5	41.1
(e) Supplies and materials	176.9	6.5	8.5	24.0	215.9
(f) Contractual services	17.8	49.4	64.9	132.1	
(g) Operating costs	2,203.7	317.3	26.1	48.2	2,595.3
(h) Other costs	36.8	25.9	597.5	660.2	
(i) Capital outlay	46.0	47.6	93.6		
(j) Out-of-state travel	61.5	61.5			

(k) Other financing uses
2.4 2.4

~~Authorized FTE: 61.00 Permanent; 22.25 Term~~

Category transfers, division transfers and budget increases from other state funds and internal service funds/interagency transfers, excluding state forfeitures and forfeiture cash balances, are specifically authorized for the department of public safety.

Subtotal 56,514.9

TOTAL PUBLIC SAFETY

170,602.8	11,060.4	4,960.3	15,485.2	202,108.7
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H. TRANSPORTATION

STATE HIGHWAY AND TRANSPORTATION DEPARTMENT:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(1) Office of the secretary:					
(a) Personal services		2,539.2	136.3	2,675.5	
(b) Employee benefits		747.4	34.0	781.4	
(c) Travel		173.9	26.1	200.0	
(d) Maintenance and repairs		10.6	10.6		
(e) Supplies and materials		124.2	5.3	129.5	
(f) Contractual services		1,218.6	85.0	1,303.6	
(g) Operating costs		191.0	27.1	218.1	

(h) Capital outlay	158.4 5.0 163.4
(i) Out-of-state travel	17.5 6.0 23.5
(j) Other financing uses	2.3 2.3

Authorized FTE: 77.00 Permanent

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(2) Administrative division:					
(a) Personal services		5,407.4	33.0	5,440.4	
(b) Employee benefits		7,585.9	11.0	7,596.9	
(c) Travel		389.8	7.6	397.4	
(d) Maintenance and repairs		1674.2	.5	1,674.7	
(e) Supplies and materials		239.0	25.0	264.0	
(f) Contractual services		878.2	10.5	888.7	
(g) Operating costs		4,339.9	70.5	4,410.4	
(h) Capital outlay		600.8	8.6	609.4	
(i) Out-of-state travel		10.4	1.6	12.0	

(j) Other financing uses
 17,160.7 17,160.7 ~~Authorized FTE: 176.00 Permanent; 2.00~~
~~Term; 1.50 Temporary~~

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(3) Engineering design division:					
(a) Personal services		8,343.3	3,547.8	11,891.1	
(b) Employee benefits		2,582.4	1,013.6	3,596.0	
(c) Travel		586.0	586.0		
(d) Maintenance and repairs		16.3	16.3		
(e) Supplies and materials		206.1	206.1		
(f) Contractual services		348.7	348.7		
(g) Operating costs		207.4	207.4		
(h) Capital outlay		147.0	147.0		
(i) Out-of-state travel		20.0	20.0		
(j) Other financing uses		10.8	10.8		

~~Authorized FTE: 341.00 Permanent; 22.00 Term; 2.50 Temporary~~

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
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	Funds	Agency Trnsf
(4) Field operations division:		
(a) Personal services	42,129.3	8,420.9 50,550.2
(b) Employee benefits	15,057.0	2,522.9 17,579.9
(c) Travel	11,428.2	11,428.2
(d) Maintenance and repairs	1,444.4	1,444.4
(e) Supplies and materials	1,106.7	1,106.7
(f) Contractual services	1,194.5	1,194.5
(g) Operating costs	3,493.4	3,493.4
(h) Capital outlay	11,587.4	11,587.4
(i) Out-of-state travel	18.4	18.4
(j) Other financing uses	62.4	62.4

Authorized FTE: 2,025.00 Permanent; 24.00 Term; 71.50 Temporary

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(5) Road betterment division:					
(a) Supplies and materials		25,000.0	25,000.0		

(b) Contractual services

95,265.6 165,289.5 260,555.1

(c) Other costs

30,420.9 30,420.9

Included in the other state funds appropriation to the road betterment division of the state highway and transportation department in the other costs category is one million five hundred thousand dollars (\$1,500,000) to be expended by local governments to match funds for cooperative, school bus route, municipal arterial or county arterial roads in the event of financial hardship as determined by the state highway commission.

Budget increases from other state funds, including the state road fund, are specifically authorized for the road betterment division.

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(6) Aviation division:					
(a) Personal services		256.2	256.2		
(b) Employee benefits		69.6	69.6		
(c) Travel		19.9	1.0	20.9	
(d) Maintenance and repairs		34.9	34.9		
(e) Supplies and materials		8.8	8.8		
(f) Contractual services		26.4	135.9	162.3	
(g) Operating costs		70.8	70.8		
(h) Other costs		951.5	951.5		
(i) Capital outlay		2.5	2.5		

(j) Out-of-state travel
7.0 7.0

(k) Other financing uses
.3 .3

~~Authorized FTE: 8.00 Permanent~~

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(7) Transportation programs division:					
(a) Personal services		937.2	303.6	1,240.8	
(b) Employee benefits		270.1	117.3	387.4	
(c) Travel		36.1	24.6	60.7	
(d) Maintenance and repairs		21.7	.5	22.2	
(e) Supplies and materials		284.7	62.7	347.4	
(f) Contractual services	198.0	1,804.1	6,822.0	8,824.1	
(g) Operating costs		226.0	37.7	263.7	
(h) Capital outlay		71.2	67.9	139.1	
(i) Out-of-state travel		4.1	40.9	45.0	
(j) Other financing uses		1.2	1.2		

~~Authorized FTE: 34.00 Permanent; 6.00 Term~~

~~Included in the general fund appropriation to the transportation programs division of the state highway and transportation department in the contractual services category is one hundred ninety-eight thousand dollars (\$198,000) to conduct a Rio Grande corridor transportation action plan.~~

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(8) Planning division:					
(a) Personal services		1,089.7	1,798.1	2,887.8	
(b) Employee benefits		336.4	524.6	861.0	
(c) Travel		49.6	177.0	226.6	
(d) Maintenance and repairs		32.9	131.8	164.7	
(e) Supplies and materials		56.2	36.2	92.4	
(f) Contractual services		361.0	1,448.8	1,809.8	
(g) Operating costs		64.1	210.8	274.9	
(h) Capital outlay		96.7	312.1	408.8	
(i) Out-of-state travel		4.4	17.8	22.2	
(j) Other financing uses		.5	2.2	2.7	

~~[Authorized FTE: 82.00 Permanent; 6.00 Term]~~

Division transfers are specifically authorized for the office of the secretary, administrative, engineering design, field operations, aviation, transportation programs and planning divisions.

Budget increases from other state funds are specifically authorized from sources other than the state road fund for the office of the secretary, administrative, engineering design, field operations, aviation, transportation programs and planning divisions.

Budget increases from the state road fund are specifically authorized for the office of the secretary, administrative, engineering design, field operations, aviation, transportation programs and planning divisions to match federal funds.

Category transfers are specifically authorized for the state highway and transportation department.

Subtotal 495,100.7

STATE TRANSPORTATION AUTHORITY:

	General Item Fund	Other State Funds	Intrnl Svc Funds/Inter- Agency Trnsf	Federal Funds Trnsf	Total
(a) Personal services				109.2 109.2	
(b) Employee benefits				37.8 37.8	
(c) Travel				9.2 9.2	
(d) Maintenance and repairs				.5 .5	
(e) Supplies and materials				8.7 8.7	
(f) Contractual services				135.4 135.4	
(g) Operating costs				29.8 29.8	
(h) Other costs				216.5 216.5	

(i) Out-of-state travel

4.1 4.1

Authorized FTE: 1.00 Permanent; 2.00 Term

The internal service funds/interagency transfers appropriation of five hundred fifty-one thousand two hundred dollars (\$551,200) to the state transportation authority shall be made from the state road fund.

Unexpended or unencumbered balances in the state transportation authority remaining at the end of fiscal year 1996 from appropriations made from the state road fund shall revert to the state road fund.

Category transfers are specifically authorized for the state transportation authority.

Subtotal 551.2

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
TOTAL TRANSPORTATION	198.0	301,341.4	551.2	193,561.3	495,651.9

I. OTHER EDUCATION

STATE DEPARTMENT OF PUBLIC EDUCATION:

(1) Administration:

2,115.8 2,115.8

Authorized FTE: 1.00 Permanent

The general fund appropriation to the state department of public education includes ~~forty-nine thousand five hundred dollars (\$49,500) for the bilingual intensive language project;~~ two hundred thirty-seven thousand six hundred dollars (\$237,600) for the graduation reality and dual skills program; ~~twenty-four thousand seven hundred dollars (\$24,700) for one FTE in the adult basic education program;~~ one hundred eight thousand nine hundred dollars (\$108,900) for the transition of youth with disabilities from secondary to postsecondary school; ~~twenty-four thousand seven hundred dollars (\$24,700) to purchase computers for Capitan municipal schools;~~ ten thousand seven hundred dollars (\$10,700) to purchase and install computers in the House municipal schools; ~~seventy-four thousand two hundred dollars (\$74,200) to establish the Gavilan adolescent alternative program in the Ruidoso municipal schools;~~ forty-nine thousand five hundred dollars (\$49,500) to operate the Grant county teen court program within Silver consolidated schools; ~~seven thousand~~

dollars (\$7,000) to continue the education for zero infection program; three thousand dollars (\$3,000) to provide educational services and materials for La Esquelita de Canones school in Canones in Rio Arriba county; one hundred thousand dollars (\$100,000) to contract for services to implement the initial phase of a five-phase student effectiveness program for high school freshmen to reduce dropout rates and increase graduation rates; fifty thousand dollars (\$50,000) to establish and operate a school-to-work program in Alamogordo public schools; sixty-five thousand dollars (\$65,000) to provide assistance to five schools authorized to be charter schools; seven hundred thousand dollars (\$700,000) to contract with a private nonprofit organization to establish dropout prevention programs at high schools in Bernalillo and Valencia counties; one hundred thousand dollars (\$100,000) to establish a pilot project to provide counseling and mental health services to potential high school dropouts at West Mesa, Valley, Rio Grande and Albuquerque high schools; seventy-five thousand dollars (\$75,000) for the career enrichment center at the Albuquerque high school campus; one hundred thousand dollars (\$100,000) for implementing a data collection and tracking system to gather data unique to native American student populations; one hundred thousand dollars (\$100,000) to design and implement an integrated computer learning program for kindergarten through grade twelve in public schools; twenty-five thousand dollars (\$25,000) to study the prevalence of children with speech and language disorders in public schools and effectiveness of educational services to those children; forty-five thousand dollars (\$45,000) to establish a summer gang and drug prevention pilot program at an elementary school in the city of Albuquerque that has been designated as having a high-risk student population by the department of health; twenty-five thousand dollars (\$25,000) for computer automation and to provide training for substitute educator services in Albuquerque public schools; forty-one thousand dollars (\$41,000) to initiate a multi-track year-round school calendar at Berino elementary school in Gadsden independent schools; and one hundred thousand dollars (\$100,000) to create a team of technology experts to implement technology education in the schools.

The state department of public education is authorized to provide a one-time salary adjustment equal to two and seventy-six hundredths percent of the employee's annual salary to every employee who is a member of the educational retirement association and who would not otherwise receive the increase provided to employees who are members of the public employees retirement association.

Subtotal 2,115.8

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
SCHOOL FOR THE VISUALLY HANDICAPPED:					
		7,683.4	7,683.4		

NEW MEXICO SCHOOL FOR THE DEAF:

1,581.1	6,164.9	7,746.0
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TOTAL OTHER EDUCATION

3,696.9	13,848.3	17,545.2
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J. HIGHER EDUCATION

Upon approval of the commission on higher education, the state budget division of the department of finance and administration may approve increases in budgets of state agencies in this subsection whose other state funds exceed amounts specified. In approving budget increases, the director of the state budget division shall advise the legislature through its officers and appropriate committees, in writing, of the conditions under which the increases are approved and the expenditures authorized, together with justification for the approval.

Except as otherwise provided, balances remaining at the end of fiscal year 1996 shall not revert to the general fund.

COMMISSION ON HIGHER EDUCATION:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(1) Administration:					
(a) Personal services	759.1	31.8	15.4		806.3
(b) Employee benefits	241.0	9.3	4.6		254.9
(c) Travel	49.4	1.5			50.9
(d) Maintenance and repairs	17.9	17.9			
(e) Supplies and materials	23.5	23.5			
(f) Contractual services	47.6	15.0			62.6

(g) Operating costs
170.0 1.5 171.5

(h) Other costs
380.0 380.0

(i) Capital outlay
26.5 26.5

(j) Out-of-state travel
15.0 15.0

~~Authorized FTE: 16.00 Permanent; 6.00 Term~~

Category transfers are specifically authorized for the commission on higher education.

Included in the general fund appropriation to the commission on higher education are sufficient funds for three term exempt FTE for the administration of financial aid programs and two term exempt FTE for the purpose of conducting an adult campaign that embodies the preparation and dissemination of information on postsecondary opportunities in New Mexico.

~~[The appropriation to the commission on higher education in the other costs category includes fifty thousand dollars (\$50,000) to coordinate a study with the university of New Mexico, New Mexico state university, and the New Mexico institute of mining and technology to review federal law and regulations affecting federally owned land and to assess the economic impact that federally owned lands located in New Mexico have on the state in general and on each county. The three universities shall work together to collect all existing and relevant data and prepare a joint report by December 1, 1995 to be submitted to the second session of the forty-second legislature and to the appropriate legislative interim committee.~~

~~The appropriation to the commission on higher education in the other costs category includes thirty thousand dollars (\$30,000) to implement the provisions of the Public Legal Services Assistance Act, contingent upon House Bill 949 of the forty-second legislature, first session, becoming law.~~

The appropriation to the commission on higher education in the other costs category includes three hundred thousand dollars (\$300,000) for a training program and operational costs for the semiconductor workforce and education training program and for the purchase of equipment for the semiconductor workforce and education training program.

Unexpended or unencumbered balances in the commission on higher education remaining at the end of fiscal year 1996 from appropriations made from the general fund shall revert to the general fund.

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(2) Special programs:					
(a) State student incentive grant	7,611.8	277.1	7,888.9		
(b) Nursing student loan program	460.7	40.0	500.7		
(c) Medical student loan program	382.8	100.0	482.8		
(d) Osteopathic student loan program	86.0	70.0	156.0		
(e) Allied health student loan fund	206.4	206.4			
(f) National health services corps loan	338.8	249.9	588.7		
(g) Work-study program	4,709.0	4,709.0			
(h) Student Choice Act	988.7	988.7			
(i) Vietnam veterans' scholarship fund	149.7	149.7			
(j) Graduate Fellowship Act	491.8	200.0	691.8		
(k) New Mexico Scholars Act	1,839.0	1,839.0			
(l) Minority doctoral assistance		275.0	275.0		

(m) Student child care	750.0	750.0
(n) Southeastern New Mexico minority and handicapped teachers	246.4	246.4
(o) Graduate student research	106.1	106.1
(p) System development fund	350.0	350.0
(q) Small business development centers	1,826.9	521.1 2,348.0
(r) Math, engineering and science	603.5 5.0	608.5
(s) Club sports equipment	74.2	74.2
(t) T-VI women and minorities	297.0	297.0
(u) Working to learn	60.4	60.4

Earnings from the investment of state financial aid appropriations shall be budgeted and expended to offset unanticipated costs of the Vietnam veterans' and New Mexico scholars scholarships, and to augment the New Mexico early intervention scholarship and legislative endowment program for public two-year institution scholarships; thereafter, the earnings shall revert to the general fund upon certification by the commission on higher education.

The general fund appropriation to the commission on higher education in the graduate student research category shall be expended at the university of New Mexico, New Mexico state university, New Mexico highlands university, western New Mexico university, eastern New Mexico university and New Mexico institute of mining and technology for graduate student research.

~~[The appropriation to the commission on higher education in the club sports equipment category is for any club sport at any two- or four-year institution.]~~

The general fund appropriation to the commission on higher education for small business development centers includes one hundred seventy-five thousand dollars

(\$175,000) to be allocated to the south valley small business development center in Bernalillo county.

Subtotal 25,126.4

UNIVERSITY OF NEW MEXICO:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(a) Instruction and general purposes	114,509.0	75,105.8	5,774.0	195,388.8	
(b) Medical school instruction and general purposes	32,013.9	10,648.8	705.0	43,367.7	
(c) Athletics	2,380.1	9,169.7	24.0	11,573.8	
(d) Educational television	1,126.8	3,398.0	705.1	5,229.9	
(e) Extended services instruction	1,248.2	386.6	1,634.8		
(f) Gallup branch	5,518.1	3,543.5	99.0	9,160.6	
(g) Los Alamos branch	1,402.9	1,304.1	23.7	2,730.7	
(h) Valencia county branch	2,681.8	1,830.0	1,440.8	5,952.6	
(i) Cancer center	1,797.4	7,221.5	9,018.9		
(j) State medical investigator	2,291.2	373.2	2,664.4		
(k) Emergency medical services academy	603.6	240.3	843.9		

- (l) Out-of-county indigent fund
1,677.2 1,677.2
- (m) Children's psychiatric
hospital
2,732.1 6,010.0 8,742.1
- (n) Specialized perinatal care
434.8 434.8
- (o) Newborn intensive care
1,955.3 222.5 2,177.8
- (p) Pediatric oncology
253.1 253.1
- (q) Hemophilia program
474.5 474.5
- (r) Young children's health
center
330.7 128.1 458.8
- (s) Pediatric pulmonary center
176.1 176.1
- (t) Health resources registry
19.0 28.3 47.3
- (u) Area health education
centers
214.4 214.4
- (v) Grief intervention
167.3 167.3
- (w) Carrie Tingley hospital
2,387.9 6,649.2 9,037.1
- (x) Pediatric dysmorphology
140.4 140.4
- (y) Locum tenens
201.3 202.5 403.8

(z) Substance abuse program
167.0 167.0

(aa) Poison control center
777.6 55.0 832.6

(bb) Student exchange program
2,163.7 270.2 2,433.9

(cc) Judicial selection
63.5 63.5

(dd) Southwest research center
1,020.2 286.7 1,306.9

(ee) Native American intervention
260.7 260.7

(ff) Resource geographic
information system
193.0 193.0

(gg) Natural heritage program
103.3 103.3

(hh) Southwest Indian law clinic
85.3 20.5 105.8

(ii) BBER census and population
analysis
53.4 8.8 62.2

(jj) Taos off-campus center
593.3 812.7 1,406.0

(kk) Judicial education center
148.0 148.0

(ll) New Mexico historical review
104.2 104.2

(mm) Ibero-American education
consortium
208.0 208.0

(nn) Geographic alliance
50.4 50.4

(oo) Youth education recreation
program
154.2 154.2

(pp) Advanced materials
laboratory
74.2 74.2

(qq) Manufacturing engineering
program
186.4 186.4

(rr) Spanish resource center
47.8 47.8

(ss) Office of international
technical cooperation
117.8 117.8

(tt) Hispanic student center
294.9 294.9

(uu) Wildlife law institute
59.4 59.4

(vv) Science and engineering
women's career
14.8 14.8

(ww) Navajo language court inter-
pretation
49.5 49.5

(xx) Disaster medicine program
99.0 99.0

(yy) Youth leadership development
99.0 99.0

(zz) Other (medical center)
90,300.0 27,020.0 117,320.0

(aaa) Other - main campus

109,751.0 59,144.8 168,895.8

The general fund appropriation to the university of New Mexico for instruction and general purposes includes two hundred thousand dollars (\$200,000) for minority graduate identification, recruitment and retention; ~~[twenty-five thousand dollars (\$25,000) for providing athletic trainers for physical education leisure services; seventy-five thousand dollars (\$75,000) for contracting for services to implement an educational demonstration project for children from the Martineztown community of Albuquerque in Bernalillo county; one hundred thousand dollars (\$100,000) to produce an online database of three weekly publications related to border issues and international trade; eighty thousand dollars (\$80,000) to continue funding of the radiation therapy technologist training program; one hundred fifty thousand dollars (\$150,000) to establish an environmental biology center; four hundred thirty thousand dollars (\$430,000) to establish a center for biomechanics;]~~ one hundred thousand dollars (\$100,000) to purchase history books, rare manuscripts and other documents by and about African Americans in New Mexico and to provide stipends for research assistants at the Morrisey research hall of the African American studies department; ~~and one hundred thousand dollars (\$100,000) to fund the African American student services youth enrichment program.~~

~~The general fund appropriation to the university of New Mexico for instruction and general purposes includes three hundred thousand dollars (\$300,000) to support start-up expenses of the doctor of pharmacy degree program, contingent upon approval of the program by the commission on higher education.~~

~~The medical school instruction and general purposes appropriation to the university of New Mexico includes fifteen thousand dollars (\$15,000) to provide rural statewide AIDS and human immune deficiency virus education to professional and paraprofessional health care and mental health care providers.~~

The general fund appropriation to the university of New Mexico for medical school instruction and general purposes includes ~~[two hundred thousand dollars (\$200,000) for distance education for nurses;]~~ three hundred nineteen thousand two hundred dollars (\$319,200) for staff, operational expenses and contractual services to expand the family nurse practitioner program; ~~[one hundred fifty-six thousand three hundred dollars (\$156,300) for staff, operational expenses and contractual services to expand the primary care physician assistant training program;]~~ and two hundred eighty-nine thousand dollars (\$289,000) to establish and operate an office of telemedicine research.

~~[The general fund appropriation to the university of New Mexico for athletics includes fifty thousand dollars (\$50,000) to provide staffing and support to athletic trainer operations.~~

~~The general fund appropriation for pediatric oncology includes fifty-five thousand dollars (\$55,000) to support program activities and twenty thousand dollars (\$20,000) to support expenses of children who attend camp enchantment.~~

~~The general fund appropriation to the young children's health center includes two hundred thousand dollars (\$200,000) to provide quality, timely examinations to children who are victims of sexual abuse.]~~

The general fund appropriation to the university of New Mexico for the southwest research center includes ~~fifty-one thousand seven hundred dollars (\$51,700) to the Don Diego de Vargas project;~~ seven hundred thirty-five thousand seven hundred dollars (\$735,700) to the center for regional studies; and two hundred thirty-two thousand eight hundred dollars (\$232,800) to the Spanish colonial research center.

~~The general fund appropriation for the Taos off-campus center includes one hundred thousand dollars (\$100,000) for the telecommunications of the Taos plaza project and two hundred thousand dollars (\$200,000) for the continued development of the community computer and education network.~~

~~The general fund appropriation for the Hispanic student center includes one hundred forty-six thousand dollars (\$146,000) to expand the operation of the Hispanic student services center.~~

Subtotal 606,829.1

NEW MEXICO STATE UNIVERSITY:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(a) Instruction and general purposes	75,260.7	38,882.3	3,305.0	117,448.0	
(b) Athletics	2,382.2	3,740.6	34.7	6,157.5	
(c) Educational television	930.2	705.9	475.0	2,111.1	
(d) Extended services instruction	203.0	232.2	435.2		
(e) Alamogordo branch	4,554.1	1,700.0	451.5	6,705.6	

(f) Carlsbad branch	3,050.1	1,323.7	380.0	4,753.8
(g) Dona Ana branch	6,331.9	2,820.2	896.1	10,048.2
(h) Grants branch	1,667.7	550.0	194.0	2,411.7
(i) Department of agriculture	6,086.6	1,675.7	1,271.3	9,033.6
(j) Agricultural experiment station	9,596.8	2,100.0	5,839.9	17,536.7
(k) Coopeative extension service	7,166.8	2,800.0	3,400.0	13,366.8
(l) Water resources research	400.3	567.9	302.1	1,270.3
(m) Border research institute	270.1	13.5	283.6	
(n) Indian resources development program	355.8	5.6	43.9	405.3
(o) International business center	101.8		101.8	
(p) Manufacturing development program	392.0		392.0	
(q) Hispanic leadership program	24.7	24.7		
(r) Spanish language curriculum	39.6	39.6		
(s) Waste management education	509.0	250.0	4,000.0	4,759.0

(t) Other

39,797.4 63,984.0 103,781.4

~~The general fund appropriation to New Mexico state university for instruction and general purposes includes one hundred fifty thousand dollars (\$150,000) to create a new master of public health program in community health education.~~

The general fund appropriation to New Mexico state university for the Carlsbad branch includes five hundred thousand dollars (\$500,000) to establish a manufacturing sector development outreach office.

The general fund appropriation to New Mexico state university for the department of agriculture includes not more than three hundred four thousand dollars (\$304,000) for animal damage control, of which not more than three-fourths may be used for lethal control methods.

~~The general fund appropriation to the border research institute includes fifty thousand dollars (\$50,000) to establish a mini-grant research fund for faculty to research border issues.~~

~~The general fund appropriation to the department of agriculture includes fifty thousand dollars (\$50,000) to fund a full-time position for a United States-Mexico trade specialist; fifty thousand dollars (\$50,000) to fund a full-time position for a market development specialist; sixty-five thousand dollars (\$65,000) to fund a full-time ground water specialist to be responsible for ensuring protection of New Mexico ground water from contamination by pesticides; and five hundred thousand dollars (\$500,000) to provide assistance to acequia and community ditch associations involved in the adjudication process provided that no more than five percent is to be used for administration.~~

~~The general fund appropriation to the cooperative extension service includes one hundred fifty thousand dollars (\$150,000) to expand food and nutritional education programs into additional counties and fifty thousand dollars (\$50,000) to develop and provide information and training on the control and management of domestic and Africanized honeybees.~~

The general fund appropriation to the Indian resources development program includes fifty thousand dollars (\$50,000) to purchase computers and related software for the American Indian program and fifty thousand dollars (\$50,000) to increase staff and to increase retention services available to native American students attending New Mexico state university.

Subtotal 301,065.9

NEW MEXICO HIGHLANDS UNIVERSITY:

Item	General Fund	Other State	Intrnl Svc Funds/Inter-	Federal Funds	Total
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	Funds	Agency Trnsf
(a) Instruction and general purposes	14,974.3 4,604.0 3,700.0	23,278.3
(b) Athletics	1,074.3 228.0 20.0	1,322.3
(c) Extended services instruction	337.2 202.0	539.2
(d) Visiting scientist	22.7	22.7
(e) Upward bound	73.2	73.2
(f) Diverse populations studies	203.3	203.3
(g) Latin American institute	276.3	276.3
(h) Other	4,297.0 6,775.0	11,072.0
Subtotal	36,787.3	

WESTERN NEW MEXICO UNIVERSITY:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(a) Instruction and general purposes	10,694.2	2,527.0	340.0	13,561.2	
(b) Athletics	1,045.3	250.0	2.5	1,297.8	
(c) Educational television	98.7	98.7			
(d) Extended services instruction	485.5	175.0	660.5		

(e) Other

2,275.0 2,600.0 4,875.0

~~The general fund appropriation to western New Mexico university for instruction and general purposes includes fifty thousand dollars (\$50,000) for the purchase of vehicles for campus security.~~

~~The general fund appropriation to western New Mexico university for extended services instruction includes two hundred thousand dollars (\$200,000) for providing postsecondary education programs in Sierra county.~~

Subtotal 20,493.2

EASTERN NEW MEXICO UNIVERSITY:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(a) Instruction and general purposes	18,102.1	6,600.0	1,300.0	26,002.1	
(b) Athletics	1,359.2	600.0	1,959.2		
(c) Educational television	878.8	450.0	1,328.8		
(d) Extended services instruction	313.2	350.0	600.0	1,263.2	
(e) Roswell branch	6,357.0	4,500.0	1,800.0	12,657.0	
(f) Roswell extended service instruction	47.3	47.3			
(g) Center for teaching excellence	260.3	260.3			
(h) Ruidoso off-campus center	358.7	400.0	100.0	858.7	

(i) Blackwater Draw and museum
96.8 20.0 116.8

(j) Assessment team
149.6 149.6

(k) Other 10,080.0 6,000.0 16,080.0

~~The general fund appropriation to eastern New Mexico university for instruction and general purposes includes sixty five thousand dollars (\$65,000) to improve and expand campus safety programs and security and seventy thousand dollars (\$70,000) for an automated irrigation system for athletic fields.~~

The general fund appropriation to athletics includes seventy thousand dollars (\$70,000) for assistant coaches positions and graduate assistants and seventy-five thousand dollars (\$75,000) for a team bus.

~~The general fund appropriation to the Ruidoso off-campus center includes fifty thousand dollars (\$50,000) to establish an adult basic education program.~~

Subtotal 60,723.0

NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(a) Instruction and general purposes	15,780.6	3,050.4	18,831.0		
(b) Athletics	133.7	133.7			
(c) Extended services instruction	16.1	16.1			
(d) Geophysical research center	633.3	100.0	1,000.0	1,733.3	
(e) Bureau of mines	3,202.6	50.0	300.0	3,552.6	
(f) Science and engineering fair	74.2	74.2			

(g) Petroleum recovery research
center
1,419.5 2,000.0 3,419.5

(h) Bureau of mine inspection
250.8 130.0 380.8

(i) Energetic materials research
center
454.2 7,000.0 7,454.2

~~(j) LANL feasibility study~~
~~99.0 99.0~~

(k) Other 5,237.1 12,020.0 17,257.1

The appropriation to New Mexico institute of mining and technology for the bureau of mines includes one hundred thousand dollars (\$100,000) from federal Mineral Lands Leasing Act receipts.

~~The general fund appropriation for the LANL feasibility study is to be used in cooperation with the university of New Mexico to study the feasibility of bidding on the management contract for Los Alamos national laboratory.~~

Subtotal 52,951.5

NORTHERN NEW MEXICO STATE SCHOOL:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(a) Instruction and general purposes	5,836.7	2,235.0	2,041.9	10,113.6	
(b) Extended services instruction	11.2	11.2			
(c) Northern pueblos institute	53.3	5.0	58.3		

(d) Other 238.0 2,030.0 2,268.0

~~The general fund appropriation to northern New Mexico state school for instruction and general purposes includes one hundred thousand dollars (\$100,000) to plan the development of the Yunge heritage center at the pueblo of San Juan in Rio Arriba county.~~

Subtotal 12,451.1

SANTA FE COMMUNITY COLLEGE:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(a) Instruction and general purposes	5,675.7	6,683.0	1,235.9	13,594.6	
(b) Community leadership program	100.0	100.0			

(c) Other

6,717.7 1,722.4 8,440.1

~~The general fund appropriation to the Santa Fe community college for instruction and general purposes includes one hundred forty thousand dollars (\$140,000) to fund an alternative fuels training program for public sector automotive technicians, fleet managers and transportation personnel.~~

Subtotal 22,134.7

TECHNICAL-VOCATIONAL INSTITUTE:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(a) Instruction and general purposes	27,465.0	21,000.0	1,400.0	49,865.0	

(b) Other 6,200.0 5,900.0 12,100.0

~~The general fund appropriation to the technical-vocational institute for instruction and general purposes includes five hundred thousand dollars (\$500,000) to renovate the Pajarito elementary school in Albuquerque in Bernalillo county and two hundred thousand dollars (\$200,000) to operate an educational site at the Pajarito elementary school in Albuquerque in Bernalillo county.~~

Subtotal 61,965.0

LUNA VOCATIONAL TECHNICAL INSTITUTE:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(a) Instruction and general					

	purposes		
	5,295.2	770.0	3.5 6,068.7
(b) Other	357.0	745.4	1,102.4

Subtotal 7,171.1

MESA TECHNICAL COLLEGE:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(a) Instruction and general purposes	1,854.7	239.8	244.3	2,338.8	
(b) Other	245.0	245.0			

Subtotal 2,583.8

NEW MEXICO JUNIOR COLLEGE:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(a) Instruction and general purposes	4,291.5	4,379.9	1,016.3	9,687.7	
(b) Athletics	33.8	394.5	428.3		
(c) Other	1,412.0	2,241.8	3,653.8		

Subtotal 13,769.8

SAN JUAN COLLEGE:

5,931.4	13,300.0	3,455.0	22,686.4
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CLOVIS COMMUNITY COLLEGE:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
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(a) Instruction and general purposes	6,148.0	1,900.0	800.0	8,848.0
(b) Extended services instruction	43.9	32.0	75.9	
(c) Other	1,500.0	2,200.0	3,700.0	
Subtotal	12,623.9			

NEW MEXICO MILITARY INSTITUTE:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(a) Instruction and general purposes	1,388.5	11,665.7	13,054.2		
(b) Athletics		669.0	669.0		
(c) Other		5,672.5	5,672.5		

~~The general fund appropriation to the New Mexico military institute includes one hundred thousand dollars (\$100,000) to provide additional financial assistance to exceptionally qualified legislative scholarship recipients who have displayed outstanding leadership qualities and who would be unable to attend the institute without supplemental financial assistance.~~

Subtotal	19,395.7
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Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
TOTAL HIGHER EDUCATION	469,959.2	557,091.1	251,707.6	1,278,757.9	

**GRAND TOTAL FISCAL YEAR 1996
APPROPRIATIONS**

1,496,637.6	1,075,839.1	388,855.2	1,529,942.7	4,491,274.6
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Section 5

Section 5. SPECIAL APPROPRIATIONS.--Appropriated from the general fund, or other funds as indicated, are the following amounts for the purposes specified. Unless otherwise indicated, these appropriations may be expended in fiscal year 1995 and fiscal year 1996. Unless otherwise indicated, unexpended or unencumbered balances of these appropriations remaining at the end of fiscal year 1996 shall revert to the appropriate fund.

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
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(1) DEPARTMENT OF FINANCE AND ADMINISTRATION:

(a) Local government division
50.0 50.0

For the village of Pecos to monitor the Terrero clean-up efforts.

(b) Local government division
250.0 250.0

For fiscal years 1995 through 1998 to design, construct and equip a recreation, swimming pool and convention center facility in the city of Las Vegas in San Miguel county.

(c) State budget division
91.2 91.2

For the reauthorization of the balance in the court expense contingency fund.

(2) GENERAL SERVICES DEPARTMENT:

(a) Risk management division - regular
500.0 500.0

To be expended from the public liability fund to pay certain litigation costs incurred by the state.

(b) Motor pool division
750.0 750.0

To purchase vehicles for lease to state agencies.

(3) CRIMINAL AND JUVENILE JUSTICE COORDINATING COUNCIL:

Notwithstanding the provisions of Subsection A of Section 7 of Chapter 147 of Laws 1994, the appropriation in Subsection M of Section 7 of Chapter 147 of Laws 1994 is appropriated for the same purpose.

(4) STATE COMMISSION OF PUBLIC RECORDS:

75.0 75.0

For insurance of the archives.

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter- Agency Trnsf	Federal Funds	Total
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(5) ECONOMIC DEVELOPMENT DEPARTMENT:

(a) Office of the secretary

200.0 200.0

To host the border governors conference.

(b) Technology enterprise division

Notwithstanding the provisions of Subsection A of Section 7 of Chapter 147 of Laws 1994, the fund balances remaining from the appropriation in Paragraph (1) of Subsection T of Section 7 of Chapter 147 of Laws 1994 are appropriated to match federal funds for technology-based proposals.

(6) COMMISSIONER OF PUBLIC LANDS:

1,095.6 547.8 1,643.4

For retirement of the oil and natural gas accounting revenue database (ONGARD) bonds and interest payments. The amount indicated in the other state funds column is from the state lands maintenance fund.

(7) INTERSTATE STREAM COMMISSION

250.0 250.0

For statewide regional water planning and water resource assessments.

(8) HUMAN SERVICES DEPARTMENT

OPERATING CONTINGENCY:

There is appropriated from the general fund operating reserve ten million dollars (\$10,000,000) to the human services department for medicaid payments in fiscal year 1996. The appropriation is to be disbursed upon certification by the secretary of the human services department to the secretary of the department of finance and administration and review by the legislative finance committee that expenditures will exceed revenues. The contingency appropriation can only be expended at the level that expenditures exceed revenues.

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter- Agency Trnsf	Federal Funds	Total
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(9) LABOR DEPARTMENT:

100.0 100.0

To contract for a traditional skills and crafts training program based in Doña Ana village for at-risk youth.

(10) DEPARTMENT OF HEALTH:

350.0 350.0

For the purchase of scientific laboratory equipment.

(11) DEPARTMENT OF ENVIRONMENT:

308.5 308.5

For five term FTE positions and environmental activities associated with the Terrero clean-up project.

~~[(12) CHILDREN, YOUTH AND FAMILIES DEPARTMENT:~~

~~—— (a) Administrative services~~

~~150.0 150.0~~

~~For recovery high school.~~

~~—— (b) Administrative services~~

~~75.0 75.0~~

~~For NAACP gang intervention.]~~

(13) CORRECTIONS DEPARTMENT

OPERATING CONTINGENCY:

There is appropriated from the general fund operating reserve two million dollars (\$2,000,000) to the corrections department to pay the costs associated with leasing county bed space, the contract for the operation of the women's facility and other projected operating budget shortages in fiscal years 1995 and 1996. The appropriation is to be disbursed upon certification by the secretary of the corrections department to the secretary of the department of finance and administration and review by the legislative finance committee that expenditures will exceed revenues.

	General	Other	Intrnl Svc	Federal	Total
Item	Fund	State	Funds/Inter-	Funds	
		Funds	Agency Trnsf		

(14) DEPARTMENT OF PUBLIC SAFETY:

(a) Administrative services

division

100.0 100.0

For litigation costs associated with the state police Fair Labor Standards Act lawsuit.

(b) State police division

1,700.0 1,700.0

To purchase state police pursuit vehicles and other emergency response vehicles.

(15) STATE DEPARTMENT OF PUBLIC EDUCATION
DEVELOPMENT TRAINING FUND:

3,000.0 3,000.0

For in-plant training.

(16) COMPUTER SYSTEMS ENHANCEMENT FUND:

4,598.8 7,680.0 12,278.8

Included in the other state funds amount is [~~seven million five hundred thousand dollars (\$7,500,000) appropriated from the subsequent injury fund and~~] one hundred eighty thousand dollars (\$180,000) authorized for transfer from the boards and commissions of the regulation and licensing department.

TOTAL SPECIAL APPROPRIATIONS

13,052.9 8,319.0 500.0 21,871.9

Section 6

Section 6. SUPPLEMENTAL AND DEFICIENCY APPROPRIATIONS.--Appropriated from the general fund, or other funds as indicated, for expenditure in fiscal year 1995, unless otherwise indicated, are the amounts set out in this section. Disbursement of these amounts shall be subject to the following conditions: certification by the state agency to the department of finance and administration that no other funds are available in fiscal year 1995 for the purpose specified in the appropriation; approval by the department of finance and administration; and notification of such approval to the legislative finance committee. Unexpended or unencumbered balances remaining at the end of fiscal year 1995 shall revert to the appropriate fund.

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(1) FIFTH JUDICIAL DISTRICT COURT:					
	4.7	4.7			

To meet State v. Lewis, et. al., water adjudication case expenses from fiscal year 1994.

(2) SECOND JUDICIAL DISTRICT ATTORNEY:

35.4 35.4

To pay gross receipts and property taxes on equipment lease in fiscal year 1994.

(3) PUBLIC EMPLOYEES RETIREMENT ASSOCIATION:

1,128.4 1,128.4

For investment manager contracts in fiscal year 1994.

(4) DEPARTMENT OF FINANCE AND
ADMINISTRATION:

200.0 200.0

For the financial control division to pay the general services department for information systems division services.

(5) PUBLIC DEFENDER DEPARTMENT:

(a) Contract attorney fees

1,163.0 1,163.0

For contract attorney fees and Americans with Disabilities Act issues.

Notwithstanding the provisions of Laws 1994, Chapter 6, Section 4, the appropriation from the general fund to the public defender department shall not be used for the establishment of the Las Vegas office, but is appropriated to the public defender department to pay outstanding contract attorney fees.

(b) Regular operating

50.0 50.0

For expert witness fees.

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter- Agency Trnsf	Federal Funds	Total
(6) PUBLIC EMPLOYEES RETIREMENT ASSOCIATION:		2,438.8	2,438.8		

For investment manager contracts.

(7) SECRETARY OF STATE:

81.0 81.0

For required legal publication of constitutional amendments and general obligation bonds.

(8) STATE TREASURER:

50.0 50.0

For projected budget shortfalls.

(9) AGENCY ON AGING:

66.0 66.0

For guardianship program.

(10) HUMAN SERVICES DEPARTMENT:

771.0 835.2 1,606.2

To pay the general services department for information systems division services.

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter- Agency Trnsf	Federal Funds	Total
(11) DEPARTMENT OF HEALTH:					
(a) Community programs--developmental					

disabilities
800.0 800.0

To pay the costs associated with employee liability coverage for developmental disabilities service providers.

(b) Fort Stanton hospital
1,800.0 1,800.0

For costs associated with facility shutdown, including termination benefits for current employees, utilities, security, patient relocation expenses and other costs.

(12) CHILDREN, YOUTH AND FAMILIES

DEPARTMENT:

(a) Office of the secretary
302.0 302.0

To pay for costs associated with a lease lawsuit.

(b) New Mexico boys' school
100.0 100.0

For eight temporary FTE to provide gate and perimeter security.

(c) Youth diagnostic and development
center
600.0 600.0

For overtime, temporary employees and food.

(13) DEPARTMENT OF MILITARY AFFAIRS:

120.1 60.3 180.4

For increased utility costs.

(14) CORRECTIONS DEPARTMENT:

5,000.0 5,000.0

To pay the costs associated with leasing county bed space, the contract for operation of the women's facility and other projected operating budget shortages.

(15) NEW MEXICO MILITARY INSTITUTE:

750.0 750.0

To offset a reduction in land and permanent fund income earnings.

TOTAL SUPPLEMENTAL AND DEFICIENCY APPROPRIATIONS

9,293.2 6,167.2 895.5 16,355.9

Section 7

Section 7. COMPUTER SYSTEMS ENHANCEMENT FUND APPROPRIATIONS. -- Appropriated from the computer systems enhancement fund in the other state funds column, or other funds as indicated, are the following amounts for the purposes specified. Unless otherwise indicated, these appropriations may be expended in fiscal

year 1995 and fiscal year 1996. Unless otherwise indicated, unexpended or unencumbered balances remaining at the end of fiscal year 1996 shall revert to the computer systems enhancement fund or other funds as indicated. The department of finance and administration shall allocate amounts from the funds for the purposes specified upon receiving certification by the requesting agency that the computer project is substantiated by a feasibility report that identifies benefits, non-recurring costs and recurring costs for the development and implementation of the proposed system. If the funds are to continue a project, the certification shall ensure that the project is on schedule, all funds previously allocated have been properly expended and additional funds are required. The department of finance and administration shall provide a copy of the certification and all supporting documentation to the legislative finance committee.

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(1) LEGISLATIVE COUNCIL SERVICE:					
		400.0	400.0		

~~For the legislative information system.~~

(2) SUPREME COURT:					
		4,500.0	4,500.0		

~~To provide for the existing eight FTE positions and to purchase hardware, software and implementation services for statewide automation of the district and magistrate courts. Included in the appropriation is sixty-nine thousand dollars (\$69,000) to provide commercial online search services.~~

(3) ADMINISTRATIVE OFFICE OF THE DISTRICT ATTORNEYS:					
		450.0	450.0		

~~For computer equipment, hardware upgrades and software consistent with the district attorneys' statewide automation plan.~~

(4) TAXATION AND REVENUE DEPARTMENT:

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(a) Office of the secretary					
		1,200.0	1,200.0		

For design, development and implementation of the taxation and revenue information management system (TRIMS) as identified in the information systems plan approved by the commission on information and communication management.

(b) Administrative services division					
		180.2	180.2		

For four term FTE positions to develop and implement the taxation and revenue information management system (TRIMS).

Notwithstanding the provisions of Section 2 of Chapter 147 of Laws of 1994, unexpended or unencumbered balances from the appropriation made in Paragraph E of Section 2 to the taxation and revenue department for the TRIMS project are appropriated for fiscal year 1996 for the same purpose.

(5) DEPARTMENT OF FINANCE AND ADMINISTRATION:

190.9 190.9

For the financial control division to pay the general services department for information systems division services.

~~(6) STATE TREASURER:~~

~~760.3 760.3~~

~~For completion of the treasurer's warrant account reconciliation system (TWARS) project and the affiliated two term and two permanent FTE positions.~~

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
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(7) REGULATION AND LICENSING DEPARTMENT:

180.0 180.0

To continue enhancement of the department's data processing system. Included in the other state funds appropriation is one hundred eighty thousand dollars (\$180,000) authorized for transfer from the boards and commissions of the regulation and licensing department.

(8) OFFICE OF CULTURAL AFFAIRS:

40.0 40.0

For continuation of the accounting system project.

(9) COMMISSIONER OF PUBLIC LANDS:

(a) ONGARD

200.0 200.0

For extending contractual services for the implementation phase of the oil and natural gas accounting revenue database (ONGARD).

(b) ONGARD

1,450.0 1,450.0

To pay the general services department for information systems division services for the development costs of the oil and gas accounting revenue database (ONGARD).

[(10) PUBLIC UTILITY COMMISSION:

~~400.0 400.0~~

~~For office automation network/document management and imaging system.]~~

General	Other	Intrnl Svc	Federal	Total
Item	Fund	State Funds	Funds/Inter- Funds	
		Funds	Agency Trnsf	

(11) HUMAN SERVICES DEPARTMENT:

~~(a) Administrative services division~~

~~1,209.5 1,327.8 2,537.3~~

~~To complete the integrated eligibility determination and benefit delivery system (ISD-2) re-engineering project and required post implementation review. Included in the other state funds column is fourteen thousand four hundred dollars (\$14,400) collected through the restitution process.~~

(b) Child support enforcement
division

1,279.2

4,919.3 6,198.5

For implementation of the child support establishment and enforcement reporting system (CHEERS) project, including the post-implementation review.

(c) Medical assistance division

600.0 1,921.0 2,521.0

For the development and oversight of a new medicaid management information system (MMIS).

Notwithstanding the provisions of Section 2 of Chapter 147 of Laws of 1994, unexpended or unencumbered balances from the appropriation made in Paragraph V of Section 2 to the human services department for the CHEERS project are appropriated for fiscal year 1996 for the same purpose.

(12) CHILDREN, YOUTH AND FAMILIES
DEPARTMENT:

500.0 500.0 1,000.0

For development of the family automated client tracking system (FACTS).

Notwithstanding the provisions of Section 2 of Chapter 147 of Laws of 1994, unexpended and unencumbered balances from the appropriation made in Subsection CC of Chapter 147 of Laws of 1994 to the children, youth and families department to develop a family automated client tracking system are appropriated for fiscal year 1996 for the same purpose.

(13) DEPARTMENT OF PUBLIC SAFETY:

644.0 644.0

Included in the appropriation is one hundred forty-four thousand dollars (\$144,000) for personal computers and software in accordance with the information systems plan and five hundred thousand dollars (\$500,000) for state police record keeping and processing systems.

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
TOTAL COMPUTER SYSTEMS ENHANCEMENT FUND APPROPRIATIONS					
		14,184.1	8,668.1	22,852.2	

Section 8. TRANSFER AUTHORITY.--If revenues and transfers to the general fund, excluding transfers to the operating reserve, appropriation contingency fund and public school state-support reserve fund, as of the end of fiscal year 1995, are not sufficient to meet appropriations, the governor, with state board of finance approval, may transfer at the end of that year the amount necessary to meet the year's obligations from the unencumbered balance remaining in the general fund operating reserve in a total not to exceed twenty million dollars (\$20,000,000).

Section 9

Section 9. GENERAL FUND OPERATING RESERVE--CONTINGENCY.--An amount not to exceed three million dollars (\$3,000,000) is appropriated from the general fund operating reserve to the state board of finance for transfer to the corrective action fund for expenditure in fiscal year 1996 contingent upon certification by the department of environment that the balance of the corrective action fund is less than one million dollars (\$1,000,000) and that an emergency exists and the funds are necessary to respond to a release or to make payments to or on behalf of owners and operators in accordance with Section 74-6B-13 NMSA 1978.

Section 10

Section 10. APPROPRIATION REDUCTION.--All amounts set out under the general fund column in the travel category in Section 4 of the General Appropriation Act of 1995 shall be reduced by one and eight hundred twenty-four thousandths percent rounded to the nearest tenth of one thousand dollars. The department of finance and administration shall adjust all totals, rates of distribution and language accordingly.

Section 11

Section 11. CASH REQUIREMENT ACCOMMODATION.--The general fund operating reserve and appropriation contingency fund are current funds as that term is used in Section 6-10-42 NMSA 1978 and may be expended to meet cash requirements during fiscal year 1996 pursuant to that section.

Section 12

Section 12. SEVERABILITY.--If any part or application of this act is held invalid the remainder or its application to other situations or persons shall not be affected.

CHAPTER 31

RELATING TO THE TAXATION AND REVENUE DEPARTMENT; CHANGING CERTAIN PROVISIONS OF THE TAXATION AND REVENUE DEPARTMENT ACT, THE TAX ADMINISTRATION ACT, THE PROPERTY TAX CODE, THE MOTOR TRANSPORTATION ACT AND THE MOTOR VEHICLE CODE; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING APPROPRIATIONS.

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

Section 1

Section 1. Section 9-11-2 NMSA 1978 (being Laws 1977, Chapter 249, Section 2) is amended to read:

"9-11-2. DEFINITIONS.--As used in the Taxation and Revenue Department Act:

A. "department" means the taxation and revenue department created under the Taxation and Revenue Department Act; and

B. "secretary" means the secretary of taxation and revenue."

Section 2

Section 2. Section 9-11-6 NMSA 1978 (being Laws 1977, Chapter 249, Section 7, as amended) is amended to read:

"9-11-6. SECRETARY--DUTIES AND GENERAL POWERS.--

A. The secretary is responsible to the governor for the operation of the department. It is the secretary's duty to manage all operations of the department and to administer and enforce the laws with which the secretary or the department is charged.

B. To perform these duties, the secretary has every power expressly enumerated in the laws, whether granted to the secretary or the department or any division of the department or any director of any division of the department, except where authority conferred upon any director or division is explicitly exempted from the secretary's authority by statute. In accordance with these provisions, the secretary shall:

(1) except as otherwise provided in the Taxation and Revenue Department Act, exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

(2) delegate authority to subordinates as the secretary deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

(3) organize the department into those organizational units the secretary deems will enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge the secretary's duties;

(5) purchase or lease personal property, purchase services and lease real property for use by the department as the secretary deems necessary, subject to approval of state agencies if any is required;

(6) conduct research and studies that will improve the operations of the department and the provision of services to the citizens of the state;

(7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the objective of improving the operations and efficiency of administration;

(8) prepare an annual budget of the department;

(9) provide cooperation, at the request of heads of administratively attached agencies and adjunct agencies, in order to:

(a) minimize or eliminate duplication of services and jurisdictional conflicts;

(b) coordinate activities and resolve problems of mutual concern; and

(c) resolve by agreement the manner and extent to which the department shall provide budgeting, recordkeeping and related clerical assistance to administratively attached agencies;

(10) appoint, with the governor's consent, a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the secretary;

(11) give bond in the penal sum of twenty-five thousand dollars (\$25,000) and require directors to each give bond in the penal sum of ten thousand dollars (\$10,000) conditioned upon the faithful performance of duties, as provided in the Surety Bond Act. The department shall pay the costs of these bonds; and

(12) require performance bonds of such department employees and officers as the secretary deems necessary, as provided in the Surety Bond Act. The department shall pay the costs of these bonds.

C. The secretary may apply for and receive, with the governor's approval, in the name of the department any public or private funds, including but not limited to United States government funds, available to the department to carry out its programs, duties or services.

D. Where functions of departments overlap or a function assigned to one department could better be performed by another department, a secretary may recommend appropriate legislation to the legislature for its approval.

E. The secretary may adopt an official seal for the use of the department or any of its divisions."

Section 3

Section 3. A new section of the Taxation and Revenue Department Act is enacted to read:

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

A. The secretary is empowered and directed to 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 a hearing officer or other 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 a 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 center 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.

G. Any regulation, ruling, instruction or order issued by the secretary or order or instruction issued by a hearing officer or other 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 4

Section 4. A new section of the Taxation and Revenue Department Act is enacted to read:

"PAYMENT METHODS AUTHORIZED-- APPROPRIATION.--

A. The department is authorized to accept payment by electronic or optical means of any amount due the state under any law or program administered by the department.

B. The department is authorized to accept payment by credit card of any amount due the state under any law or program administered by the department. If the department must pay a charge to accept payment by credit card, the amount of the charge shall be added to the amount due from the person making payment by credit card. The amount of the charge to the taxpayer is appropriated to the department for payment to the credit card company."

Section 5

Section 5. A new section of the Taxation and Revenue Department Act is enacted to read:

"ELECTRONIC FILING.--The department is authorized to require where practical, in lieu of the filing of paper documents, the filing by electronic or optical means of any return, application, report or other document required under any law or program administered by the department. The department, using reasonable criteria, may require some classes of persons to file electronically or optically while not so requiring others to file in that manner. The date of filing shall be the date the return, application, report or other document is transmitted to the department in a form able to be processed."

Section 6

Section 6. Section 66-2-3 NMSA 1978 (being Laws 1978, Chapter 35, Section 7, as amended) is amended to read:

"66-2-3. POWERS AND DUTIES OF DEPARTMENT.--

A. The department is vested with the power and is charged with the duty of observing, administering and enforcing the Motor Vehicle Code in cooperation with state and local agencies as provided by law and the provisions of law now existing or hereinafter enacted that pertain to the licensing of drivers and that pertain to the financial responsibility of owners and drivers.

B. The secretary may seek an injunction in any district court to require compliance with or prohibit violation of the Motor Vehicle Code. A request for an injunction may seek the prohibition of the buying, selling, exchanging or operation of vehicles of a type required to be registered under the Motor Vehicle Code."

Section 7

Section 7. REPEAL.--Sections 7-1-5, 7-38-90, 7-38-91, 65-1-10 and 66-2-3.1 NMSA 1978 (being Laws 1965, Chapter 248, Section 11, Laws 1973, Chapter 258, Sections 130 and 131, Laws 1967, Chapter 97, Section 12 and Laws 1991, Chapter 160, Section 6, as amended) are repealed.

Section 8

Section 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE BILL 72

CHAPTER 32

RELATING TO MOTOR VEHICLES; PROVIDING FOR A VETERAN-DESIGNATION DECAL FOR DISABLED KOREAN VETERANS AND OTHER ARMED FORCES VETERANS.

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

Section 1

Section 1. Section 66-3-419 NMSA 1978 (being Laws 1990, Chapter 46, Section 2, as amended) is amended to read:

"66-3-419. SPECIAL REGISTRATION PLATES FOR ARMED FORCES VETERANS.--

A. The division shall issue distinctive registration plates indicating that the recipient is a veteran of the armed forces of the United States, as defined in Section 28-13-7 NMSA 1978, if that person submits proof satisfactory to the division of honorable discharge from the armed forces.

B. For a fee of fifteen dollars (\$15.00), which shall be in addition to the regular motor vehicle registration fees, any motor vehicle owner who is a veteran of the armed forces of the United States may apply for the issuance of a special registration plate as defined in Subsection A of this section. No two owners shall be issued identically lettered or numbered plates.

C. The fifteen dollar (\$15.00) fee provided in Subsection B of this section shall be waived for each registration period in which a validating sticker is issued under the provisions of Section 66-3-17 NMSA 1978, in lieu of the issuance of a special armed forces veteran plate.

D. Each armed forces veteran may elect to receive a veteran-designation decal to be placed across the top of the plate, centered above the registration number in lieu of the county-designation decal specified in Subsection H of Section 66-3-14 NMSA 1978. Replacement or different veteran-designation decals shall be available for purchase from the division at a reasonable charge to be set by the director. The department shall furnish the following veteran-designation decals with the armed forces veteran plate to a:

- (1) medal of honor recipient;
- (2) silver star recipient;
- (3) bronze star recipient;
- (4) navy cross recipient;
- (5) distinguished service cross recipient;
- (6) air force cross recipient;
- (7) ex-prisoner of war;
- (8) disabled veteran;
- (9) purple heart veteran;
- (10) atomic veteran;
- (11) Pearl Harbor survivor;

- (12) Navajo code talker;
- (13) Vietnam veteran;
- (14) Korean veteran;
- (15) disabled Korean veteran;
- (16) World War II veteran;
- (17) World War I veteran;
- (18) Grenada veteran;
- (19) Panama veteran; and
- (20) Desert Storm veteran.

E. The revenue from the special registration plates for the armed forces veterans fee imposed by Subsection B of this section shall be distributed as follows:

(1) seven dollars (\$7.00) of the fee collected for each registration plate shall be retained by the division and is appropriated to the division for the manufacture and issuance of the registration plates; and

(2) eight dollars (\$8.00) of the fee collected for each registration plate shall be transferred under the provisions of Subsection F of this section.

F. There is created in the state treasury the "armed forces veterans license fund". A portion of the fee collected for each special registration plate for armed forces veterans, as provided in Subsection E of this section, shall be transferred to the state treasurer for the credit of the fund. Expenditures from the fund shall be made on vouchers issued and signed by the director of veterans' affairs upon warrants drawn by the department of finance and administration for the purpose of expanding services to rural areas of the state, including Native American communities and senior citizen centers. Any unexpended or unencumbered balance remaining at the end of any fiscal year in the armed forces veterans license fund shall not revert to the general fund."

HOUSE BILL 102

CHAPTER 33

**RELATING TO FINANCIAL INSTITUTIONS; AMENDING SECTIONS OF THE
CONSUMER CREDIT BANK ACT.**

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

Section 1

Section 1. Section 58-1A-2 NMSA 1978 (being Laws 1993, Chapter 11, Section 2) is amended to read:

"58-1A-2. DEFINITIONS.--As used in the Consumer Credit Bank Act:

A. "consumer credit bank" means a national bank located in the state or a bank organized pursuant to the laws of this state that has those powers and limitations provided for pursuant to the Consumer Credit Bank Act;

B. "credit card" means an arrangement or loan agreement under which a domestic bank or consumer credit bank gives a borrower the privilege of using a credit card or other credit confirmation or device of any type in transactions out of which debt is created by:

(1) the domestic bank or consumer credit bank honoring a draft or similar order for the payment of money created, authorized, issued or accepted by the borrower; or

(2) the domestic bank or consumer credit bank paying or agreeing to pay the borrower's obligation;

C. "credit card account" means an arrangement between a domestic bank or consumer credit bank and a borrower for the creation of debt pursuant to a credit card and under which:

(1) the domestic bank or consumer credit bank may permit the borrower to create either revolving or nonrevolving debt from time to time;

(2) the unpaid balance of principal of the created debt and the loan, finance or other appropriate charges are debited to the account;

(3) a loan finance charge is computed or an interest rate is imposed upon the outstanding debt balances of the borrower's account from time to time; and

(4) a domestic bank or consumer credit bank is to render bills or statements to the borrower at regular intervals stating the amount that is payable by and due from the borrower on a specified date stated in the bill or statement or, at the option of the borrower but subject to the terms and conditions of the credit card account, stating that the amount may be paid by the borrower in installments;

D. "director" means the director of the financial institutions division of the regulation and licensing department;

E. "domestic bank" means a bank having its principal place of business in this state and chartered under the laws of this state or the United States;

F. except as used in Subsection H of this section, "foreign bank" means a bank chartered under the laws of the United States, any state other than New Mexico or the District of Columbia that has its principal place of business outside of New Mexico;

G. "holding company" means a corporation that controls a domestic, foreign or international bank; and

H. "international bank" means any company organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands, which engages in the business of banking, or any subsidiary or affiliate of any company which engages in the business of banking organized under those laws.

"International bank" includes foreign commercial banks, foreign merchant banks and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries where such foreign institutions are organized or operating."

Section 2

Section 2. Section 58-1A-3 NMSA 1978 (being Laws 1993, Chapter 11, Section 3) is amended to read:

"58-1A-3. ORGANIZATION OF CONSUMER CREDIT BANK.--With the approval of the director, a domestic bank, foreign bank, international bank or holding company may organize, own and control a consumer credit bank in accordance with the following terms and conditions:

A. in connection with the application to organize or to own and control a consumer credit bank, the applicant shall pay to the director a filing fee of six thousand dollars (\$6,000) and a nonrefundable investigation fee of one thousand dollars (\$1,000);

B. the shares of a consumer credit bank shall be owned solely by a domestic bank, foreign bank, international bank or holding company;

C. a consumer credit bank shall accept deposits only at a single location in this state;

D. a consumer credit bank shall maintain capital stock and paid-in surplus of not less than four million dollars (\$4,000,000);

E. a consumer credit bank may engage in the business of soliciting, processing and making loans pursuant to credit card accounts and conducting other

necessarily incidental activities, including the taking of a security interest in any property to secure a loan;

F. a consumer credit bank may accept deposits only of one hundred thousand dollars (\$100,000) or more and only from affiliates of the consumer credit bank or from persons having their principal place of business or residence outside New Mexico; but the limitation provided pursuant to this subsection shall not apply to deposits made for the purpose of security taken pursuant to Subsection E of this section;

G. a consumer credit bank shall, prior to commencing business, obtain and thereafter maintain insurance of its deposits by the federal deposit insurance corporation;

H. a consumer credit bank may not engage in the business of making commercial loans, but may issue credit cards and create credit card accounts for commercial customers;

I. a consumer credit bank shall have no less than twenty-five employees located in this state engaged in credit card activities on or before the first anniversary of its commencement of operations;

J. a consumer credit bank shall provide the following services in this state:

(1) the initial distribution of credit cards or other devices, or both, designed and effective to access credit card accounts;

(2) the preparation of periodic statements of amounts due under credit card accounts; and

(3) the maintenance of financial records reflecting the status of credit card accounts from time to time; and

K. the affairs of a consumer credit bank shall be managed by a board of directors that shall exercise the bank's powers and be responsible for the discharge of the bank's duties. The number of directors, which shall not be less than three and not more than twenty-five, shall be fixed by the bylaws. At least three-fourths of the directors shall be United States citizens."

Section 3

Section 3. Section 58-1A-5 NMSA 1978 (being Laws 1993, Chapter 11, Section 5) is amended to read:

"58-1A-5. CREDIT CARD ACCOUNT--TERMS AND CONDITIONS.--A credit card account between a domestic bank or consumer credit

bank and a borrower, wherever the borrower's place of residence, shall be governed solely by the laws of New Mexico and federal law, where applicable. Unless otherwise expressly agreed in writing by the parties, a credit card account between a consumer credit bank and a borrower shall be governed by the provisions of Sections 56-8-1 through 56-8-30 NMSA 1978. A domestic bank or consumer credit bank may, as provided in the written agreement governing the credit card account, modify the terms or conditions of the credit card account upon prior written notice of the modification as specified by credit card account agreement or by the federal Truth in Lending Act."

Section 4

Section 4. Section 58-1A-6 NMSA 1978 (being Laws 1993, Chapter 11, Section 6) is amended to read:

"58-1A-6. REGULATION OF CONSUMER CREDIT BANKS.--

A. A consumer credit bank organized under the laws of New Mexico shall be subject to the supervision, regulation and examination of the director.

B. The director shall adopt and promulgate rules and regulations implementing the provisions of the Consumer Credit Bank Act, including provisions for the formation and organization of a consumer credit bank."

Section 5

Section 5. Section 58-1A-7 NMSA 1978 (being Laws 1993, Chapter 11, Section 7) is amended to read:

"58-1A-7. SUPERVISION FEES.--

A. Each consumer credit bank shall annually pay to the director a supervision fee, calculated on the basis of total assets as of December 31 of the immediately previous year:

Total assets (000):		Assessment:		
Over	But not over	This amount	Plus	Of excess over (000)
0	200,000	7,500	0.0000250	100,000
200,000	500,000	10,000	0.0006667	200,000
500,000	1,000,000	30,000	0.0000500	500,000
1,000,000	2,000,000	55,000	0.0000400	1,000,000
2,000,000		95,000	0.0000300	2,000,000.

B. The fee shall be paid on or before March 1 of each year. For failure to pay the supervisor fee when due unless excused for cause by the director, the consumer credit bank shall pay to the financial institutions division of the regulation and licensing department one hundred dollars (\$100) for each day of delinquency.

C. The director shall examine the condition of the consumer credit bank. A report of examination shall be sent to the board of directors of the consumer credit bank."

HOUSE BILL 311

CHAPTER 34

RELATING TO ALCOHOLIC BEVERAGES; AUTHORIZING CERTAIN SUNDAY SALES OF ALCOHOLIC BEVERAGES FOR CONSUMPTION OFF THE LICENSED PREMISES; PROVIDING FOR AN ELECTION; AMENDING A SECTION OF THE LIQUOR CONTROL ACT.

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

Section 1

Section 1. Section 60-7A-1 NMSA 1978 (being Laws 1981, Chapter 39, Section 47, as amended) is amended to read:

"60-7A-1. HOURS AND DAYS OF BUSINESS--SUNDAY SALES--CHRISTMAS DAY SALES--SUNDAY SALES FOR CONSUMPTION OFF THE LICENSED PREMISES--ELECTIONS.--

A. Alcoholic beverages shall be sold, served and consumed on licensed premises only during the following hours and days:

(1) on Mondays from 7:00 a.m. until midnight;

(2) on other weekdays from after midnight of the previous day until 2:00 a.m., then from 7:00 a.m. until midnight, except as provided in Subsections D, E and H of this section; and

(3) on Sundays only after midnight of the previous day until 2:00 a.m., except as provided in Subsections C and F of this section; provided, however, nothing in this section shall prohibit the consumption at any time of alcoholic beverages in guest rooms of hotels.

B. Alcoholic beverages shall be sold by a dispenser or a retailer in unbroken packages, for consumption off the licensed premises and not for resale, on

Mondays through Saturdays from 7:00 a.m. until 12:00 a.m. on the following day except as provided in Subsections D, E and H of this section.

C. Subject to the provisions of Subsections F and I of this section, a dispenser, restaurant licensee or club may, upon payment of an additional fee of one hundred dollars (\$100), obtain a permit to sell, serve or permit the consumption of alcoholic beverages by the drink on the licensed premises on Sundays from 12:00 noon until midnight and in those years when December 31 falls on a Sunday from 12:00 noon until 2:00 a.m. of the following day, except as otherwise provided in Subsection F of this section. The permit shall expire on June 30 of each year and may be renewed from year to year upon application for renewal and payment of the required fee. The permit fee shall not be prorated. Sales made pursuant to this subsection or Subsection I of this section shall be called "Sunday sales".

D. Retailers, dispensers, canopy licensees, restaurant licensees, club licensees and governmental licensees or its lessees shall not sell, serve, deliver or allow the consumption of alcoholic beverages on the licensed premises during voting hours on the days of the primary election, general election, elections for officers of a municipality or any other election as prescribed by the rules and regulations of the director.

E. Retailers, dispensers, canopy licensees that were replaced by dispenser's licensees pursuant to Section 60-6B-16 NMSA 1978, restaurant licensees, club licensees and governmental licensees or its lessees shall not sell, serve, deliver or allow the consumption of alcoholic beverages on the licensed premises from 2:00 a.m. on Christmas day until 7:00 a.m. on the day after Christmas, except as permitted pursuant to Subsection H of this section.

F. At the 1984 general election, the secretary of state shall order placed on the ballot in each local option district the question "Shall Sunday sales of alcoholic beverages by the drink for consumption on the licensed premises of licensees be allowed in this local option district?". If the secretary of state determines a need, he may authorize the use of paper ballots for the purpose of the election provided for pursuant to this subsection. Until such election, Sunday sales shall be permitted on the same basis in any local option district as provided under any former act, and the election held at the first general election following the effective date of the Liquor Control Act shall have no effect on whether Sunday sales are permitted in any local option district. If the question is disapproved by a majority of those voting upon the question in the local option district, Sunday sales shall be unlawful in that local option district upon certification of the election returns, and the question shall not again be placed on the ballot in that local option district until:

(1) at least one year has passed; and

(2) a petition is filed with the local governing body bearing the signatures of registered qualified electors of the local option district equal in number to ten percent of the number of votes cast and counted in the local option district for governor in the last preceding general election in which a governor was elected. The signatures on the petition shall be verified by the clerk of the county in which the local option district is situated.

G. The local governing body of a local option district in an eligible county shall:

(1) adopt a resolution within sixty days of April 7, 1989 calling for an election to place on the ballot the question "Shall a retailer or dispenser be allowed to sell or deliver alcoholic beverages at any time from a drive-up window?";

(2) arrange for the election to be held within sixty days after the date the resolution is adopted; and

(3) ensure that the election is called, conducted, counted and canvassed in the manner provided by law for elections within the county.

As used in this subsection, "eligible county" means any county that, according to motor vehicle statistics reported to the state highway and transportation department during the years 1985 and 1986, convicted more than twenty-five persons for each one thousand licensed drivers of driving while intoxicated offenses.

H. On and after July 1, 1989, dispensers, canopy licensees that were replaced by dispenser's licensees pursuant to Section 60-6B-16 NMSA 1978, restaurant licensees, club licensees and governmental licensees or lessees of these licensees may sell, serve or allow the consumption of beer and wine with meals on licensed premises from noon until 10:00 p.m. on Christmas day, except in a local option district in which, pursuant to petition and election under this subsection, a majority of the voters voting on the question votes against continuing such sales or consumption on Christmas day. An election shall be held on the question of whether to continue to allow the sale, service or consumption of beer and wine with meals on licensed premises from noon until 10:00 p.m. on Christmas day in a local option district, if a petition requesting the governing body of that district to call the election is signed by at least ten percent of the registered voters of the district and is filed with the clerk of the governing body of the district. Upon verification by the clerk that the petition contains the required number of signatures of registered voters, the governing body shall adopt a resolution calling an election on the question of allowing the sale, service or consumption of beer and wine with meals on licensed premises from noon until 10:00 p.m. on Christmas day. The election shall be held within sixty days after the date the petition is verified, or it may be held in conjunction with a regular election of the governing body if that election occurs within sixty days of such verification. The election shall be called, conducted, counted and canvassed in substantially the same manner as provided for general elections in the county under the Election Code or for special municipal elections in a municipality

under the Municipal Election Code. If a majority of the voters voting on the question votes against continuing the sale, service or consumption of beer and wine with meals on licensed premises from noon until 10:00 p.m. on Christmas day, then such sales and consumption shall be prohibited. If a majority of the voters voting on the question votes to allow continued sale, service and consumption of beer and wine with meals on licensed premises from noon until 10:00 p.m. on Christmas day, then such sales and consumption shall be allowed to continue. The question then shall not be submitted again to the voters within two years of the date of the last election on the question.

I. Notwithstanding the provisions of Subsection F of this section, any Indian tribe or pueblo whose lands are wholly situated within the state that has by statute, ordinance or resolution elected to permit the sale, possession or consumption of alcoholic beverages on lands within the territorial boundaries of the tribe or pueblo may, by statute, ordinance or resolution of the governing body of the Indian tribe or pueblo, permit Sunday sales by the drink on the licensed premises of licensees on lands within the territorial boundaries of the tribe or pueblo; provided that a certified copy of such enactment is filed with the office of the director and of the secretary of state.

J. Subject to the provisions of Subsection K of this section, a dispenser or retailer, upon payment of an additional fee of one hundred dollars (\$100), may obtain a permit to sell alcoholic beverages in unbroken packages for consumption off the licensed premises on Sundays from 12:00 noon until midnight, and in those years when December 31 falls on a Sunday, from 12:00 noon on December 31 until 2:00 a.m. of the following day. The permit shall expire on June 30 of each year and may be renewed from year to year upon application for renewal and payment of the required fee. The permit fee shall not be prorated. Sales made pursuant to the provisions of this subsection shall be called "Sunday package sales".

K. If a petition requesting the governing body of a local option district to call an election on the question of continuing to allow sales of alcoholic beverages in unbroken packages for consumption off the licensed premises on Sundays is filed with the clerk of the governing body, and that petition is signed by at least ten percent of the number of registered voters of the local option district, and the clerk of the governing body verifies the petition signatures, the governing body shall adopt a resolution calling an election on the question. The election shall be held within sixty days of the date the petition is verified, or it may be held in conjunction with a regular election of the governing body, if the regular election occurs within sixty days of the petition verification. The election shall be called, conducted, counted and canvassed substantially in the manner provided by law for general elections within a county or special municipal elections within a municipality. If a majority of the voters of the local option district voting in the election votes to allow the sale of alcoholic beverages in unbroken packages for consumption off the licensed premises, then those sales shall continue to be allowed. If a majority of the voters of the local option district voting in the election votes not to allow the Sunday sales, then those Sunday sales shall be prohibited commencing the first Sunday after the results of the election are certified.

Following the election, the question of allowing the Sunday sales shall not be submitted again to the voters within two years of the date of the last election on the question."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE BILL 176

CHAPTER 35

RELATING TO EDUCATION; ENACTING THE LEGISLATIVE ENDOWMENT SCHOLARSHIP ACT; MAKING AN APPROPRIATION.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Legislative Endowment Scholarship Act".

Section 2

Section 2. PURPOSE.--The purpose of the Legislative Endowment Scholarship Act is to encourage New Mexico students with financial need to obtain a baccalaureate degree at a public post-secondary educational institution in New Mexico.

Section 3

Section 3. DEFINITIONS.--As used in the Legislative Endowment Scholarship Act:

A. "commission" means the commission on higher education; and

B. "student" means a resident of New Mexico who is enrolled or will be enrolled, at the time the scholarship is awarded, in a public post-secondary educational institution in New Mexico.

Section 4

Section 4. CONDITIONS FOR ELIGIBILITY.--A legislative endowment scholarship may be awarded to any individual who:

A. has complied with all the rules, regulations and policies adopted by the commission pursuant to the Legislative Endowment Scholarship Act;

B. is a resident of New Mexico for the purpose of tuition payment;

C. is a citizen of the United States or has a permanent resident visa;

D. maintains a minimum cumulative grade point average of 2.5 on a scale of 4.0 in the immediately preceding semester;

E. has not earned a baccalaureate degree and is enrolled or will be enrolled, at the time the scholarship is awarded, at least half-time in a public post-secondary educational institution in New Mexico; and

F. has demonstrated financial need in accordance with rules, regulations and policies adopted by the commission pursuant to the Legislative Endowment Scholarship Act.

Section 5

Section 5. SCHOLARSHIP AUTHORIZED--ADMINISTRATION--PREFERENCE IN SCHOLARSHIP AWARDS.--

A. The commission shall administer the Legislative Endowment Scholarship Act and shall adopt all rules, regulations and policies necessary to administer that act.

B. Scholarships shall be awarded to qualified applicants. Qualifications shall be determined by the commission pursuant to its adopted rules, regulations and policies.

C. Preference in awarding scholarships shall be to qualified applicants who are returning students or transfer students from public two-year post-secondary educational institutions.

Section 6

Section 6. DURATION OF SCHOLARSHIP.--Each scholarship is for a period of one academic year. A scholarship may be renewed until the award recipient has received four consecutive annual scholarship awards or until the student graduates from an eligible four-year institution, whichever occurs first.

Section 7

Section 7. TERMINATION OF SCHOLARSHIP.--A scholarship is terminated upon occurrence of one or more of the following:

A. withdrawal of the award recipient from the institution or failure to remain at least a half-time student;

B. failure of the award recipient to achieve satisfactory academic progress;
or

C. substantial noncompliance by the award recipient with the Legislative Endowment Scholarship Act or the rules, regulations or policies adopted by the commission pursuant to that act.

Section 8

Section 8. FUND CREATED.--The "legislative endowment scholarship fund" is created in the state treasury. Money in the fund is appropriated to the commission to carry out the purposes of the Legislative Endowment Scholarship Act. Money appropriated to the legislative endowment scholarship fund shall not be expended but shall be invested by the commission in coordination with the state investment council and state treasurer's office. Income earned from investment of the fund shall be expended by the commission for the purpose of providing legislative endowment scholarships to students at two-year public post-secondary educational institutions pursuant to the Legislative Endowment Scholarship Act.

Section 9

Section 9. APPROPRIATION -- CHANGING PURPOSE OF PRIOR APPROPRIATION--EXTENDING THE EXPENDITURE PERIOD.--One million five hundred thousand dollars (\$1,500,000) appropriated to the commission on higher education to provide merit scholarships to students attending two-year public post-secondary educational institutions pursuant to Subparagraph (g) of Paragraph (4) of Subsection JJ of Section 7 of Chapter 147 of Laws 1994 shall not be expended for that purpose but is appropriated to the legislative endowment scholarship fund for investment pursuant to the provisions of the Legislative Endowment Scholarship Act and shall not revert at the end of the eighty-fourth fiscal year but shall remain to the credit of the fund.

HOUSE BILL 619

CHAPTER 36

RELATING TO TAXATION; MAKING PERMANENT GROSS RECEIPTS AND
COMPENSATING TAX DEDUCTIONS FOR SALE AND USE OF CERTAIN JET FUEL;
PROVIDING FOR DISTRIBUTION OF REVENUES.

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

Section 1

Section 1. That version of Section 7-1-6.7 NMSA 1978 (being Laws 1994, Chapter 5, Section 2, as amended) that is to become effective on August 1, 1995 is amended to read:

"7-1-6.7. DISTRIBUTIONS--STATE AVIATION FUND.--

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state aviation fund in an amount equal to three and fifty-nine hundredths percent of the gross receipts attributable to the sale of fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state aviation fund in an amount equal to twenty-six hundredths of one percent of gasoline taxes, exclusive of penalties and interest, collected pursuant to the Gasoline Tax Act."

Section 2

Section 2. REPEAL.--Laws 1993, Chapter 364, Section 4 is repealed.

HOUSE BILL 69

CHAPTER 37

RELATING TO TELEMARKETING; ENACTING THE FRAUDULENT TELEMARKETING ACT; PRESCRIBING PENALTIES.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Fraudulent Telemarketing Act".

Section 2

Section 2. PURPOSE.--The purpose of the Fraudulent Telemarketing Act is to protect consumers from fraudulent telemarketing.

Section 3

Section 3. DEFINITIONS.--As used in the Fraudulent Telemarketing Act:

A. "telemarketing" means:

(1) being employed by or associating with any company, organization, sole proprietorship or economic venture that uses the telephone on a regular basis as a primary instrument to obtain money from the people to whom information is transmitted by telephone communication; or

(2) representing oneself to a person from whom money is requested as being associated with any company, organization, sole proprietorship or economic venture that can be reasonably understood as using the telephone on a regular basis as a primary instrument to obtain money from the people to whom information is transmitted by telephone communication; and

B. "telephone communication" means any communication by words, fax, computer modem, video or other type of transmission that is carried in whole or in part through the local, long distance or cellular telephone network.

Section 4

Section 4. FRAUDULENT TELEMARKETING--PENALTIES.--Any person who knowingly and willfully engages in telemarketing to or from a telephone located in New Mexico with the intent to embezzle or to obtain money, property or any thing of value by fraudulent pretenses, representations or promises in the course of a telephone communication, when:

A. the money, property or thing has a value of less than two hundred fifty dollars (\$250), is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978;

B. the money, property or thing has a value of two hundred fifty dollars (\$250) or more but less than two thousand five hundred dollars (\$2,500), is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

C. the money, property or thing has a value of two thousand five hundred dollars (\$2,500) or more but less than twenty thousand dollars (\$20,000), is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; or

D. the money, property or thing has a value of twenty thousand dollars (\$20,000) or more, is guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

Section 5

Section 5. SEVERABILITY.--If any part of the Fraudulent Telemarketing Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 6

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE BILL 117

CHAPTER 38

RELATING TO PERSONAL PROPERTY; ENACTING THE RENTAL-PURCHASE AGREEMENT ACT; REGULATING AGREEMENTS FOR THE RENTAL AND PURCHASE OF CERTAIN PERSONAL PROPERTY; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. SHORT TITLE.--Sections 1 through 12 of this act may be cited as the "Rental-Purchase Agreement Act".

Section 2

Section 2. DEFINITIONS.--As used in the Rental-Purchase Agreement Act:

A. "advertisement" means a commercial message in any medium that solicits a consumer to enter a rental-purchase agreement;

B. "cash sale price" means the price stated in a rental-purchase agreement for which the lessor would have sold and the consumer would have bought the goods that are the subject matter of a rental-purchase agreement if the transaction had been a sale for cash and may include any taxes and charges for delivery, installation, servicing, repairs, alterations or improvements;

C. "consumer" means an individual who rents goods under a rental-purchase agreement to be used primarily for personal, family or household purposes;

D. "consummation" means the date on which a consumer enters a rental-purchase agreement;

E. "goods" means personal property of which a consumer acquires use under a rental-purchase agreement;

F. "lessor" means a person who regularly provides the use of goods under rental-purchase agreements and to whom rental payments are initially payable on the face of the rental-purchase agreement; and

G. "rental-purchase agreement" means an agreement for the use of goods by an individual for personal, family or household purposes, for an initial period of four months or less, that is automatically renewable with each payment after the initial period, that does not obligate or require the consumer to continue renting or using the goods beyond the initial period and that permits the consumer to become the owner of the goods.

Section 3

Section 3. EXEMPTED TRANSACTIONS--RELATIONSHIP TO OTHER LAWS.--

A. The Rental-Purchase Agreement Act does not apply to the following:

(1) rental-purchase agreements made primarily for business, commercial or agricultural purposes;

(2) a lease of a safe deposit box;

(3) a lease or bailment of personal property that is incidental to the lease of real property and provides that the consumer has no option to purchase the leased property;

(4) a lease of a "motor vehicle", as defined in Subsection C of Section 56-1-1 NMSA 1978; or

(5) a lease of a "mobile home", as defined in Subsection D of Section 56-1-1 NMSA 1978.

B. Rental-purchase agreements are not governed by the provisions of:

(1) the Uniform Commercial Code;

(2) Chapter 56, Articles 1 and 8 NMSA 1978; or

(3) Chapter 58, Article 15 NMSA 1978.

Section 4

Section 4. GENERAL REQUIREMENTS OF RENTAL-PURCHASE AGREEMENTS.--

A. Each rental-purchase agreement shall be in writing, dated, signed by the consumer and lessor and completed as to all essential provisions.

B. The printed or typed portion of the rental-purchase agreement, other than instructions for completion, shall be in a size equal to at least eight-point type. The rental-purchase agreement shall be designated "rental-purchase agreement".

C. The lessor shall deliver to the consumer, or mail to him at his address shown on the rental-purchase agreement, a copy of the agreement as accepted by the consumer. Until the lessor does so, a consumer who has not received delivery of the rented goods shall have the right to rescind his rental-purchase agreement and receive a refund of all payments made. An acknowledgment by the consumer of delivery of a copy of the rental-purchase agreement shall be in a size equal to at least ten-point bold type and, if contained in the agreement, shall appear directly above the consumer's signature.

D. The rental-purchase agreement shall contain the names of the lessor and consumer, the lessor's business address and the residence or other address of the consumer as specified by the consumer.

E. The lessor shall disclose to the consumer the information required by Section 5 of the Rental-Purchase Agreement Act on the face of the rental-purchase agreement above the line for the consumer's signature. The disclosures shall be made at or before consummation of the rental-purchase agreement. In a transaction involving more than one lessor, only one lessor need make the disclosures, but all lessors shall be bound by the disclosures. If a disclosure becomes inaccurate as a result of any act, occurrence or any agreement by the consumer after delivery of the required disclosures, the resulting inaccuracy is not a violation of the Rental-Purchase Agreement Act.

F. A lessor who provides an advertisement in any language other than English shall have rental-purchase agreements printed in each non-English language of the advertisement and shall make those rental-purchase agreements available to consumers.

Section 5

Section 5. DISCLOSURES.--

A. For each rental-purchase agreement, the lessor shall disclose in the agreement the following items, as applicable:

(1) whether the periodic payment is weekly, monthly or otherwise, the dollar amount of each payment and the total number and total dollar amount of all periodic payments necessary to acquire ownership of the goods;

(2) a statement that the consumer will not own the goods until the consumer has paid the total amount necessary to acquire ownership;

(3) a statement advising the consumer whether the consumer is liable for loss or damage to the goods and, if so, a statement that the liability will not exceed the fair market value of the goods as of the time they are lost or damaged;

(4) a brief description of the goods, sufficient to identify the goods to the consumer and the lessor, including an identification number, if applicable, and a statement indicating whether the goods are new or used. A statement that indicates new goods are used is not a violation of the Rental-Purchase Agreement Act;

(5) a statement of the cash sale price of the goods, but if one rental-purchase agreement involves a lease of two or more items as a set, a statement of the aggregate cash price of all items shall satisfy this requirement;

(6) the total of initial payments paid or required at or before consummation of the rental-purchase agreement or delivery of the goods, whichever is later;

(7) a statement that the total amount of payments does not include other charges or fees and a statement of all other charges or fees;

(8) a statement clearly summarizing the terms of the consumer's option to purchase, including a statement that the consumer has the right to exercise an early purchase option, and the price, formula or method for determining the early purchase price;

(9) a statement identifying the party responsible for maintaining or servicing the goods while they are being rented, together with a description of that responsibility and a statement that if any part of a manufacturer's express warranty covers the goods at the time the consumer acquires ownership of them, it shall be transferred to the consumer, if allowed by the terms of the warranty;

(10) a statement that the consumer may terminate the rental-purchase agreement without penalty by voluntarily surrendering or returning the goods in good repair, reasonable wear and tear excepted, along with any past due rental payments upon expiration of any rental period;

(11) notice of the right to reinstate a rental-purchase agreement, as provided in the Rental-Purchase Agreement Act; and

(12) the following notice printed or typed in a size equal to at least ten-point bold type:

"NOTICE TO THE CONSUMER

Do not sign this agreement before you read it or if it contains blank spaces. You are entitled to a copy of the agreement you sign.

B. With respect to matters governed by the federal Consumer Credit Protection Act, 15 U.S.C. Sections 1601 et seq., compliance with that act satisfies the requirements of this section."

Section 6

Section 6. PROHIBITED PROVISIONS.--A rental-purchase agreement shall not contain:

- A. a confession of judgment;
- B. a negotiable instrument;
- C. a security interest or any other claim of a property interest in any property of the consumer;
- D. a wage assignment;
- E. a waiver by the consumer of claims or defenses;
- F. a provision authorizing the lessor or a person acting on the lessor's behalf to enter upon the consumer's premises unlawfully or to commit any breach of the peace in the repossession of goods;
- G. a provision requiring the purchase of insurance or a liability damage waiver from the lessor for goods that are the subject of the rental-purchase agreement;
- H. a provision that mere failure to return goods constitutes probable cause for a criminal action;
- I. a provision requiring the consumer to make a payment in addition to regular periodic payments in order to acquire ownership of the goods or a provision requiring the consumer to make periodic payments totaling more than the dollar amount necessary to acquire ownership as disclosed pursuant to Section 5 of the Rental-Purchase Agreement Act;
- J. a provision for more than one reinstatement fee on any one periodic payment, regardless of the period of time during which it remains unpaid; or
- K. a provision for a late charge or any other type of charge or penalty for reinstating a rental-purchase agreement, other than a reinstatement fee; however, a lessor may use the term "late charge" or a similar term to refer to a reinstatement fee.

Section 7

Section 7. REINSTATEMENT.--

A. A consumer who fails to make a timely rental payment may reinstate the rental-purchase agreement without losing any rights or options that exist under the agreement by the payment of the following charges within five days of the renewal date of an agreement with monthly periodic payments or within two days of the renewal date of an agreement requiring periodic payments more frequently than monthly:

- (1) all past due rental charges;
- (2) if the goods have been picked up, the reasonable costs of pickup and redelivery; and
- (3) any applicable reinstatement fee.

B. If a consumer has paid less than two-thirds of the total of payments necessary to acquire ownership of the goods and has returned or voluntarily surrendered the goods within seven days of the renewal date, other than through judicial process, the consumer may reinstate the rental-purchase agreement during a period of not less than twenty-one days after the date of the return of the goods.

C. If a consumer has paid two-thirds or more of the total of payments necessary to acquire ownership of the goods and has returned or voluntarily surrendered the goods within seven days of the renewal date, other than through judicial process, the consumer may reinstate the rental-purchase agreement during a period of not less than thirty days after the date of the return of the goods.

D. Nothing in this section shall prevent a lessor from attempting to repossess property during the reinstatement period, but such a repossession shall not affect the consumer's right to reinstate. Upon reinstatement, the lessor shall provide the consumer with the same goods, if available, or with substitute goods of comparable quality and condition.

Section 8

Section 8. RECEIPTS.--Upon request by the consumer, a lessor shall provide the consumer with a written receipt for each payment made.

Section 9

Section 9. RENEGOTIATIONS AND EXTENSIONS.--

A. A renegotiation occurs when any term of a rental-purchase agreement that is required to be disclosed by Section 5 of the Rental-Purchase Agreement Act is

changed by agreement between the lessor and consumer. A renegotiation creates a new rental-purchase agreement requiring the lessor to give all the disclosures required by Section 5 of the Rental-Purchase Agreement Act.

B. A renegotiation shall not include:

(1) reinstatement of a rental-purchase agreement in accordance with Section 7 of the Rental-Purchase Agreement Act;

(2) a lessor's waiver or failure to assert any claim against the consumer;

(3) a deferral, extension or waiver of a portion of a periodic payment or of one or more periodic payments; or

(4) a change, made at the consumer's request, of the day of the week or month on which periodic payments are to be made.

Section 10

Section 10. ADVERTISING.--

A. An advertisement that refers to or states the dollar amount of a periodic payment and the right to acquire ownership of a specific item shall also clearly and conspicuously state:

(1) that the transaction advertised is a rental-purchase agreement;

(2) the total number and total amount of periodic payments necessary to acquire ownership of the item; and

(3) that the consumer acquires no ownership rights in the item unless the total amount necessary to acquire is paid.

B. Any owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable for failure to comply with the provisions of this section.

C. The provisions of Subsection A of this section shall not apply to an advertisement that does not refer to or state the amount of any payment or that is published in the yellow pages of a telephone directory or in any similar directory of business.

D. Every item displayed or offered under a rental-purchase agreement shall bear a tag or card that clearly and conspicuously indicates in Arabic numerals each of the following:

- (1) the cash price of the item;
- (2) the amount of the periodic payment; and
- (3) the total number and total amount of periodic payments necessary to acquire ownership.

E. An advertisement in any language other than English shall contain disclosures as required by this section in the non-English language.

Section 11

Section 11. ENFORCEMENT--REMEDIES--LIMITATIONS.--

A. A lessor who fails to comply with the requirements of the Rental-Purchase Agreement Act is liable to the consumer damaged thereby in an amount equal to:

(1) the greater of the actual damages sustained by the consumer as a result of the lessor's failure to comply or twenty-five percent of the total of payments necessary to acquire ownership, but not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000); and

(2) the costs of the action and reasonable attorneys' fees as determined by the court.

B. A consumer may not take any action to offset the amount for which a lessor is potentially liable under Subsection A of this section against any amount owed by the consumer, unless the amount of the lessor's liability has been determined by judgment of a court of competent jurisdiction in an action in which the lessor was a party. This subsection does not bar a consumer then in default on an obligation from asserting a violation of the Rental-Purchase Agreement Act as an original action or as a defense or counterclaim to an action brought by a lessor against the consumer.

C. The remedies of a consumer, pursuant to the provisions of this section, are in addition to any other rights or remedies available to a consumer pursuant to applicable laws or regulations.

D. No action under this section may be brought in any court of competent jurisdiction more than one year after the date the consumer made his last rental payment or more than one year after the date of the occurrence of the violation that is the subject of the suit, whichever is later.

Section 12

Section 12. LESSOR'S DEFENSES.--

A. If a lessor establishes by a preponderance of evidence that a violation of the Rental-Purchase Agreement Act was unintentional or the result of a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such errors, the lessor shall not be subject to the provisions of Section 11 of the Rental-Purchase Agreement Act and the validity of the transaction is not affected. Examples of bona fide errors are clerical errors, calculation errors, errors due to unintentionally improper computer programming or data entry and printing errors, but do not include errors of legal judgment with respect to a lessor's obligations under the Rental-Purchase Agreement Act.

B. A lessor is not subject to the provisions of Section 11 of the Rental-Purchase Agreement Act if, within sixty days after discovering a failure to comply with a requirement of the Rental-Purchase Agreement Act and prior to the institution of an action for noncompliance and prior to the receipt of written notice of the noncompliance from the consumer, the lessor notifies the consumer of the noncompliance and makes whatever adjustments in the appropriate account are necessary to correct the noncompliance.

C. No provision of Section 11 of the Rental-Purchase Agreement Act applies to any action done or omitted in good faith in conformity with some provision of that act, notwithstanding that after the action or omission has occurred the provision is amended, rescinded or determined by judicial or other competent authority to be invalid for any reason.

Section 13

Section 13. Section 57-12-21 NMSA 1978 (being Laws 1987, Chapter 212, Section 1) is amended to read:

"57-12-21. DOOR-TO-DOOR SALES--CONTRACTS--REQUIREMENTS--PROHIBITIONS.--

A. In connection with any door-to-door sale, it constitutes an unfair or deceptive trade practice for any seller to:

(1) fail to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution that is in the same language as that principally used in the oral sales presentation and that shows the date of the transaction and contains the name and address of the seller and, in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of ten points, a statement in substantially the following form:

"You, the buyer, may cancel this transaction at any time prior to midnight of the

third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.";

(2) fail to furnish each buyer, at the time he signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION", that shall be attached to the contract or receipt and easily detachable and that shall contain in ten-point bold face type the following information and statements in the same language as that used in the contract:

"NOTICE OF CANCELLATION

date

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale and any negotiable instrument executed by you will be returned within ten business days following receipt by the seller of your cancellation notice and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within twenty days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice or send a telegram to:

(name of seller)

at _____
(address of seller's place of business)

not later than midnight of _____
(date)

I hereby cancel this transaction.

(date)

(buyer's signature)";

(3) fail, before furnishing copies of the notice of cancellation to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation;

(4) include in any door-to-door contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this section, including specifically his right to cancel the sale in accordance with the provisions of this section;

(5) fail to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel;

(6) misrepresent in any manner the buyer's right to cancel;

(7) fail or refuse to honor any valid notice of cancellation by a buyer and, within ten business days after the receipt of such notice, fail to:

(a) refund all payments made under the contract or sale;

(b) return in substantially as good condition as when received by the seller any goods or property traded in; and

(c) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction;

(8) negotiate, transfer, sell or assign any notice or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased; and

(9) fail to notify the buyer, within ten business days of receipt of his notice of cancellation, whether the seller intends to repossess or to abandon any shipped or delivered goods.

B. The cancellation period provided for in this section as applied to telephone initiated sales shall not begin until the buyer has been informed of his right to cancel and has been provided with copies of the notice of cancellation.

C. For the purposes of this section:

(1) "business day" means any calendar day except Sunday or the following business holidays:
new year's day, Washington's birthday, memorial day, independence day, labor day, Columbus day, veterans' day, thanksgiving day, Christmas day, Martin Luther King, Jr.'s birthday and any other legal public holiday of the state of New Mexico or the United States;

(2) "consumer goods or services" means goods or services other than perishable goods or agricultural products purchased, leased or rented primarily for personal, family or household purposes, including courses of instruction or training, regardless of the purpose for which they are taken;

(3) "door-to-door sale" means a sale, lease or rental of consumer goods or services with a purchase price of twenty-five dollars (\$25.00) or more, whether under single or multiple contracts, in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller. A door-to-door sale includes seller initiated telephone sales. A door-to-door sale does not include a transaction:

(a) made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis;

(b) in which the consumer is accorded the right of rescission by the provisions of the Consumer Credit Protection Act, 15 U.S.C. 1635, or regulations issued pursuant thereto;

(c) in which the buyer has initiated the contract and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days;

(d) in which the buyer has initiated the contract and specifically requested the seller to visit his home for the purpose of repairing or performing maintenance upon the buyer's personal property. If in the course of such a visit the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the

repairs, the sale of those additional goods or services would not fall within this exclusion;

(e) pertaining to the sale or rental of real property, to the sale of insurance or to the sale of securities or commodities by a broker-dealer registered with the securities and exchange commission; or

(f) in which a consumer acquires the use of goods under the terms of a rental-purchase agreement made pursuant to the provisions of the Rental-Purchase Agreement Act, with an initial rental period of one week or less, by placing a telephone call to a lessor and by requesting that specific goods be delivered to the consumer's residence or such other place as the consumer directs and consummation of the rental-purchase agreement occurs after the goods are delivered;

(4) "place of business" means the main or permanent branch office or local address of a seller;

(5) "purchase price" means the total price paid or to be paid for the consumer goods or services, including all interest and service charges; and

(6) "seller" means any person, partnership, corporation or association engaged in the door-to-door sale of consumer goods or services."

Section 14

Section 14. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE BILL 648

CHAPTER 39

RELATING TO TELECOMMUNICATIONS; AMENDING SECTIONS OF THE TELECOMMUNICATIONS ACCESS ACT.

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

Section 1

Section 1. Section 63-9F-4 NMSA 1978 (being Laws 1993, Chapter 54, Section 4) is amended to read:

"63-9F-4. SPECIALIZED TELECOMMUNICATIONS EQUIPMENT PROGRAM ESTABLISHED.--The commission shall design, establish and administer a program for

providing specialized telecommunications equipment to impaired individuals. The commission shall adopt regulations for the program that:

A. shall include eligibility requirements for participation in the program, which requirements:

(1) shall provide financial eligibility conditions; and

(2) shall include provisions for determining eligibility thresholds based on:

(a) the quality and severity of the individual's impairment;

(b) the availability of current telecommunications services at the individual's place of residence;

(c) New Mexico residency; and

(d) minimum age;

B. establish detailed procedures and forms to be used by impaired individuals wishing to apply for participation in the program;

C. establish minimum training requirements for all applicants receiving telecommunications equipment regarding etiquette and use of telecommunications equipment;

D. include a statewide survey and information gathering component to identify the extent of the hearing and speech impairment problem in the state, the number of impaired individuals in the state and the existence and availability of any specialized telecommunications equipment; and

E. include an outreach component designed to provide information about and facilitate access to the program for impaired individuals."

Section 2

Section 2. Section 63-9F-5 NMSA 1978 (being Laws 1993, Chapter 54, Section 5) is amended to read:

"63-9F-5. IMPLEMENTATION DATE REQUIREMENT FOR SPECIALIZED TELECOMMUNICATIONS EQUIPMENT PROGRAM.--The commission may implement a specialized telecommunications equipment program no later than July 1, 1997."

Section 3

Section 3. Section 63-9F-8 NMSA 1978 (being Laws 1993, Chapter 54, Section 8) is amended to read:

"63-9F-8. COMMISSION DUTIES.--The commission shall advise the department concerning the administration of the specialized telecommunications equipment program and the telecommunications relay system. The commission shall:

A. create policies, procedures and regulations governing the administration of the specialized telecommunications equipment program and review and recommend policies, procedures and regulations governing the administration of the telecommunications relay system;

B. assist the department in obtaining certification from the federal communications commission that the telecommunications relay system is in compliance with applicable federal rules and regulations;

C. review and comment upon the department's budget request for administration of the specialized telecommunications equipment program and the telecommunications relay system;

D. monitor expenditures for the specialized telecommunications equipment program and the telecommunications relay system;

E. monitor the quality of the telecommunications relay system and the satisfaction of its users;

F. identify the need for specialized telecommunications equipment by impaired individuals;

G. identify the problems that impaired individuals have in acquiring specialized telecommunications equipment;

H. obtain funding for the specialized telecommunications equipment program; and

I. perform other duties necessary to advise the department in the administration of the provisions of the Telecommunications Access Act."

HOUSE BILL 654

CHAPTER 40

RELATING TO INDIAN AFFAIRS; REPEALING CERTAIN SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Section 1

Section 1. REPEAL.--Sections 31-10-1 through 31-10-3 NMSA 1978 (being Laws 1864-1865, Chapter 21, Sections 1 and 2 and Laws 1889, Chapter 140, Section 1, as amended) are repealed.

Section 2

Section 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 499 WITH EMERGENCY CLAUSE
SIGNED APRIL 5, 1995

CHAPTER 41

EXPANDING THE PURPOSE FOR WHICH AN APPROPRIATION WAS MADE FROM THE EMPLOYMENT SECURITY DEPARTMENT FUND FOR AN OFFICE IN LUNA COUNTY; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1

Section 1. EMPLOYMENT SECURITY DEPARTMENT FUND-- PROPERTY CONTROL DIVISION OF THE GENERAL SERVICES DEPARTMENT--EXPANSION OF PURPOSE--APPROPRIATION.--Laws 1994, Chapter 148, Section 72 is amended to read:

"Section 72. APPROPRIATIONS--CHANGE IN PURPOSE-- EXTENDING EXPENDITURE PERIOD.--Ninety-seven thousand dollars (\$97,000) from the appropriation from the employment security department fund to the property control division of the general services department pursuant to Paragraph (3) of Subsection A of Section 1 of Chapter 85 of Laws 1992 shall not be used for its original purpose but is appropriated to the property control division of the general services department for acquisition of, remodeling or renovating an existing building for an office for the labor department in the Deming area in Luna county. Additionally, the period of time in which that appropriation may be expended is extended through fiscal year 1996. Any unexpended or unencumbered balance at the end of fiscal year 1996 shall revert to the employment security department fund."

Section 2

Section 2. APPROPRIATION.--Seventy-three thousand dollars (\$73,000) is appropriated from the employment security department fund to the property control division of the general services department for expenditure in fiscal years 1995 and 1996 for the purpose of acquiring, remodeling and renovating an existing building for an office for the labor department in the Deming area in Luna county. Any unexpended or unencumbered balance remaining at the end of fiscal year 1996 shall revert to the employment security department fund.

Section 3

Section 3. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 1043 WITH EMERGENCY CLAUSE
SIGNED APRIL 5, 1995

CHAPTER 42

RELATING TO INCOME TAXATION; PROVIDING AN EXEMPTION FOR INDIANS, THEIR INDIAN SPOUSES AND INDIAN DEPENDENTS EARNING INCOME ON TRIBAL LANDS IN NEW MEXICO.

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

Section 1

Section 1. EXEMPTION--EARNINGS BY INDIANS, THEIR INDIAN SPOUSES AND INDIAN DEPENDENTS ON INDIAN LANDS.--Income earned by a member of a New Mexico federally recognized Indian nation, tribe, band or pueblo, his spouse or dependent, who is a member of a New Mexico federally recognized Indian nation, tribe, band or pueblo, is exempt from state income tax if the income is earned from work performed within and the member, spouse or dependent lives within the boundaries of the Indian member's or the spouse's reservation or pueblo grant or within the boundaries of lands held in trust by the United States for the benefit of the member or spouse or his nation, tribe, band or pueblo, subject to restriction against alienation imposed by the United States.

Section 2

Section 2. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 1995.

HOUSE BILL 39

CHAPTER 43

RELATING TO CORRECTIONAL FACILITIES; AMENDING A SECTION OF THE NMSA 1978 PERTAINING TO USE OF THE CORRECTIONS DEPARTMENT BUILDING FUND.

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

Section 1

Section 1. Section 33-1-19 NMSA 1978 (being Laws 1990 (1st S.S.), Chapter 5, Section 2) is amended to read:

"33-1-19. USE OF FUND.--The corrections department building fund shall be used by the corrections department solely for the purpose of acquiring, by lease, loan, issuance of bonds or other means, a corrections department central office complex, a personnel training academy, a penitentiary, a prison, a special incarceration alternative facility or any combination of these facilities."

HOUSE BILL 238

CHAPTER 44

RELATING TO MOTOR VEHICLES; CHANGING CERTAIN PROVISIONS FOR REGISTRATION OF VEHICLES; AMENDING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

Section 1

Section 1. Section 66-3-17 NMSA 1978 (being Laws 1978, Chapter 35, Section 37, as amended) is amended to read:

"66-3-17. REGISTRATION PLATE--REPLACEMENT OF PLATE.--

A. Succeeding registration renewals of the registration plate issued under Section 66-3-14 NMSA 1978 shall cause the division to issue a validating sticker only, except as provided in Subsections B and C of this section.

B. The person to whom the plate is issued may, at any time, apply for the issuance of a duplicate or replacement plate, and upon the surrender of the registration plate he then has, along with the payment of a reasonable fee set by the director that

will cover the cost of the production and distribution of the plate, the applicant shall be issued a duplicate or replacement plate.

C. Any peace officer may, upon discovering that the registration plate of any vehicle is illegible because of wear or damage or other cause, issue a citation to the owner or operator of the vehicle. The citation shall provide that the owner shall, within thirty days from the date of the citation, apply for and obtain a duplicate or replacement plate from the division."

Section 2

Section 2. Section 66-3-19 NMSA 1978 (being Laws 1978, Chapter 35, Section 39, as amended) is amended to read:

"66-3-19. RENEWAL OF REGISTRATION--STAGGERED PERIOD FOR VEHICLES--EXCEPTION FOR MANUFACTURED HOMES AND FREIGHT TRAILERS--LATE REGISTRATION.--

A. The department, in order to operate a more uniform system of vehicle registration, is authorized for certain or all vehicles to:

(1) prorate registration fees by quarterly increments for periods in excess of twelve months, but not exceeding twenty-four months;

(2) determine the specific registered vehicle owners and the numbers of these to be assigned to each registration period in order to maintain the system;

(3) notify each registered vehicle owner by mail at the last known address within an appropriate period prior to the expiration of the current registration period. The notice shall include a renewal-of-registration application form specifying the amount of registration fees due and the specific dates of the registration period covered by the renewal application;

(4) provide for the retention of registration plates;

(5) provide for the issuance of validating stickers to be affixed either to retained registration plates or elsewhere on the vehicles to signify the registration of the vehicles for the current registration period; and

(6) provide for identification purposes clearly recognizable distinctions between current and expired registration plates and validation stickers. To this end, the department, by whatever system or device the secretary may direct that is approved by the commanding officer of the New Mexico state police division of the department of public safety, shall ensure a practicable display of the proper and current registration of vehicles.

B. Certificates of title need not be renewed annually but shall remain valid until canceled by the department for cause or upon transfer of any interest shown in the certificate of title.

C. The vehicle registration of vehicles registered under the provisions of Subsection A of this section expires on the last day of the period for which the vehicle has been registered. Every vehicle registration other than vehicles registered in accordance with Subsection A of this section, manufactured homes and freight trailers expires December 31. The department may receive applications for renewal of registration and may issue new registration evidence and registration plates or validating stickers at any time prior to expiration of the current registration.

D. The registration of a manufactured home or freight trailer need not be renewed annually, and the initial registration shall be effective and considered a current registration for the purpose of the Motor Vehicle Code as long as the ownership of the vehicle is not transferred. The transfer of title provisions of the Motor Vehicle Code do apply to manufactured homes and freight trailers, and the transferee is required to register the vehicle in accordance with Section 66-3-103 NMSA 1978. The department is authorized and directed to issue distinctive registration plates for manufactured homes and freight trailers that identify the plates as permanent registration plates.

E. It is unlawful to operate or transport or cause to be transported upon any highways in this state any vehicle, except a commercial motor vehicle registered in another state or a manufactured home, subject to registration under the provisions of the Motor Vehicle Code without having paid the registration fee or without having secured and constantly displayed the registration plate required by the Motor Vehicle Code. If a vehicle, other than a manufactured home, is operated or transported after the expiration of the vehicle registration, the owner of the vehicle is subject to a penalty of the greater of ten dollars (\$10.00) or, if the vehicle is operated or transported thirty-one days or more after the expiration of the vehicle registration, an amount equal to seventy-five percent of the registration fee. Any duly appointed deputy or agent of the department has the authority to seize the vehicle and hold it until the fee, penalty and any fine that may be imposed for violation of law are paid and may sell the vehicle in the manner provided by law for the distraint and sale of personal property.

F. It is unlawful to operate, transport or cause to be transported upon any highways in this state or to maintain in any place in this state a manufactured home subject to registration under the provisions of the Motor Vehicle Code without having paid the registration fee or without having secured and constantly displayed the registration plate required by the Motor Vehicle Code. Violation of this subsection subjects the owner to a penalty of five dollars (\$5.00), and no other administrative penalty for failure to register under the Motor Vehicle Code shall be imposed upon manufactured homes that are subject to the provisions of Section 66-6-10 NMSA 1978. Any duly appointed deputy or agent of the department has authority to seize the manufactured home and hold it until the fee, penalties and any fine that may be

imposed for violation of law are paid and may sell the manufactured home in the manner provided by law for the distraint and sale of personal property.

G. This section authorizes a staggered system of registration of vehicles."

Section 3

Section 3. Section 66-3-20.1 NMSA 1978 (being Laws 1988, Chapter 94, Section 1) is amended to read:

"66-3-20.1. PROVIDING FOR EXTENDED REGISTRATION PERIODS FOR CERTAIN MOTOR VEHICLES.--

A. Registrations of vehicles, motorcycles and trucks with a declared gross weight of twenty-six thousand pounds or less may be for a period of up to two years; provided, the extended registration period shall begin on the first day of any month and expire on the last day of any month.

B. The fee for an extended registration period shall be the fee for a registration for one year divided by four and multiplied by the number of calendar quarters in the registration period with any fraction of a quarter year to be considered a full quarter.

C. Should a registration expire by operation of law prior to the end of the extended registration period, no portion of the registration fee shall be refunded."

Section 4

Section 4. Section 66-3-101 NMSA 1978 (being Laws 1978, Chapter 35, Section 48, as amended) is amended to read:

"66-3-101. TRANSFER BY OWNER--RECORDATION OF MILEAGE OF VEHICLE.--

A. Whenever the owner of a registered vehicle sells, transfers or assigns his title or interest in, and delivers the possession of, the vehicle to another, the registration of the vehicle shall expire, except as provided in Subsection B of this section. The previous owner shall notify the division of the sale or transfer giving the date thereof, the name and address of the new owner and such description of the vehicle as may be required in the appropriate form provided for such purpose by the division. In the case of any transfer, including, but not limited to, a transfer resulting from a sale, lease, gift or auction of any vehicle, the person making the transfer shall sign and shall record on the document evidencing the transfer of the vehicle the actual mileage of the vehicle as indicated by the vehicle's odometer at the time of the transfer.

B. The owner shall remove the registration plates from the vehicle except as provided in Subsection C of this section and, within thirty days from the date of transfer, shall forward the registration plates to the division or its authorized agent to be destroyed or may have the plate and the registration number assigned to another vehicle, as provided for in Section 66-3-104 NMSA 1978, upon the payment of the difference, if any, between the paid registration fee and the new registration fee and the transfer fee provided by law and subject to the rules and regulations of the division.

C. Whenever the owner of a vehicle bearing a current registration plate of a foreign state, territory or country transfers or assigns his title or interest in the vehicle, the foreign registration plate must be delivered, together with the title to the vehicle and evidence of registration, to the division or its authorized agent at the time application is made for a New Mexico registration plate, except when the assignment or transfer of the title is to a bona fide resident of the foreign state, territory or country in which the vehicle is registered."

Section 5

Section 5. Section 66-3-104 NMSA 1978 (being Laws 1978, Chapter 35, Section 51, as amended) is amended to read:

"66-3-104. USE OF PLATE AND REGISTRATION NUMBER ON ANOTHER VEHICLE--TRANSFER OF REGISTRATION.--Whenever the owner of a registered vehicle assigns title or interest to the vehicle, the registration of the vehicle expires. At such time, the owner shall remove the registration plate from the vehicle and shall forward the plate to the division or its authorized agent, within thirty days of the transfer, to be destroyed, or the owner shall retain the license plate, within the same thirty days, and make application to have the registration number assigned to another vehicle of the same class. The registration plate shall be transferred only where the application for transfer is made in the name of the original registered owner unless the owner's name has been changed by marriage, divorce or court order. The registration plate shall not be displayed upon the newly acquired vehicle until the registration of the vehicle has been completed and a new registration certificate issued."

Section 6

Section 6. Section 66-6-1 NMSA 1978 (being Laws 1978, Chapter 35, Section 336, as amended by Laws 1994, Chapter 117, Section 18 and also by Laws 1994, Chapter 126, Section 18) is amended to read:

"66-6-1. MOTORCYCLES--REGISTRATION FEES.--

A. For the registration of motorcycles, the division shall collect the following fees for a twelve-month registration period:

(1) for each motorcycle having not more than two wheels in contact with the ground, eleven dollars (\$11.00); and

(2) for each motorcycle having three wheels in contact with the ground or having a sidecar, eleven dollars (\$11.00).

B. Beginning July 1, 1994, in addition to other fees required by this section, the division shall collect, for each motorcycle, an annual tire recycling fee of fifty cents (\$.50) for a twelve-month registration period.

C. Two dollars (\$2.00) of each fee collected pursuant to Paragraphs (1) and (2) of Subsection A of this section shall be credited to the motorcycle training fund."

Section 7

Section 7. Section 66-6-2 NMSA 1978 (being Laws 1978, Chapter 35, Section 337, as amended by Laws 1994, Chapter 117, Section 19 and also by Laws 1994, Chapter 126, Section 19) is amended to read:

"66-6-2. PASSENGER VEHICLES--REGISTRATION FEES.--For registration of each motor vehicle other than motorcycles, trucks, buses and tractors, the division shall collect the following fees for a twelve-month registration period:

A. for a vehicle whose gross factory shipping weight is not more than two thousand pounds, twenty dollars (\$20.00); provided, however, that after five years of registration, calculated from the date when the vehicle was first registered in this or another state, the fee is sixteen dollars (\$16.00);

B. for a vehicle whose gross factory shipping weight is more than two thousand but not more than three thousand pounds, twenty-nine dollars (\$29.00); provided, however, that after five years of registration, calculated from the date when the vehicle was first registered in this or another state, the fee is twenty-three dollars (\$23.00);

C. for a vehicle whose gross factory shipping weight is more than three thousand pounds, forty-two dollars (\$42.00); provided, however, that after five years of registration, calculated from the date when the vehicle was first registered in this or another state, the fee is thirty-four dollars (\$34.00); and

D. beginning July 1, 1994, for each vehicle registered pursuant to the provisions of this section, a tire recycling fee of one dollar (\$1.00) for a twelve-month registration period."

Section 8

Section 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE BILL 260

CHAPTER 45

RELATING TO MOTOR VEHICLES; CHANGING THE REQUIREMENTS FOR FIRST-TIME APPLICANTS FOR NEW MEXICO DRIVER'S LICENSES; AMENDING A SECTION OF THE MOTOR VEHICLE CODE.

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

Section 1

Section 1. Section 66-5-9 NMSA 1978 (being Laws 1978, Chapter 35, Section 231, as amended) is amended to read:

"66-5-9. APPLICATION FOR LICENSE, TEMPORARY LICENSE OR INSTRUCTION PERMIT.--

A. Every application for an instruction permit or for a driver's license shall be made upon a form furnished by the department. Every application shall be accompanied by the proper fee. For permits or driver's licenses other than those issued pursuant to the New Mexico Commercial Driver's License Act, submission of a complete application with payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of six months from the date of application.

B. Every application shall contain the full name, social security number, date of birth, sex and New Mexico residence address of the applicant and briefly describe the applicant and indicate whether the applicant has previously been licensed as a driver and, if so, when and by what state or country and whether any such license has ever been suspended or revoked or whether an application has ever been refused and, if so, the date of and reason for the suspension, revocation or refusal.

C. Every applicant shall indicate whether he has been convicted of driving while under the influence of intoxicating liquor or drugs in this state or in any other jurisdiction. Failure to disclose any such conviction prevents the issuance of a driver's license, temporary license or instruction permit for a period of one year if the failure to disclose is discovered by the department prior to issuance. If the nondisclosure is discovered by the department subsequent to issuance, the department shall revoke the driver's license, temporary license or instruction permit for a period of one year. Intentional and willful failure to disclose, as required in this subsection, is a misdemeanor.

D. Every applicant less than eighteen years of age who is making an application to be granted his first New Mexico driver's license shall submit evidence that he has successfully completed a driver education course that included a DWI prevention and education program approved by the bureau or offered by a public school. The bureau may accept verification of driver education course completion from another state if the driver education course substantially meets the requirements of the bureau for a course offered in New Mexico.

E. Every applicant eighteen years of age and over, but less than forty-five years of age, who is making an application to be granted his first New Mexico driver's license shall submit evidence with his application that he has successfully completed a bureau-approved DWI prevention and education program.

F. Every applicant forty-five years of age and over, who has not been previously licensed in other jurisdictions for a cumulative total of more than ten years or who has been convicted of driving under the influence of intoxicating liquor or drugs, and who is making an application to be granted his first New Mexico driver's license, shall submit evidence with his application that he has successfully completed a bureau-approved DWI prevention and education program.

G. Whenever application is received from a person previously licensed in another jurisdiction, the department may request a copy of the driver's record from the other jurisdiction. When received, the driver's record may become a part of the driver's record in this state with the same effect as though entered on the driver's record in this state in the original instance.

H. Whenever the department receives a request for a driver's record from another licensing jurisdiction, the record shall be forwarded without charge.

I. This section does not apply to driver's licenses issued pursuant to the New Mexico Commercial Driver's License Act."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE BILL 268

CHAPTER 46

RELATING TO CHILD SUPPORT; CLARIFYING THAT ATTORNEYS IN CERTAIN CHILD SUPPORT ENFORCEMENT ACTIONS REPRESENT THE STATE; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 27-2-27 NMSA 1978 (being Laws 1981, Chapter 90, Section 1, as amended) is amended to read:

"27-2-27. SINGLE STATE AGENCY--POWERS AND DUTIES.--The department is designated as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV D of the federal act with the following duties and powers:

A. establish the paternity of a child in the case of the child born out of wedlock with respect to whom an assignment of support rights has been executed in favor of the department;

B. establish an order of support for children receiving aid to families with dependent children and, at the option of the department, for the spouse or former spouse with whom such children are living, but only if a support obligation has been established with respect to such spouse or former spouse, for whom no order of support presently exists and seek modification, based upon the noncustodial parent's ability to pay, of existing orders in which the support order is inadequate to properly care for the child and the spouse or former spouse with whom the child is living;

C. enforce as the real party in interest any existing order for the support of children who are receiving aid to families with dependent children or of the spouse or former spouse with whom such children are living; and

D. provide services to non-aid families with dependent children in the establishment and enforcement of paternity and child support obligations, including locating the absent parent. For these services, the department is authorized to establish and collect fees, costs and charges permitted or required by federal law or by regulations adopted pursuant to that federal law.

E. In all cases handled by the department pursuant to the provisions of this section, the child support enforcement division of the department and any attorney employed by the division represent the department in establishing, modifying and enforcing support obligations."

HOUSE BILL 996

CHAPTER 47

RELATING TO EDUCATION; ENACTING A NEW SECTION OF THE PUBLIC

**SCHOOL CODE MANDATING THE ADOPTION OF STUDENT DISCIPLINE
POLICIES PERTAINING TO WEAPONS IN SCHOOL.**

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

Section 1

Section 1. A new section of the Public School Code, Section 22-5-4.7 NMSA 1978, is enacted to read:

"22-5-4.7. ADDITIONAL STUDENT DISCIPLINE POLICIES-- WEAPON-FREE SCHOOLS.--

A. In addition to other student discipline policies, each school district shall adopt a policy providing for the expulsion from school, for a period of not less than one year, of any student who is determined to have knowingly brought a weapon to a school under the jurisdiction of the local board. The local school board or the superintendent of the school district may modify the expulsion requirement on a case-by-case basis.

B. Student discipline policies shall also provide for placement in an alternative educational setting, for not more than forty-five days, of any student with a disability who is determined to have knowingly brought a weapon to a school under the jurisdiction of the local board. If a parent or guardian of the student requests a due process hearing, then the student shall remain in the alternative educational setting during the pendency of any proceeding, unless the parent or guardian and the school district agree otherwise.

C. For the purposes of this section, "weapon" means:

(1) any firearm that is designed to, may readily be converted to or will expel a projectile by the action of an explosion; and

(2) any destructive device that is an explosive or incendiary device, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter-ounce, mine or similar device."

HOUSE BILL 274

CHAPTER 48

**EXTENDING THE EXPENDITURE PERIOD FOR WHICH AN APPROPRIATION TO
THE THIRD JUDICIAL DISTRICT WAS MADE; MAKING AN APPROPRIATION.**

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

Section 1

Section 1. APPROPRIATION--EXTENDING EXPENDITURE PERIOD.--The period of time in which the appropriation made in Subsection F of Section 7 of Chapter 147 of Laws 1994 from the general fund to the third judicial district for moving expenses may be expended shall be extended through fiscal year 1996.

HOUSE BILL 308

CHAPTER 49

RELATING TO STATE AIRCRAFT; CREATING THE AVIATION SERVICES FUND; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

Section 1

Section 1. Section 15-9-1 NMSA 1978 (being Laws 1994, Chapter 135, Section 1) is amended to read:

"15-9-1. SHORT TITLE.--Chapter 15, Article 9 NMSA 1978 may be cited as the "State Aircraft Act"."

Section 2

Section 2. Section 15-9-4 NMSA 1978 (being Laws 1994, Chapter 135, Section 4) is amended to read:

"15-9-4. TRAVEL CHARGES.--The department shall charge for the use of state aircraft. Charges shall be sufficient to offset the costs of operation, maintenance and depreciation of state aircraft. Money collected for travel charges shall be deposited in the aviation services fund."

Section 3

Section 3. AVIATION SERVICES FUND.--There is created in the state treasury the "aviation services fund". Money in the fund is appropriated to the general services department for the purpose of operating, maintaining and repairing state aircraft, including fuel, insurance, pilot compensation and other basic support costs. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the director of the motor pool division of the general services department. Money in the fund shall not revert at the end of any fiscal year.

CHAPTER 50

RELATING TO TAXATION; AMENDING THE GROSS RECEIPTS AND COMPENSATING TAX ACT; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 7-9-7 NMSA 1978 (being Laws 1966, Chapter 47, Section 7, as amended) is amended to read:

"7-9-7. IMPOSITION AND RATE OF TAX--DENOMINATION AS "COMPENSATING TAX".--

A. For the privilege of using tangible property in New Mexico, there is imposed on the person using the property an excise tax equal to five percent of the value of tangible property that was:

(1) manufactured by the person using the property in the state;

(2) acquired outside this state as the result of a transaction that would have been subject to the gross receipts tax had it occurred within this state; or

(3) acquired as the result of a transaction which was not initially subject to the compensating tax imposed by Paragraph (2) of this subsection or the gross receipts tax but which transaction, because of the buyer's subsequent use of the property, should have been subject to the compensating tax imposed by Paragraph (2) of this subsection or the gross receipts tax.

B. For the purpose of Subsection A of this section, value of tangible property shall be the adjusted basis of the property for federal income tax purposes determined as of the time of acquisition or introduction into this state or of conversion to use, whichever is later. If no adjusted basis for federal income tax purposes is established for the property, a reasonable value of the property shall be used.

C. For the privilege of using services rendered in New Mexico, there is imposed on the person using such services an excise tax equal to five percent of the value of the services at the time they were rendered. The services, to be taxable under this subsection, must have been rendered as the result of a transaction which was not initially subject to the gross receipts tax but which transaction, because of the

buyer's subsequent use of the services, should have been subject to the gross receipts tax.

D. The tax imposed by this section shall be referred to as the "compensating tax".

Section 2

Section 2. Laws 1993, Chapter 45, Section 1, as amended by Laws 1994, Chapter 34, Section 1 is compiled as Section 7-9-7.1 NMSA 1978 and amended to read:

"7-9-7.1. DEPARTMENT BARRED FROM TAKING COLLECTION ACTIONS WITH RESPECT TO CERTAIN COMPENSATING TAX LIABILITIES.--

A. The department shall take no action to enforce collection of compensating tax due on purchases made by an individual if:

(1) the property is used only for nonbusiness purposes;

(2) the property is not a manufactured home; and

(3) the individual is not an agent for collection of compensating tax pursuant to Section 7-9-10 NMSA 1978.

B. The prohibition in Subsection A of this section does not prevent the department from enforcing collection of compensating tax on purchases from persons who are not individuals, who are agents for collection pursuant to Section 7-9-10 NMSA 1978 or who use the property in the course of engaging in business in New Mexico or from enforcing collection of compensating tax due on purchase of manufactured homes."

Section 3

Section 3. Section 7-9-54 NMSA 1978 (being Laws 1969, Chapter 144, Section 44, as amended) is amended to read:

"7-9-54. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL GROSS RECEIPTS TAX--SALES TO GOVERNMENTAL AGENCIES.--

A. Except as provided otherwise in Subsection C of this section, receipts from selling tangible personal property to the United States or New Mexico or any governmental unit or subdivision, agency, department or instrumentality thereof may be deducted from gross receipts or from governmental gross receipts.

B. Except as provided otherwise in Subsection C of this section, receipts from selling tangible personal property to an Indian tribe, nation or pueblo or any

governmental subdivision, agency, department or instrumentality thereof for use on Indian reservations or pueblo grants may be deducted from gross receipts or from governmental gross receipts.

C. Unless contrary to federal law, the deduction provided by this section does not apply to:

(1) receipts from selling metalliferous mineral ore;

(2) receipts from selling tangible personal property that is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code;

(3) receipts from selling tangible personal property that will become an ingredient or component part of a construction project; or

(4) that portion of the receipts from performing a "service", as defined in Subsection K of Section 7-9-3 NMSA 1978, that reflects the value of tangible personal property utilized or produced in performance of such service."

Section 4

Section 4. Section 7-9-60 NMSA 1978 (being Laws 1970, Chapter 12, Section 4, as amended) is amended to read:

"7-9-60. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL GROSS RECEIPTS TAX--SALES TO CERTAIN ORGANIZATIONS.--

A. Except as provided otherwise in Subsection B of this section, receipts from selling tangible personal property to organizations that have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended or renumbered, may be deducted from gross receipts or from governmental gross receipts if the sale is made to an organization that delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate shall employ the tangible personal property in the conduct of functions described in Section 501(c)(3) and shall not employ the tangible personal property in the conduct of an unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code of 1986, as amended or renumbered.

B. The deduction provided by this section does not apply to receipts from selling tangible personal property that will become an ingredient or component part of a construction project or from selling metalliferous mineral ore."

Section 5

Section 5. Section 7-9-73.1 NMSA 1978 (being Laws 1991, Chapter 8, Section 3, as amended) is amended to read:

"7-9-73.1. DEDUCTION--GROSS RECEIPTS--HOSPITALS.--Fifty percent of the receipts of hospitals licensed by the department of health may be deducted from gross receipts; provided, this deduction may be applied only to the taxable gross receipts remaining after all other appropriate deductions have been taken."

Section 6

Section 6. REPEAL.--Section 7-9-51.1 NMSA 1978 (being Laws 1993, Chapter 31, Section 14) is repealed.

Section 7

Section 7. EFFECTIVE DATES.--

A. The effective date of the provisions of Section 6 of this act is July 1, 1998.

B. The effective date of the provisions of Sections 1 through 5 of this act is July 1, 1995.

HOUSE BILL 323

CHAPTER 51

RELATING TO UNCLAIMED PROPERTY; AMENDING THE UNIFORM UNCLAIMED PROPERTY ACT TO INCLUDE AGRICULTURAL COOPERATIVES.

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

Section 1

Section 1. Section 7-8-2 NMSA 1978 (being Laws 1989, Chapter 293, Section 2) is amended to read:

"7-8-2. DEFINITIONS.--As used in the Uniform Unclaimed Property Act:

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

B. "apparent owner" means the person whose name appears on the records of the holder as the person entitled to property held, issued or owing by the holder;

C. "banking organization" means a bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker or any organization defined by other law as a bank or banking organization;

D. "business association" means a nonpublic corporation, joint stock company, investment company, business trust, partnership or association for business purposes of two or more individuals, whether or not for profit, including a banking organization, financial organization, insurance company or utility;

E. "domicile" means the state of incorporation of a corporation and the state of the principal place of business of an unincorporated person;

F. "financial organization" means a savings and loan association, cooperative bank building and loan association or credit union;

G. "holder" means a person, wherever organized or domiciled, who is:

(1) in possession of property belonging to another;

(2) a trustee; or

(3) indebted to another on an obligation;

H. "insurance company" means an association, corporation, fraternal or mutual benefit organization, whether or not for profit, which is engaged in providing insurance coverage, including accident, burial, casualty, credit life, contract performance, dental, fidelity, fire, health, hospitalization, illness, life including endowments and annuities, malpractice, marine, mortgage, surety and wage protection insurance;

I. "intangible property" includes:

(1) money, checks, drafts, deposits, interest, dividends and income;

(2) credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, unused airline tickets and unidentified remittances;

(3) stocks and other intangible ownership interests in business associations;

(4) money deposited to redeem stocks, bonds, coupons and other securities or to make distributions;

(5) amounts due and payable under the terms of insurance policies;
and

(6) amounts distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance or similar benefits;

J. "last known address" means a description of the location of the apparent owner sufficient for the purpose of the delivery of mail;

K. "owner" means a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, a creditor, claimant or payee in the case of other intangible property or a person having a legal or equitable interest in property subject to the Uniform Unclaimed Property Act or his legal representative;

L. "person" means an individual, business association, state or other government, governmental subdivision or agency, public corporation, public authority, estate, trust, two or more persons having a joint or common interest or any other legal or commercial entity;

M. "state" means any state, district, commonwealth, territory, insular possession or any other area subject to the legislative authority of the United States; and

N. "utility" means a person who owns or operates for public use any plant, equipment, property, franchise or license for the transmission of communications or the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam or gas."

Section 2

Section 2. Section 7-8-10 NMSA 1978 (being Laws 1989, Chapter 293, Section 11, as amended) is amended to read:

"7-8-10. STOCK AND OTHER INTANGIBLE INTERESTS IN BUSINESS ASSOCIATIONS.--

A. Except as provided in Subsections B and E of this section, stock or other intangible ownership interest in a business association, the existence of which is evidenced by records available to the association, is presumed abandoned and, with respect to the interest, the association is the holder if a dividend, distribution or other

sum payable as a result of the interest has remained unclaimed by the owner for seven years and the owner within seven years has not:

(1) communicated in writing with the association regarding the interest or a dividend, distribution or other sum payable as a result of the interest; or

(2) otherwise communicated with the association regarding the interest or a dividend, distribution or other sum payable as a result of the interest, as evidenced by a memorandum or other record on file with the association prepared by an employee of the association.

B. At the expiration of a seven-year period following the failure of the owner to claim a dividend, distribution or other sum payable to the owner as a result of the interest, the interest is not presumed abandoned unless there have been at least seven dividends, distributions or other sums paid during the period, none of which has been claimed by the owner. If seven dividends, distributions or other sums are paid during the seven-year period, the period leading to a presumption of abandonment commences on the date payment of the first unclaimed dividend, distribution or other sum became due and payable. If seven dividends, distributions or other sums are not paid during the presumptive period, the period continues to run until there have been seven dividends, distributions or other sums that have not been claimed by the owner.

C. The running of the seven-year period of abandonment ceases immediately upon the occurrence of a communication referred to in Subsection A of this section. If any future dividend, distribution or other sum payable to the owner as a result of the interest is subsequently not claimed by the owner, a new period of abandonment commences and relates back to the time a subsequent dividend, distribution or other sum became due and payable.

D. At the time an interest is presumed abandoned under this section, any dividend, distribution or other sum then held for or owing to the owner as a result of the interest, and not previously presumed abandoned, is presumed abandoned.

E. The Uniform Unclaimed Property Act shall not apply to any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions or other sums payable as a result of the interest unless the records available to the administrator of the plan show, with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not within seven years communicated in any manner described in Subsection A of this section.

F. The Uniform Unclaimed Property Act shall not apply to any patronage capital or other tangible ownership interest in a rural electric cooperative, a telephone cooperative, a water cooperative or an agricultural cooperative, if the bylaws of the cooperative provide for unclaimed patronage capital to be used for educational scholarships or other charitable uses."

HOUSE BILL 225

CHAPTER 52

MAKING AN APPROPRIATION; CHANGING THE PURPOSE FOR FUNDS APPROPRIATED PURSUANT TO SUBSECTION AA OF SECTION 6 OF CHAPTER 147 OF LAWS 1994.

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

Section 1

Section 1. APPROPRIATION--LOCAL GOVERNMENT DIVISION OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION--CHANGE IN PURPOSE-- APPROPRIATION.--The appropriation from the general fund to the local government division of the department of finance and administration for construction and other improvements at the Socorro county landfill described in Subsection AA of Section 6 of Chapter 147 of Laws 1994 shall not be appropriated for its original purpose but is reauthorized and reappropriated to improve solid waste management and disposal in Socorro county.

HOUSE BILL 812

CHAPTER 53

RELATING TO TAXATION; EXTENDING THE EXEMPTION FROM THE COAL SURTAX IMPOSED ON COAL SOLD PURSUANT TO CERTAIN SALES CONTRACTS.

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

Section 1

Section 1. Section 7-26-6.2 NMSA 1978 (being Laws 1990, Chapter 83, Section 1 and also Laws 1990, Chapter 84, Section 1, as amended) is amended to read:

"7-26-6.2. COAL SURTAX EXEMPTION--QUALIFICATION REQUIREMENTS.--

A. The following coal is exempt, until July 1, 2009, from the surtax imposed on coal under the provisions of Section 7-26-6 NMSA 1978:

(1) coal sold and delivered pursuant to coal sales contracts that are entered into on or after July 1, 1990, under which deliveries start after July 1, 1990 and before June 30, 1997, if the sales contracts are not the result of:

(a) a producer and purchaser mutually rescinding an existing contract and negotiating a revised contract under substantially similar terms and conditions;

(b) a purchaser establishing an affiliated company to purchase coal on behalf of the purchaser; or

(c) a purchaser independently abrogating a contract that was in effect on July 1, 1990 with a producer for the purpose of securing the benefits of the exemption granted by this section; and

(2) coal sold and delivered pursuant to a contract in effect on July 1, 1990 that exceeds the average calendar year deliveries under the contract during production years 1987, 1988 and 1989 or the highest contract minimum during 1987, 1988 and 1989, whichever is greater.

B. If a contract existing on July 1, 1990 is renegotiated between a producer and a purchaser prior to June 30, 1997 and after May 20, 1992 and if that renegotiated contract requires the purchaser to take annual coal deliveries in excess of the greater of the average calendar year deliveries under the contract during production years 1987, 1988 and 1989 or the highest contract minimum during 1987, 1988 and 1989, the surtax imposed by Subsection B of Section 7-26-6 NMSA 1978 shall not apply to such excess deliveries for the remaining term of the renegotiated contract or until July 1, 2009, whichever occurs first.

C. For coal exempt under the provisions of Paragraph (2) of Subsection A of this section, if the contract involved was for a lesser term during the production years specified, then actual deliveries shall be annualized to establish average calendar year deliveries, and in the event that coal sold and delivered in any calendar year after June 30, 1997 falls below the average calendar year deliveries during 1987, 1988 and 1989, the exemption shall no longer apply unless the deliveries are reduced due to causes beyond the reasonable control of either party to the contract.

D. The taxpayer, prior to taking the exemption provided by this section, shall register any contract for the sale of coal that qualifies for the exemption from the surtax under the provisions of this section with the department on forms provided by the secretary. If upon examination of the contract or upon audit or inspection of transactions occurring under the contract the secretary or the secretary's delegate determines that any person who is a party to the contract has taken any action to circumvent the intent and purpose of this section, the exemption shall be disallowed."

HOUSE BILL 116

CHAPTER 54

RELATING TO DOMESTIC AFFAIRS; REQUIRING LAW ENFORCEMENT OFFICERS TO INCLUDE CERTAIN WRITTEN STATEMENTS IN POLICE REPORTS ATTENDANT TO ARRESTS FOR DOMESTIC ABUSE; PROVIDING NOTIFICATION TO VICTIMS WHEN AN ABUSING HOUSEHOLD MEMBER IS RELEASED FROM DETENTION; REQUIRING THAT CERTAIN STATEMENTS BE INCLUDED IN A JUDGMENT AND SENTENCE DOCUMENT; AMENDING A SECTION OF THE FAMILY VIOLENCE PROTECTION ACT.

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

Section 1

Section 1. Section 40-13-7 NMSA 1978 (being Laws 1987, Chapter 286, Section 7) is amended to read:

"40-13-7. LAW ENFORCEMENT OFFICERS--EMERGENCY ASSISTANCE--LIMITED LIABILITY--PROVIDING NOTIFICATION TO VICTIMS WHEN AN ABUSING HOUSEHOLD MEMBER IS RELEASED FROM DETENTION--STATEMENT IN JUDGMENT AND SENTENCE DOCUMENT.--

A. A person who allegedly has been a victim of domestic abuse may request the assistance of a local law enforcement agency.

B. A local law enforcement officer responding to the request for assistance shall be required to take whatever steps are reasonably necessary to protect the victim from further domestic abuse, including:

(1) advising the victim of the remedies available under the Family Violence Protection Act, the right to file a written statement or request for an arrest warrant and the availability of domestic violence shelters, medical care, counseling and other services;

(2) upon the request of the petitioner, providing or arranging for transportation of the victim to a medical facility or place of shelter;

(3) upon the request of the petitioner, accompanying the victim to the victim's residence to remove the victim's clothing and personal effects required for immediate needs and the clothing and personal effects of any children then in the care of the victim;

(4) upon the request of the petitioner, assist in placing the petitioner in possession of the dwelling or premises or otherwise assist in execution or service of the order of protection;

(5) arresting the abusing household member when appropriate and including a written statement in the attendant police report to indicate that the arrest of

the abusing household member was, in whole or in part, premised upon probable cause to believe that the abusing household member committed domestic abuse against the victim; and

(6) advising the victim when appropriate of the procedure for initiating proceedings under the Family Violence Protection Act or criminal proceedings and of the importance of preserving evidence.

C. The jail or detention center shall make a reasonable attempt to notify the arresting law enforcement agency or officer when the abusing household member is released from custody. The arresting law enforcement agency shall make a reasonable attempt to notify the victim that the abusing household member is released from custody.

D. Any law enforcement officer responding to the request for assistance under the Family Violence Protection Act is immune from civil liability to the extent allowed by law. Any jail, detention center or law enforcement agency that makes a reasonable attempt to provide notification that an abusing household member is released from custody is immune from civil liability to the extent allowed by law.

E. A statement shall be included in a judgment and sentence document to indicate when a conviction results from the commission of domestic abuse."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 334

CHAPTER 55

CREATING A JOINT INTERIM LEGISLATIVE ELECTION CODE RECODIFICATION COMMITTEE; DECLARING AN EMERGENCY.

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

Section 1

Section 1. ELECTION CODE RECODIFICATION COMMITTEE CREATED--TERMINATION.--There is created a joint interim legislative committee which shall be known as the "Election Code recodification committee". The committee shall function from the date of its appointment until the first day of December prior to the second session of the forty-second legislature.

Section 2

Section 2. MEMBERSHIP--APPOINTMENT--VACANCIES.--

A. The Election Code recodification committee shall be composed of eight members. The New Mexico legislative council shall appoint four members from the house of representatives and four members from the senate. At the time of making the appointment, the legislative council shall designate the chairman and vice chairman of the committee.

B. Members shall be appointed from each house so as to give the two major political parties in each house the same proportionate representation on the committee as prevails in each house; however in no event shall either party have less than one member from each house on the committee. At the request of the committee chairman, members may be removed from the committee by the New Mexico legislative council for nonattendance according to council policy. Vacancies on the committee, however caused, may be filled by the legislative council, or the council may reduce the size of the committee by not making replacement appointments and in such case need not readjust party representation.

C. No action shall be taken by the committee if a majority of the total membership from either house on the committee rejects such action.

Section 3

Section 3. DUTIES.--After its appointment, the Election Code recodification committee shall hold one organizational meeting to develop a workplan and budget for the ensuing interim. Included in the workplan shall be an opportunity for representatives from the secretary of state's office, county and municipal officials and members of the public to provide input on issues related to elections in New Mexico. The workplan and budget shall be submitted to the New Mexico legislative council for approval. Upon approval of the workplan and budget by the legislative council, the committee shall examine and review the statutes, constitutional provisions, regulations and court decisions governing the Election Code in New Mexico and recommend legislation or changes if any are found to be necessary to the second session of the forty-second legislature.

Section 4

Section 4. SUBCOMMITTEES.--Subcommittees shall be created only by majority vote of all members appointed to the Election Code recodification committee and with the prior approval of the New Mexico legislative council. A subcommittee shall be composed of at least one member from the senate and one member from the house of representatives, and at least one member of the minority party shall be a member of the subcommittee. All meetings and expenditures of a subcommittee shall be approved by the full committee in advance of such meeting or expenditure, and the approval shall be shown in the minutes of the committee.

Section 5

Section 5. REPORT.--The Election Code recodification committee shall make a report of its findings and recommendations for the consideration of the second session of the forty-second legislature. The report and suggested legislation shall be made available to the New Mexico legislative council on or before December 15 preceding that session.

Section 6

Section 6. STAFF.--The staff for the Election Code recodification committee shall be provided by the legislative council service.

Section 7

Section 7. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 271 WITH EMERGENCY CLAUSE
SIGNED APRIL 5, 1995

CHAPTER 56

RELATING TO EDUCATION; CREATING THE ADULT BASIC EDUCATION FUND;
REQUIRING THE ADOPTION OF AN OBJECTIVE FORMULA TO PROVIDE FOR
EQUITABLE DISTRIBUTION OF MONEY IN THE ADULT BASIC EDUCATION FUND;
MAKING AN APPROPRIATION.

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

Section 1

Section 1. A new section of the Public School Finance Act is enacted to read:

"ADULT BASIC EDUCATION FUND CREATED.--The "adult basic education fund" is created in the state treasury. Money in the fund is appropriated to the department of education for the purpose of funding adult basic education programs for educationally disadvantaged adults. Money in the fund shall be distributed by the department of education pursuant to an equitable formula established by the state board in consultation with representatives from the adult basic education administrative sites and with the approval of the commission on higher education as provided by law. Any unexpended or unencumbered balance remaining in the fund at the end of each fiscal year shall revert to the general fund."

Section 2

Section 2. A new section of the Public School Finance Act is enacted to read:

"ADULT BASIC EDUCATION--DISTRIBUTION OF MONEY--OBJECTIVE FORMULA--STATE BOARD ADOPTION OF FORMULA--COMMISSION ON HIGHER EDUCATION APPROVAL.--The state board in consultation with representatives of adult basic education administrative sites shall, by regulation, establish an equitable formula for the distribution of money in the adult basic education fund. In establishing an equitable formula, the state board shall consider the types of programs conducted, the cost of service delivery and the socio-economic profiles of the adult receiving services. The state board shall submit the proposed formula to the commission on higher education for approval prior to adoption."

HOUSE BILL 358

CHAPTER 57

RELATING TO THE ENVIRONMENT; AMENDING THE TIRE RECYCLING ACT TO EXEMPT THE STORAGE OF TIRES FOR AGRICULTURAL PURPOSES FROM THE PROVISIONS OF THE ACT; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 74-11-2 NMSA 1978 (being Laws 1994, Chapter 117, Section 2 and also Laws 1994, Chapter 126, Section 2) is amended to read:

"74-11-2. DEFINITIONS.--As used in the Tire Recycling Act:

A. "board" means the environmental improvement board;

B. "cooperative association" means a refuse disposal district created pursuant to the Refuse Disposal Act, a sanitation district created pursuant to the Water and Sanitation District Act, a special district created pursuant to the Special District Procedures Act or other associations created pursuant to the Joint Powers Agreements Act or the Solid Waste Authority Act;

C. "department" means the department of environment;

D. "dispose" means to deposit scrap tires into or on any land or water;

E. "person" means an individual or any other legal entity, including government entities;

F. "reprocessing" means retreading, shredding of scrap tires for crumb rubber used in modified asphalt or concrete paving or shredding for volume reduction for ultimate disposal;

G. "scrap tire" means a tire that is no longer suitable for its originally intended purpose because of wear, damage or defect;

H. "secretary" means the secretary of environment;

I. "tire" means a continuous solid or pneumatic rubber covering that encircles the wheel of a motor vehicle;

J. "tire dump" means an unauthorized location or facility at which scrap tires are disposed;

K. "tire recycling" means a process in which scrap tires are collected, stored, separated or reprocessed for reuse as a different product or shredded into a form suitable for use in rubberized asphalt or as raw material for the manufacture of other products, but not as a raw material or product used as a fuel for combustion; and

L. "tire recycling facility" means a place operated or maintained for tire recycling, but does not include:

(1) retail business premises where tires are sold if no more than five hundred scrap tires are kept on the premises at one time;

(2) the premises of a tire retreading business if no more than three thousand scrap tires are kept on the premises at one time;

(3) premises where tires are removed from motor vehicles in the ordinary course of business if no more than five hundred scrap tires are kept on the premises at one time;

(4) a site where no more than two hundred fifty scrap tires are stored for construction uses for no more than one year;

(5) a solid waste facility having a valid permit or registration issued pursuant to the provisions of the Solid Waste Act or regulations adopted pursuant to that act or registration issued pursuant to the Environmental Improvement Act; or

(6) a site where tires are stored and used for agricultural purposes.

For purposes of this section, "agricultural" means all methods of production and management of livestock, crops, vegetation and soil. This includes raising, harvesting and marketing, as well as the activities of feeding, housing and maintaining animals such as cattle, dairy cows, sheep, goats, hogs, horses and poultry."

Section 2

Section 2. Section 74-11-3 NMSA 1978 (being Laws 1994, Chapter 117, Section 3 and also Laws 1994, Chapter 126, Section 3) is amended to read:

"74-11-3. PROHIBITED ACTS.--After October 1, 1995:

A. no person shall operate or maintain a tire recycling facility unless the facility has a valid permit issued pursuant to the provisions of the Tire Recycling Act; except that a facility described in Paragraph (5) of Subsection L of Section 74-11-2 NMSA 1978 shall be able to operate provided that the facility is in compliance with all substantive provisions of and regulations adopted pursuant to the Tire Recycling Act; and

B. no person shall store or dispose of scrap tires in a place other than a tire recycling facility as defined by the Tire Recycling Act unless the place is specifically excluded from the definition of "tire recycling facility" in Paragraphs (1) through (6) of Subsection L of Section 74-11-2 NMSA 1978."

Section 3

Section 3. Section 74-11-5 NMSA 1978 (being Laws 1994, Chapter 117, Section 5 and also Laws 1994, Chapter 126, Section 5) is amended to read:

"74-11-5. REGULATIONS--AUTHORITY AND CONTENT.--By September 1, 1995, the board shall adopt regulations necessary and appropriate to implement the provisions of the Tire Recycling Act. The regulations shall be adopted pursuant to the provisions of the Environmental Improvement Act. The regulations shall include:

A. requirements and procedures for the issuance of permits to tire recycling facilities;

B. standards and requirements for tire recycling and for facilities that utilize tires as a fuel for combustion;

C. criteria and procedures for making disbursements under grant and loan programs authorized in Section 74-11-13 NMSA 1978 from the tire recycling fund established in Section 74-11-15 NMSA 1978; and

D. requirements and procedures for contracting with counties, municipalities and cooperative associations for the abatement of tire dumps and for reprocessing scrap tires."

Section 4

Section 4. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 223 WITH EMERGENCY CLAUSE
SIGNED APRIL 5, 1995

CHAPTER 58

RELATING TO DOMESTIC AFFAIRS; AMENDING THE GRANDPARENT'S VISITATION PRIVILEGES ACT.

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

Section 1

Section 1. Section 40-9-3 NMSA 1978 (being Laws 1993, Chapter 93, Section 4) is amended to read:

"40-9-3. VISITATION--MODIFICATION--RESTRICTIONS.--

A. When the district court grants reasonable visitation privileges to a grandparent pursuant to the provisions of the Grandparent's Visitation Privileges Act, the court shall issue any necessary order to enforce the visitation privileges and may modify the privileges or order upon a showing of good cause by any interested person.

B. Absent a showing of good cause, no grandparent or parent shall file a petition pursuant to the provisions of the Grandparent's Visitation Privileges Act more often than once a year.

C. When ion for enforcement of a court order allowing visitation privileges is brought pursuant to the Grandparent's Visitation Privileges Act by a grandparent, the court may award court costs and reasonable attorneys' fees to the prevailing party when a court order is violated."

Section 2

Section 2. Section 40-9-4 NMSA 1978 (being Laws 1993, Chapter 93, Section 5) is amended to read:

"40-9-4. CHANGE OF CHILD'S DOMICILE--NOTICE TO GRANDPARENT.--

A. When a grandparent is granted visitation privileges with respect to a minor child pursuant to the provisions of the Grandparent's Visitation Privileges Act and the child's custodian intends to depart the state or to relocate within the state with the intention of changing that child's domicile, the custodian shall:

(1) notify the grandparents of the minor child of the custodian's intent to change the child's domicile at least five days prior to the child's change of domicile;

(2) provide the grandparent with an address and telephone number for the minor child; and

(3) afford the grandparent of the minor child the opportunity to communicate with the child.

B. This state will recognize an order or act regarding grandparent visitation privileges issued by any state, district, Indian tribe or territory of the United States of America."

HOUSE BILL 372

CHAPTER 59

RELATING TO PUBLIC SAFETY; ENACTING THE PEACE OFFICERS' SURVIVORS SUPPLEMENTAL BENEFITS ACT; PROVIDING SUPPLEMENTAL DEATH BENEFITS TO SURVIVORS OF PEACE OFFICERS KILLED IN THE LINE OF DUTY; CREATING THE PEACE OFFICERS' SURVIVORS FUND; PROVIDING FOR DISTRIBUTIONS; DECLARING AN EMERGENCY.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Peace Officers' Survivors Supplemental Benefits Act".

Section 2

Section 2. FINDINGS--PURPOSE.--The legislature finds that peace officers throughout the state risk their lives daily to protect the citizens of New Mexico. The legislature further finds that when peace officers are killed in the line of duty, their immediate families can suffer grievously, both emotionally and economically. To recognize the substantial public safety benefits conferred by peace officers, and in consideration of the sacrifices undertaken by these officers and their families for the citizens of New Mexico, it is the purpose of the Peace Officers' Survivors Supplemental Benefits Act to ensure that certain supplemental death benefits accrue to the spouses and surviving children of peace officers killed in the line of duty.

Section 3

Section 3. DEFINITIONS.--As used in the Peace Officers' Survivors Supplemental Benefits Act:

A. "fund" means the peace officers' survivors fund;

B. "peace officer" means any full-time salaried and commissioned or certified law enforcement officer of a police or sheriff's department that is part of or administered by the state or any political subdivision of the state; and

C. "secretary" means the secretary of public safety.

Section 4

Section 4. FUND CREATED.--The "peace officers' survivors fund" is created in the state treasury and shall be administered by the department of public safety. The fund shall consist of all gifts, donations and bequests of money to the fund as well as any appropriations made to the fund. Earnings from investment of the fund shall be credited to the fund. Money in the fund is appropriated to the department of public safety for the purpose of paying death benefits pursuant to the Peace Officers' Survivors Supplemental Benefits Act and shall be paid out only upon warrants issued by the secretary of finance and administration pursuant to vouchers signed by the secretary of public safety. Any unexpended or unencumbered balance remaining in the fund at the end of any fiscal year shall not revert.

Section 5

Section 5. PEACE OFFICERS' SURVIVORS SUPPLEMENTAL BENEFITS--REVIEW COMMITTEE--DETERMINATION--PAYMENT.--

A. There is created the "peace officers' survivors supplemental death benefits review committee". The committee shall consist of the attorney general, the chief of the New Mexico state police and the state president of the fraternal order of police or their designees.

B. The peace officers' survivors supplemental death benefits review committee shall determine whether a peace officer has been killed in the line of duty and advise the secretary of that determination. In addition to any other death benefits provided by law, the surviving spouse or children shall be paid fifty thousand dollars (\$50,000) as supplemental death benefits whenever a peace officer is killed in the line of duty. The benefits shall be paid from the fund.

C. The benefits shall be paid entirely to the surviving spouse. If there is no surviving spouse, the benefits shall be distributed in pro rata shares to all surviving children.

Section 6

Section 6. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 127 WITH EMERGENCY CLAUSE
SIGNED APRIL 5, 1995

CHAPTER 60

RELATING TO PROCUREMENT; CLARIFYING PREFERENCES; PROVIDING FOR COOPERATIVE PROCUREMENT OF PAPER PRODUCTS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 13-1-21 NMSA 1978 (being Laws 1979, Chapter 72, Section 1, as amended) is amended to read:

"13-1-21. APPLICATION OF PREFERENCES.--

A. For the purposes of this section:

(1) "resident business" means a business that is authorized to do and is doing business under the laws of this state and:

(a) that maintains its principal place of business in the state;

(b) has staffed an office and has paid applicable state taxes for two years prior to the awarding of the bid and has five or more employees who are residents of the state; or

(c) is an affiliate of a business that meets the requirements of Subparagraph (a) or (b) of this paragraph. As used in this section, "affiliate" means an entity that, directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the qualifying business through ownership of voting securities representing a majority of the total voting power of the entity;

(2) "resident manufacturer" means a person who offers materials grown, produced, processed or manufactured wholly in the state;

(3) "recycled content goods" means supplies and materials composed in whole or in part of recycled materials; provided that the recycled materials content meets or exceeds the minimum content standards required by bid specifications; and

(4) "virgin content goods" means supplies and materials that are wholly composed of nonrecycled materials or do not meet minimum recycled content standards required by bid specification.

B. When bids are received only from nonresident businesses and resident businesses and the lowest responsible bid is from a nonresident business, the contract shall be awarded to the resident business whose bid is nearest to the bid price of the otherwise low nonresident business bidder if the bid price of the resident bidder is made lower than the bid price of the nonresident business when multiplied by a factor of .95.

C. When bids are received only from nonresident businesses and resident manufacturers and the lowest responsible bid is from a nonresident business, the contract shall be awarded to the resident manufacturer whose bid is nearest to the bid price of the otherwise low nonresident business bidder if the bid price of the resident manufacturer is made lower than the bid price of the nonresident business when multiplied by a factor of .95.

D. When bids are received only from resident businesses and resident manufacturers and the lowest responsible bid is from a resident business, the contract shall be awarded to the resident manufacturer whose bid is nearest to the bid price of the otherwise low resident business bidder if the bid price of the resident manufacturer is made lower than the bid price of the resident business when multiplied by a factor of .95.

E. When bids are received from resident manufacturers, resident businesses and nonresident businesses and the lowest responsible bid is from a resident business, the contract shall be awarded to the resident manufacturer whose bid is nearest to the bid price of the otherwise low resident business bidder if the bid price of the resident manufacturer is made lower than the bid price of the resident business when multiplied by a factor of .95.

F. When bids are received from resident manufacturers, resident businesses and nonresident businesses and the lowest responsible bid is from a nonresident business, the contract shall be awarded to the resident manufacturer whose bid is nearest to the bid price of the otherwise low nonresident business bidder if the bid price of the resident manufacturer is evaluated as lower than the bid price of the nonresident business when multiplied by a factor of .95. If there is no resident manufacturer eligible for award under this provision, then the contract shall be awarded to the resident business whose bid is nearest to the bid price of the otherwise low nonresident business bidder if the bid price of the resident business is made lower than the bid price of the nonresident business when multiplied by a factor of .95.

G. When bids are received for virgin content goods only or for recycled content goods only, Subsections B through F of this section shall apply.

H. When bids are received for both recycled content goods and virgin content goods and the lowest responsible bid is for virgin content goods, the contract shall be awarded to:

(1) a resident manufacturer offering the lowest bid on recycled content goods of equal quality if the bid price of the resident manufacturer when multiplied by a factor of .90 is made lower than the otherwise low virgin content goods bid price;

(2) a resident business offering a bid on recycled content goods of equal quality if:

(a) the bid price of no resident manufacturer following application of the preference allowed in Paragraph (1) of this subsection can be made sufficiently low; and

(b) the lowest bid price of the resident business when multiplied by a factor of .90 is made lower than the otherwise low virgin content goods bid price; or

(3) a nonresident business or nonresident manufacturer offering recycled content goods of equal quality if:

(a) the bid price of no resident business or resident manufacturer following application of the preference allowed in Paragraph (1) or (2) of this subsection can be made sufficiently low; and

(b) the lowest bid price of a nonresident offering recycled content goods when multiplied by a factor of .95 is made lower than the otherwise low virgin content bid price.

I. When bids are received for both recycled content goods and virgin content goods, and the lowest responsible bid is for recycled content goods offered by a nonresident business or nonresident manufacturer, the contract shall be awarded to:

(1) a resident manufacturer offering the lowest bid on recycled content goods of equal quality if the bid price of the resident manufacturer when multiplied by a factor of .95 is made lower than the otherwise low recycled content goods bid price; or

(2) a resident business offering a bid on recycled content goods of equal quality if:

(a) the bid price of no resident manufacturer following application of the preference allowed in Paragraph (1) of this subsection can be made sufficiently low; and

(b) the lowest bid price of the resident business when multiplied by a factor of .95 is made lower than the otherwise low recycled content goods bid price offered by a nonresident business or manufacturer.

J. When bids are received for both recycled content goods and virgin content goods, and the lowest responsible bid is for recycled content goods offered by a resident business, the contract shall be awarded to a resident manufacturer offering the lowest bid on recycled content goods of equal quality if the bidprice of the resident manufacturer when multiplied by a factor of .95 is made lower than the otherwise low recycled content goods bid price.

K. This section shall not apply when the expenditure of federal funds designated for a specific purchase is involved or for any bid price greater than five million dollars (\$5,000,000)."

Section 2

Section 2. A new Section 13-1-135.1 NMSA 1978 is enacted to read:

"13-1-135.1. RECYCLED CONTENT GOODS--COOPERATIVE PROCUREMENT.--

A. Beginning July 1, 1995, each central purchasing office shall, whenever its price, quality, quantity, availability and delivery requirements are met, purchase recycled content goods through contracts established by the purchasing division of the general services department or with other central purchasing offices.

B. For purposes of this section, "recycled content goods" means supplies and materials composed in whole or in part of recycled materials; provided that the recycled materials content meets or exceeds the minimum content standards required by bid specifications.

HOUSE BILL 430

CHAPTER 61

RELATING TO DOMESTIC RELATIONS; ENACTING THE UNIFORM PREMARITAL AGREEMENT ACT; PRESCRIBING THE CONTENT AND APPLICATION OF PREMARITAL AGREEMENTS.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Uniform Premarital Agreement Act".

Section 2

Section 2. DEFINITIONS.--As used in the Uniform Premarital Agreement Act:

A. "premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage; and

B. "property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

Section 3

Section 3. FORMALITIES.--A premarital agreement must be in writing, signed by both parties and acknowledged. It is enforceable without consideration.

Section 4

Section 4. CONTENT.--

A. Parties to a premarital agreement may contract with respect to:

(1) the rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;

(2) the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;

(3) the disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;

(4) the making of a will, trust, or other arrangement to carry out the provisions of the agreement;

(5) the ownership rights in and disposition of the death benefit from a life insurance policy;

(6) the choice of law governing the construction of the agreement;
and

(7) any other matter not in violation of public policy.

B. A premarital agreement may not adversely affect the right of a child or spouse to support, a party's right to child custody or visitation, a party's choice of abode or a party's freedom to pursue career opportunities.

Section 5

Section 5. EFFECT OF MARRIAGE.--A premarital agreement becomes effective upon marriage.

Section 6

Section 6. AMENDMENT--REVOCATION.--After marriage, a premarital agreement may be amended or revoked only by a written agreement signed and acknowledged by the parties or by a consistent and mutual course of conduct, which evidences an amendment to or revocation of the premarital agreement. The amended agreement or the revocation is enforceable without consideration.

Section 7

Section 7. ENFORCEMENT.--

A. A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

(1) that party did not execute the agreement voluntarily; or

(2) the agreement was unconscionable when it was executed and, before execution of the agreement, that party:

(a) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(b) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(c) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

B. An issue of unconscionability or voluntariness of a premarital agreement shall be decided by the court as a matter of law.

Section 8

Section 8. ENFORCEMENT--VOID MARRIAGE.--If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

Section 9

Section 9. LIMITATION OF ACTIONS.--Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

Section 10

Section 10. APPLICATION AND CONSTRUCTION.--The Uniform Premarital Agreement Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of that act among states enacting it.

Section 11

Section 11. SEVERABILITY.--If any provision of the Uniform Premarital Agreement Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act which can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

Section 12

Section 12. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE BILL 317

CHAPTER 62

RELATING TO VETERANS' SERVICES; AMENDING A SECTION OF THE VETERANS' SERVICE ACT TO CLARIFY THE CHARGE TO BE MADE AGAINST A VETERAN'S ESTATE.

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

Section 1

Section 1. Section 28-13-12 NMSA 1978 (being Laws 1957, Chapter 176, Section 4, as amended) is amended to read:

"28-13-12. COMMISSION MAY PRORATE COST OF BOND PREMIUM.--In each case where the New Mexico veterans' service commission is appointed to serve as personal representative or conservator of the estate of any beneficiary of the United States veterans' administration, the court in which the estate is filed shall authorize a charge for each estate's share of the bond premium to be paid from the assets of the estate. The commission shall determine the charge to be made against each estate, but in no case shall the aggregate amount of all charges exceed the bond premium. It is the intent of the legislature that this charge shall be each estate's share in the cost of the bond that the commission will post as provided in Section 28-13-11 NMSA 1978."

HOUSE BILL 685

CHAPTER 63

RELATING TO LIMITATION OF ACTIONS; AMENDING A SECTION OF THE NMSA 1978 PERTAINING TO LIMITATION OF ACTIONS FOR DAMAGES BASED ON CHILDHOOD SEXUAL ABUSE.

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

Section 1

Section 1. Section 37-1-30 NMSA 1978 (being Laws 1993, Chapter 136, Section 1) is amended to read:

"37-1-30. ACTION FOR DAMAGES DUE TO CHILDHOOD SEXUAL ABUSE--
LIMITATION ON ACTIONS.--

A. An action for damages based on personal injury caused by childhood sexual abuse shall be commenced by a person before the latest of the following dates:

(1) the first instant of the person's twenty-fourth birthday; or

(2) three years from the date of the time that a person knew or had reason to know of the childhood sexual abuse and that the childhood sexual abuse resulted in an injury to the person, as established by competent medical or psychological testimony.

B. As used in this section, "childhood sexual abuse" means behavior that, if prosecuted in a criminal matter, would constitute a violation of:

(1) Section 30-9-11 NMSA 1978, regarding criminal sexual penetration of a minor;

(2) Section 30-9-13 NMSA 1978, regarding criminal sexual contact of a minor; or

(3) the Sexual Exploitation of Children Act."

SENATE BILL 742

CHAPTER 64

RELATING TO PUBLIC FINANCES; PROVIDING ADDITIONAL DUTIES FOR THE STATE TREASURER CONCERNING THE SHORT-TERM INVESTMENT FUND.

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

Section 1

Section 1. Section 6-10-10.1 NMSA 1978 (being Laws 1988, Chapter 61, Section 2, as amended) is amended to read:

"6-10-10.1. SHORT-TERM INVESTMENT FUND CREATED--DISTRIBUTION OF EARNINGS--REPORT OF INVESTMENTS.--

A. There is created in the state treasury the "short-term investment fund". The fund shall consist of all deposits from governmental entities and Indian tribes or pueblos that are placed in the custody of the state treasurer for short-term investment purposes pursuant to this section. The state treasurer shall maintain a separate account for each governmental entity and Indian tribe or pueblo having deposits in the fund.

B. If any local public body is unable to receive payment on public money at the rate of interest as set forth in Section 6-10-36 NMSA 1978 from financial institutions within the geographic boundaries of the governmental unit, then a local public finance official having money of that local public body in his custody required for expenditure within thirty days or less may, with the consent of the appropriate local board of finance, if any, remit some or all of such money to the state treasurer, bank, savings and loan association or credit union for deposit for the purpose of short-term investment as allowed by this section.

C. Before any local funds are invested or reinvested for the purpose of short-term investment pursuant to this section, the local public body finance official shall notify and make such funds available to banks, savings and loan associations and credit unions located within the geographical boundaries of their respective governmental unit, subject to the limitation on credit union accounts. To be eligible for such funds, the financial institution shall pay to the local public body the rate established by the state treasurer pursuant to a policy adopted by the state board of finance for such short-term investments.

D. The local public body finance official shall specify the length of time each deposit shall be in the short-term investment fund, but in any event the deposit shall not be made for more than one hundred eighty-one days. The state treasurer through the use of the state fiscal agent shall separately track each such deposit and shall make such information available to the public upon written request.

E. The state treasurer shall invest the fund as provided for state funds under Section 6-10-10 NMSA 1978 and may elect to have the short-term investment fund consolidated for investment purposes with the state funds under the control of the state treasurer; provided that accurate and detailed accounting records are maintained for the account of each participating entity and Indian tribe or pueblo and that a proportionate amount of interest earned is credited to each of the separate government accounts. The state treasurer may invest a portion of the funds in banks, savings and loan associations or credit unions subject to the requirements of this section. The fund shall be invested to achieve its objective, which is to realize the maximum return consistent with safe and prudent management.

F. At the end of each month, all interest earned from investment of the short-term investment fund shall be distributed by the state treasurer to the contributing entities and Indian tribes or pueblos in amounts directly proportionate to the respective amounts deposited in the fund and the length of time the amounts in the fund were invested. The state treasurer shall charge participating entities, Indian tribes and pueblos a fee of five basis points for the investment services provided pursuant to this section.

G. As used in this section:

(1) "local public body" means any political subdivision of the state, including school districts and any post-secondary educational institution; and

(2) "short-term" means less than thirty days.

H. In addition to the deposit of funds of local public bodies, the state treasurer may also accept for deposit, deposit and account for, in the same manner as funds of local public bodies, funds of the following governmental entities if the governing authority of the entity approves by resolution the deposit of the funds for the short-term investment:

(1) the agricultural commodity commission established under the Agricultural Commodity Commission Act;

(2) the Albuquerque metropolitan arroyo flood control authority established under the Arroyo Flood Control Act;

(3) the business improvement district management committee established under the Business Improvement District Act;

(4) the New Mexico community assistance council established under the New Mexico Community Assistance Act;

(5) the governing authority of only special districts authorized under Chapter 73 NMSA 1978;

(6) the board of trustees established under the Economic Advancement District Act;

(7) the board of directors of a corporation or foundation established under the Educational Assistance Act;

(8) a board of directors established under the Flood Control District Act;

(9) the New Mexico hospital equipment loan council established under the Hospital Equipment Loan Act;

(10) the authority established under the Industrial and Agricultural Finance Authority Act;

(11) the authority established under the Las Cruces Arroyo Flood Control Act;

(12) the authority established under the Mortgage Finance Authority Act;

(13) the authority established under the Municipal Mortgage Finance Act;

(14) the authority established under the Public School Insurance Authority Act;

(15) the authority established under the Southern Sandoval County Arroyo Flood Control Act;

(16) a board of trustees established under the Special Hospital District Act; and

(17) the authority established under the New Mexico Finance Authority Act.

I. In addition to the deposit of funds of local public bodies, the state treasurer may also accept for deposit and deposit and account for, in the same manner as funds of local public bodies, funds of any Indian tribe or pueblo in the state if authorized to do so under a joint powers agreement executed by the state treasurer and

the governing authority of the Indian tribe or pueblo under the provisions of the Joint Powers Agreements Act."

SENATE BILL 564

CHAPTER 65

RELATING TO PROPERTY TAXATION; AMENDING AND ENACTING SECTIONS OF THE PROPERTY TAX CODE TO ALLOW CHANGES IN THE PROPERTY TAX SCHEDULE TO CORRECT CERTAIN ERRORS.

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

Section 1

Section 1. Section 7-38-77 NMSA 1978 (being Laws 1973, Chapter 258, Section 117, as amended) is amended to read:

"7-38-77. AUTHORITY TO MAKE CHANGES IN PROPERTY TAX SCHEDULE AFTER ITS DELIVERY TO THE COUNTY TREASURER.--After delivery of the property tax schedule to the county treasurer, the amounts shown on the schedule as taxes due and other information on the schedule shall not be changed except:

A. by the county treasurer to correct obvious clerical errors in:

(1) the name or address of the property owner or other persons shown on the schedule;

(2) the description of the property subject to property taxation; or

(3) the mathematical computation of taxes;

B. by the county treasurer to cancel multiple valuations for property taxation purposes of the same property in a single tax year, but only if:

(1) a taxpayer presents tax receipts showing the payment of taxes by him for any year in which multiple valuations for property taxation purposes are claimed to have been made;

(2) a taxpayer presents evidence of his ownership of the property, satisfactory to the treasurer, as of January 1 of the year in which multiple valuations for property taxation purposes are claimed to have been made; and

(3) there is no dispute concerning ownership of the property called to the attention of the treasurer, and he has no actual knowledge of any dispute concerning ownership of the property;

C. as a result of a protest, including a claim for refund, in accordance with the Property Tax Code, of values, classification, allocations of values determined for property taxation purposes or a denial of a claim for an exemption;

D. by the department or the order of a court as a result of any proceeding by the division to collect delinquent property taxes under the Property Tax Code;

E. by a court order entered in an action commenced by a property owner under Section 7-38-78 NMSA 1978;

F. by the department as authorized under Section 7-38-79 NMSA 1978;

G. by the department of finance and administration as authorized under Section 7-38-77.1 NMSA 1978; or

H. as specifically otherwise authorized in the Property Tax Code."

Section 2

Section 2. A new section of the Property Tax Code, Section 7-38-77.1 NMSA 1978, is enacted to read:

"7-38-77.1. CHANGES IN PROPERTY TAX SCHEDULE ORDERED BY THE DEPARTMENT OF FINANCE AND ADMINISTRATION.--After the delivery of the property tax schedule to the county treasurer for any tax year, the department of finance and administration may order the county treasurer to make changes in the property tax schedule in connection with any property listed on the schedule if the department of finance and administration determines that an error was made in the certification of the tax rates."

Section 3

Section 3. APPLICABILITY.--The provisions of this act apply to the 1995 and subsequent property tax years.

SENATE BILL 938

CHAPTER 66

RELATING TO COURTS; PROVIDING FOR ONE ADDITIONAL JUDGE IN THE SECOND JUDICIAL DISTRICT; ESTABLISHING A DOMESTIC VIOLENCE COURT IN THE SECOND JUDICIAL DISTRICT.

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

Section 1

Section 1. Section 34-6-5 NMSA 1978 (being Laws 1968, Chapter 69, Section 8, as amended) is amended to read:

"34-6-5. JUDGES--SECOND JUDICIAL DISTRICT.--There shall be twenty-one district judges in the second judicial district."

Section 2

Section 2. TEMPORARY PROVISION--APPOINTMENT.--The additional judgeships provided for in Section 1 of this act shall be filled by the governor pursuant to Article 6, Section 36 of the constitution of New Mexico.

Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 1996.

SENATE BILL 391

CHAPTER 67

RELATING TO MUNICIPAL UTILITIES; AMENDING SECTION 3-23-3 NMSA 1978 (BEING LAWS 1965, CHAPTER 300, SECTION 14-22-3, AS AMENDED); EXEMPTING CERTAIN ACTIONS FROM PUBLIC UTILITY COMMISSION APPROVAL; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 3-23-3 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-22-3, as amended) is amended to read:

"3-23-3. MUNICIPAL UTILITY--APPROVAL OF NEW MEXICO PUBLIC UTILITY COMMISSION.--

A. If the acquisition of a utility is to be financed from funds received from the issuance and sale of revenue bonds, the price of the acquisition of the utility shall be approved by the New Mexico public utility commission and the commission shall require:

(1) a determination by appraisal or otherwise of the true value of the utility to be purchased; or

(2) an engineer's estimate of the cost of the utility to be constructed.

B. No revenue bonds shall be issued for the acquisition of such a utility until the New Mexico public utility commission has approved the issue and its amount, date of issuance, maturity, rate of interest and general provisions.

C. The provisions of Subsections A and B of this section shall not apply to the condemnation by a municipality having a population of twenty-five thousand or more persons according to the 1990 federal decennial census of either sewer facilities as authorized by Chapter 3, Article 26 NMSA 1978 or water facilities as authorized by Chapter 3, Article 27 NMSA 1978."

Section 2

Section 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE BILL 982 WITH EMERGENCY CLAUSE
SIGNED APRIL 5, 1995

CHAPTER 68

AUTHORIZING A CHANGE IN PURPOSE FOR CERTAIN FUNDS APPROPRIATED IN LAWS 1994, CHAPTER 148, SECTION 47 AND APPROPRIATING THOSE FUNDS FOR THE DESIGN, CONSTRUCTION AND EQUIPPING OF A RECREATION, SWIMMING POOL AND CONVENTION CENTER FACILITY IN LAS VEGAS IN SAN MIGUEL COUNTY; DECLARING AN EMERGENCY.

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

Section 1

Section 1. APPROPRIATION--CHANGE OF PURPOSE.--Two million dollars (\$2,000,000) of the appropriation in Laws 1994, Chapter 148, Section 47 to the board of regents of New Mexico highlands university for renovation of its natatorium building shall not be expended for that purpose but is appropriated to the local government division of the department of finance and administration for expenditure in fiscal years 1995 through 1998 to design, construct and equip a recreation, swimming pool and convention center facility in the city of Las Vegas in San Miguel county. Any unexpended or unencumbered balance remaining at the end of fiscal year 1998 shall revert to the general fund.

Section 2

Section 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE BILL 2

CHAPTER 69

RELATING TO EDUCATION; ALLOWING PARENTS OF A CHILD WITH A DISABILITY CERTAIN EDUCATIONAL OPTIONS; AMENDING SECTIONS OF THE PUBLIC SCHOOL FINANCE ACT, THE PUBLIC SCHOOL CODE AND CHAPTER 28, ARTICLE 18 NMSA 1978.

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

Section 1

Section 1. Section 22-8-2 NMSA 1978 (being Laws 1978, Chapter 128, Section 3, as amended) is amended to read:

"22-8-2. DEFINITIONS.--As used in the Public School Finance Act:

A. "ADM" or "MEM" means membership;

B. "membership" means the total enrollment of qualified students on the current roll of a class or school on a specified day. The current roll is established by the addition of original entries and reentries minus withdrawals. Withdrawals of students, in addition to students formally withdrawn from the public school, includes students absent from the public school for as many as ten consecutive school days;

C. "basic program ADM" or "basic program MEM" means the MEM of qualified students but excludes the full-time-equivalent MEM in early childhood education and three- and four-year old students receiving special education services;

D. "cost differential factor" is the numerical expression of the ratio of the cost of a particular segment of the school program to the cost of the basic program in grades four through six;

E. "department" or "division" means the state department of public education;

F. "early childhood education ADM" or "early childhood education MEM" means the full-time-equivalent MEM of students attending approved early childhood education programs;

G. "full-time-equivalent ADM" or "full-time- equivalent MEM" is that membership calculated by applying to the MEM in an approved public school program

the ratio of the number of hours per school day devoted to the program to six hours or the number of hours per school week devoted to the program to thirty hours;

H. "operating budget" means the annual financial plan required to be submitted by a local school board;

I. "program cost" is the product of the total number of program units to which a school district is entitled multiplied by the dollar value per program unit established by the legislature;

J. "program element" is that component of a public school system to which a cost differential factor is applied to determine the number of program units to which a school district is entitled, including but not limited to MEM, full-time-equivalent MEM, teacher, classroom or public school;

K. "program unit" is the product of the program element multiplied by the applicable cost differential factor;

L. "public money" or "public funds" means all money from public or private sources received by a local school board or officer or employee of a local school board for public use;

M. "qualified student" means a public school student who:

(1) has not graduated from high school;

(2) is regularly enrolled in one-half or more of the minimum course requirements approved by the state board for public school students; and

(3) is at least five years of age prior to 12:01 a.m. on September 1 of the school year; or

(4) is at least three years of age at any time during the school year and is receiving special education services pursuant to regulation of the state board; or

(5) has not reached his twenty-second birthday on the first day of the school year and is receiving special education services pursuant to regulation of the state board; and

N. "state superintendent" means the superintendent of public instruction or his designee."

Section 2

Section 2. Section 22-13-5 NMSA 1978 (being Laws 1972, Chapter 95, Section 1, as amended) is amended to read:

"22-13-5. SPECIAL EDUCATION.--School districts shall provide special education and related services appropriate to meet the needs of all children requiring special education and related services. Regulations and standards shall be developed and established by the state board for the provision of special education in the schools and classes of the public school system in the state and in all institutions wholly or partly supported by the state. The state board shall monitor and enforce the regulations and standards. School districts shall also provide services for three-year-old and four-year-old preschool children with disabilities, unless the parent or guardian chooses not to enroll his child. If a child receiving services in the department of health's family, infant, toddler program has his third birthday during the school year, the child's parents shall have the option of having the child complete the school year in the family, infant, toddler program or enrolling the child in the public school's preschool program. A child with a disability who enrolls in the public school's preschool program and who has his third birthday during a school year may receive special education and related services from the beginning of that school year. Services for students age three through twenty-one may include, but are not limited to, evaluating particular needs, providing learning experiences that develop cognitive and social skills, arranging for or providing related services as defined by the state board and providing parent education. The services may be provided by certified school personnel or contracted for with other community agencies and shall be provided in age-appropriate, integrated settings, including home, daycare centers, headstart programs, schools or community-based settings."

Section 3

Section 3. Section 22-13-6 NMSA 1978 (being Laws 1972, Chapter 95, Section 2, as amended) is amended to read:

"22-13-6. SPECIAL EDUCATION--DEFINITIONS.--As used in the Public School Code:

A. "special education" means the provision of services additional to, supplementary to or different from those provided in the regular school program by a systematic modification and adaptation of instructional techniques, materials and equipment to meet the needs of exceptional children;

B. "exceptional children" means school-age persons whose abilities render regular services of the public school to be inconsistent with their educational needs;

C. "children with disabilities" means those children who are classified as developmentally disabled according to the Developmental Disabilities Act; and

D. "gifted child" means a school-age person who is determined to be gifted pursuant to Section 22-13-6.1 NMSA 1978 and standards adopted by the state board pursuant to that section. Nothing in this section shall preclude a school district from offering additional gifted programs for students who fail to meet the eligibility criteria;

however, the state shall only provide state funds for department of education approved gifted programs for those students who meet the established criteria."

Section 4

Section 4. Section 28-18-1 NMSA 1978 (being Laws 1990, Chapter 4, Section 1, as amended by Laws 1993, Chapter 34, Section 1 and also by Laws 1993, Chapter 178, Section 1) is amended to read:

"28-18-1. DEPARTMENT DESIGNATION--AUTHORIZATION--PAYMENT SYSTEM.--

A. The department of health is designated as the lead state agency for the development and administration of a statewide system of comprehensive, coordinated, multidisciplinary, interagency early intervention services for eligible children with or at risk of developmental delay and their families. The program shall be known as the "family, infant, toddler program".

B. The parent may choose whether his eligible child shall participate in the family, infant, toddler program.

C. If a child enrolled in the family, infant, toddler program has his third birthday during the school year, the child's parent shall have the option of having the child complete the school year in the family, infant, toddler program or enrolling the child in the public school's preschool program. A child with a disability who enrolls in the public school's preschool program and has his third birthday during a school year may receive special education and related services from the beginning of that school year.

D. The state department of public education, the human services department, the children, youth and families department and other publicly funded services shall collaborate with the department of health and continue to provide all services within their respective statutory responsibilities to eligible children. State and local interagency agreements shall delineate responsibility for provisions of the family, infant, toddler program.

E. The department of health shall establish a payment system that shall maximize funds from appropriate federal, state, local and private sources to support the family, infant, toddler program.

F. The secretary of health shall meet the requirements of the Individuals with Disabilities Education Act, 20 U.S.C., Sections 1475(c) and 1476(a), contingent upon voluntary participation by the state, including:

(1) establishing policies and adopting regulations necessary to comply with those sections of that act;

(2) implementing procedures to ensure that services are provided to eligible children in a timely manner;

(3) making arrangements for the provisions of the family, infant, toddler program;

(4) carrying out the general administration, supervision and monitoring of the family, infant, toddler program;

(5) resolving complaints concerning the family, infant, toddler program;

(6) maintaining and expanding state and local coordination and interagency agreements pertaining to the family, infant, toddler program;

(7) identifying and coordinating all available resources for early intervention services for the family, infant, toddler program; and

(8) establishing requirements for qualified personnel involved in the family, infant, toddler program.

G. As used in this section:

(1) "early intervention services" means services that are designed to meet the developmental needs of eligible children, including physical development, communications development, adaptive development, social and emotional development or sensory development; and

(2) "eligible child" means infants and toddlers between the ages of birth and thirty-six months with developmental delay or who are at risk of delay according to specific criteria established by the department of health."

SENATE BILL 856

CHAPTER 70

RELATING TO TAXATION; MAKING TECHNICAL CORRECTIONS TO THE TAX ADMINISTRATION ACT AND CERTAIN TAX ACTS; AMENDING AND REPEALING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 7-1-20 NMSA 1978 (being Laws 1965, Chapter 248, Section 22, as amended) is amended to read:

"7-1-20. COMPROMISE OF TAXES--CLOSING AGREEMENTS.--

A. At any time after the assessment of any tax, if the secretary in good faith is in doubt of the liability for the payment thereof, the secretary may, with the written approval of the attorney general, compromise the asserted liability for taxes by entering with the taxpayer into a written agreement that adequately protects the interests of the state.

B. The agreement provided for in this section is to be known as a "closing agreement". If entered into after any court acquires jurisdiction of the matter, the agreement shall be part of a stipulated order or judgment disposing of the case.

C. As a condition for entering into a closing agreement, the secretary may require the taxpayer to furnish security for payment of any taxes due according to the terms of the agreement.

D. A closing agreement is conclusive as to liability or nonliability for payment of assessed taxes relating to the periods referred to in the agreement, and except upon a showing of fraud or malfeasance, or misrepresentation or concealment of a material fact:

(1) the agreement shall not be modified by any officer, employee or agent of the state; and

(2) in any suit, action or proceeding, the agreement or any determination, assessment, collection, payment, abatement, refund or credit made in accordance therewith shall not be annulled, modified, set aside or disregarded."

Section 2

Section 2. 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 action and order of the secretary, all as specified in Section 7-1-24 NMSA 1978, or except as a consequence of a claim for refund as specified in Section 7-1-26 NMSA 1978."

Section 3

Section 3. Section 7-1-66 NMSA 1978 (being Laws 1965, Chapter 248, Section 67) is amended to read:

"7-1-66. IMMUNITY OF PROPERTY OF INDIAN NATIONS, TRIBES OR PUEBLOS AND OF THE UNITED STATES.--Liens will attach or levy may be made by terms of any provision of the Tax Administration Act to or on property belonging to the United States of America or to an Indian nation, tribe or pueblo or to any Indian only to the extent allowed by law."

Section 4

Section 4. Section 7-1-82 NMSA 1978 (being Laws 1973, Chapter 179, Section 1, as amended) is amended to read:

"7-1-82. TRANSFER, ASSIGNMENT, SALE, LEASE OR RENEWAL OF LIQUOR LICENSE.--

A. The director of the alcohol and gaming division of the regulation and licensing department shall not allow the transfer, assignment, lease or sale of any liquor license pursuant to the provisions of the Liquor Control Act until the director receives written notification from the secretary or secretary's delegate that:

(1) the licensee or any person authorized to use the license is not a delinquent taxpayer as defined in Section 7-1-16 NMSA 1978; or

(2) the transferee, assignee, buyer or lessee has entered into a written agreement with the secretary or secretary's delegate in which the transferee, assignee, buyer or lessee has assumed full liability for payment of all taxes due or which may become due from engaging in business authorized by the liquor license.

B. The director of the alcohol and gaming division of the regulation and licensing department shall not allow the renewal of any liquor license pursuant to the provisions of the Liquor Control Act until the director receives notification from the secretary or secretary's delegate that on a certain date:

(1) there is no assessed tax liability from engaging in business authorized by the liquor license or, if there is assessed tax liability, the licensee is not a delinquent taxpayer; and

(2) there are no unfiled tax returns due from engaging in business authorized by the liquor license."

Section 5

Section 5. Section 7-9-45 NMSA 1978 (being Laws 1969, Chapter 144, Section 35, as amended) is amended to read:

"7-9-45. DEDUCTIONS.--

A. In computing the gross receipts tax or governmental gross receipts tax due, only those receipts specified in Sections 7-9-46 through 7-9-76.2 and 7-9-83 through 7-9-85 NMSA 1978 may be deducted. Receipts, whether specified once or several times in Sections 7-9-46 through 7-9-76.2 and 7-9-83 through 7-9-85 NMSA 1978, may be deducted only once from gross receipts or governmental gross receipts.

B. Receipts that are exempted from the gross receipts tax may not be deducted from gross receipts. Receipts that are deducted from gross receipts may not be exempted from the gross receipts tax.

C. Receipts that are exempted from the governmental gross receipts tax shall not be deducted from governmental gross receipts. Receipts that are deducted from governmental gross receipts shall not be exempted from the governmental gross receipts tax."

Section 6

Section 6. Section 7-9-82 NMSA 1978 (being Laws 1986, Chapter 20, Section 68) is amended to read:

"7-9-82. CREDIT--GROSS RECEIPTS TAX--MUNICIPAL GROSS RECEIPTS TAX PAID.--A credit shall be allowed for each reporting period against the gross receipts tax for:

A. an amount of the municipal gross receipts tax equal to one-half of one percent of the taxable gross receipts for which the taxpayer is liable for that reporting period imposed by a municipality pursuant to Section 7-19D-4 NMSA 1978 if that municipality has imposed a total municipal gross receipts tax rate of at least one-half of one percent; or

B. an amount of the municipal gross receipts tax equal to one-fourth of one percent of the taxable gross receipts for which the taxpayer is liable for that reporting period imposed by a municipality pursuant to Section 7-19D-4 NMSA 1978 if that municipality has imposed a total municipal gross receipts tax rate of one-fourth of one percent."

Section 7

Section 7. Section 7-10-1 NMSA 1978 (being Laws 1970, Chapter 26, Section 1) is amended to read:

"7-10-1. SHORT TITLE.--Chapter 7, Article 10 NMSA 1978 may be cited as the "Gross Receipts Tax Registration Act".

Section 8

Section 8. Section 7-10-2 NMSA 1978 (being Laws 1970, Chapter 26, Section 2) is amended to read:

"7-10-2. PURPOSE OF ACT.--The purpose of the Gross Receipts Tax Registration Act is to ensure that all persons doing business with the state, whether leasing property employed in New Mexico, performing services in New Mexico or selling property in New Mexico, are registered with the department for payment of the gross receipts tax."

Section 9

Section 9. Section 7-10-3 NMSA 1978 (being Laws 1970, Chapter 26, Section 3, as amended) is amended to read:

"7-10-3. DEFINITIONS.--As used in the Gross Receipts Tax Registration Act:

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

B. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity; and

C. "state" means any state agency, department or office that has authority to contract in the name of the state or to make payments from state funds."

Section 10

Section 10. Section 7-10-4 NMSA 1978 (being Laws 1970, Chapter 26, Section 4) is amended to read:

"7-10-4. PERSONS DOING BUSINESS WITH THE STATE--REGISTRATION TO PAY THE GROSS RECEIPTS TAX REQUIRED.--Any person leasing or selling property to the state or performing services for the state, as those terms are used in the Gross Receipts and Compensating Tax Act, shall be registered with the department to pay the gross receipts tax unless that person has no business location, employees or property in New Mexico and does not conduct business in New Mexico through agents or contractors."

Section 11

Section 11. Section 7-10-5 NMSA 1978 (being Laws 1970, Chapter 26, Section 5) is amended to read:

"7-10-5. PENALTY FOR NONCOMPLIANCE.--If any person required to register under the provisions of Section 7-10-4 NMSA 1978 is not registered to pay the gross receipts tax, the state shall withhold payment of the amount due until the person has presented evidence of registration with the department to pay the gross receipts tax."

Section 12

Section 12. Section 7-12-2 NMSA 1978 (being Laws 1971, Chapter 77, Section 2, as amended) is amended to read:

"7-12-2. DEFINITIONS.--As used in the Cigarette Tax Act:

A. "cigarette" means any roll of tobacco or any substitute therefor wrapped in paper or any substance other than tobacco;

B. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity;

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

D. "secretary" means the secretary of taxation and revenue;

E. "stamp" means any authorized label which is issued to cover the tax in multiples of five cigarettes and upon which is printed the words "State of New Mexico" and "tobacco tax" and which is coated with an adhesive to affix the stamp to a package so that the stamp, once affixed, cannot be removed without destroying it;

F. "stamped" means a package or container of cigarettes to which a cigarette tax stamp has been affixed as provided in the Cigarette Tax Act; and

G. "unstamped" means a package or container of cigarettes to which the cigarette tax stamp provided for in the Cigarette Tax Act has not been affixed."

Section 13

Section 13. Section 7-12-3 NMSA 1978 (being Laws 1971, Chapter 77, Section 3, as amended by Laws 1993, Chapter 30, Section 19 and also by Laws 1993, Chapter 358, Section 2) is amended to read:

"7-12-3. EXCISE TAX ON CIGARETTES--RATES.--

A. For the privilege of selling, giving or consuming cigarettes in New Mexico, there is levied an excise tax at the rate of one and five hundredths cents (\$.0105) for each cigarette sold, given or consumed in this state.

B. The tax imposed by this section shall be referred to as the "cigarette tax".

Section 14

Section 14. Section 7-12-3.1 NMSA 1978 (being Laws 1986, Chapter 13, Section 3) is amended to read:

"7-12-3.1. CIGARETTE INVENTORY TAX--IMPOSITION OF TAX--DATE PAYMENT OF TAX DUE.--

A. A cigarette inventory tax is imposed, measured by the quantity of cigarette stamps, whether or not affixed to packages of cigarettes, in the possession of a person who is required by Subsection C of Section 7-12-5 NMSA 1978 to affix stamps on the date on which an increase in the excise tax imposed by Section 7-12-3 NMSA 1978 is effective. The taxable event is the existence of an inventory of cigarette stamps, whether or not affixed to packages of cigarettes, in the possession of a person who is required by Subsection C of Section 7-12-5 NMSA 1978 to affix stamps on the date on which an increase in the excise tax imposed by Section 7-12-3 NMSA 1978 is effective. The rate of the cigarette inventory tax to apply to cigarette stamps held in inventory shall be the amount of the increase in the cigarette tax imposed by Section 7-12-3 NMSA 1978.

B. The cigarette inventory tax is to be paid to the department on or before the twenty-fifth day of the month following the month in which the taxable event occurs."

Section 15

Section 15. Section 7-12-6 NMSA 1978 (being Laws 1971, Chapter 77, Section 6, as amended) is amended to read:

"7-12-6. WAIVER OF REQUIREMENT THAT STAMPS BE AFFIXED.--The requirement imposed in Section 7-12-5 NMSA 1978 that stamps be affixed to packages or containers of cigarettes is waived if:

A. the cigarettes are sold on railroad passenger trains in New Mexico. When unstamped cigarettes are sold on railroad passenger trains in New Mexico, the seller shall remit to the department the tax imposed in Section 7-12-3 NMSA 1978 on or before the twenty-fifth day of the month following the month in which sales of unstamped cigarettes are made on railroad passenger trains in New Mexico; or

B. the cigarettes are distributed by a cigarette manufacturer to consumers within the state of New Mexico as free samples. When unstamped cigarettes are distributed by a cigarette manufacturer in New Mexico as free samples, the manufacturer shall remit to the department the tax imposed in Section 7-12-3 NMSA 1978 on or before the twenty-fifth day of the month following the month in which distributions of unstamped cigarettes are made."

Section 16

Section 16. Section 7-13-3.2 NMSA 1978 (being Laws 1979, Chapter 166, Section 8, as amended) is amended to read:

"7-13-3.2. GASOLINE INVENTORIES.--

A. On the day prior to the day that the excise tax imposed by Section 7-13-3 NMSA 1978 is increased, each distributor, wholesaler and retailer shall take inventory of the gallons of gasoline on hand.

B. Distributors and wholesalers shall report total gallons of gasoline in inventory on the day prior to the day that an increase in the gasoline tax rate is effective and pay any tax due imposed by Section 7-13-3.1 NMSA 1978.

C. Retailers shall maintain a record of the total gallons of gasoline in inventory on the day prior to the day that an increase in the gasoline tax rate is effective and shall not increase the price of the gasoline sold until the inventory is disposed of in the ordinary course of business."

Section 17

Section 17. Section 7-14A-2 NMSA 1978 (being Laws 1991, Chapter 197, Section 6) is amended to read:

"7-14A-2. DEFINITIONS.--As used in the Leased Vehicle Gross Receipts Tax Act:

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

B. "engaging in business" means carrying on or causing to be carried on the leasing of vehicles with the purpose of direct or indirect benefit;

C. "gross receipts" means the total amount of money or the value of other consideration received from leasing vehicles used in New Mexico, but excludes cash discounts allowed and taken, leased vehicle gross receipts tax payable on transactions for the reporting period, gross receipts tax payable pursuant to the Gross Receipts and

Compensating Tax Act on transactions for the reporting period and taxes imposed pursuant to the provisions of any local option gross receipts tax, as that term is defined in the Tax Administration Act, that is payable on transactions for the reporting period and any type of time-price differential. Also excluded from "gross receipts" are any gross receipts or sales taxes imposed by an Indian nation, tribe or pueblo, provided that the tax is approved, if approval is required by federal law or regulation, by the secretary of the interior of the United States, and provided further that the gross receipts or sales tax imposed by the Indian nation, tribe or pueblo provides a reciprocal exclusion for gross receipts, sales or gross receipts-based excise taxes imposed by the state or its political subdivisions. In an exchange in which the money or other consideration received does not represent the value of the lease of the vehicle, "gross receipts" means the reasonable value of the lease of the vehicle. When the leasing of vehicles is made under a leasing contract, the seller or lessor may elect to treat all receipts under those contracts as gross receipts as and when the payments are actually received. "Gross receipts" also includes amounts paid by members of any cooperative association or similar organization for the lease of vehicles by that organization;

D. "leasing" means any arrangement whereby, for a consideration, a vehicle without a driver furnished by the lessor or owner is employed for or by any person other than the owner of the vehicle for a period of not more than six months;

E. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity; and

F. "vehicle" means a passenger automobile designed to accommodate six or fewer adult human beings that is part of a fleet of five or more passenger automobiles owned by the same person."

Section 18

Section 18. Section 7-17-2 NMSA 1978 (being Laws 1966, Chapter 49, Section 2, as amended) is amended to read:

"7-17-2. DEFINITIONS.--As used in the Liquor Excise Tax Act:

A. "alcoholic beverages" means distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin and aromatic bitters or any similar alcoholic beverage, including blended or fermented beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half of one percent alcohol, but excluding medicinal bitters:

(1) "spirituous liquors" means alcoholic beverages except fermented beverages such as wine, beer and ale;

(2) "beer" means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt and hops or other cereals in water and includes porter, beer, ale and stout;

(3) "fortified wine" means wine containing more than fourteen percent alcohol by volume when bottled or packaged by the manufacturer, but does not include:

(a) wine that is sealed or capped by cork closure and aged two years or more;

(b) wine that contains more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and has not been produced with the addition of wine spirits, brandy or alcohol; or

(c) vermouth and sherry; and

(4) "wine" includes the words "fruit juices" and means alcoholic beverages obtained by the fermentation of the natural sugar contained in fruit or other agricultural products, with or without the addition of sugar or other products, that do not contain less than one-half of one percent nor more than twenty-one percent alcohol by volume;

B. "distribute" means the transfer of alcoholic beverages by a wholesaler to another person by any means other than by sale, but does not include the return by a wholesaler to a distiller, rectifier, brewer or winer of alcoholic beverages that are spoiled or otherwise damaged so as to be unfit for sale or consumption;

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

D. "micro brewer" means any person who produces less than five thousand barrels of beer in a year;

E. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other association; "person" also means, to the extent permitted by law, any federal, state or other governmental unit or subdivision or agency, department or instrumentality thereof;

F. "small winer or winegrower" means any person who produces less than two hundred twenty thousand liters of wine in a year; and

G. "wholesaler" means any person holding a license issued under Section 60-6A-1 NMSA 1978 or any person selling alcoholic beverages that were not purchased from a person holding a license issued under Section 60-6A-1 NMSA 1978."

Section 19

Section 19. Section 7-17-6 NMSA 1978 (being Laws 1984, Chapter 85, Section 4) is amended to read:

"7-17-6. DEDUCTION--INTERSTATE SALES.--A wholesaler may deduct the liters of spirituous liquors, gallons of beer and liters of wine sold and shipped to a person in another state from the units of alcoholic beverages subject to the tax imposed by the Liquor Excise Tax Act; provided that the department may require the wholesaler to submit evidence satisfactory to the department that the units have been sold and shipped to a person in another state."

Section 20

Section 20. Section 7-17-11 NMSA 1978 (being Laws 1969, Chapter 80, Section 1, as amended) is amended to read:

"7-17-11. REFUND OR CREDIT OF TAX.--The department shall allow a claim for refund or credit as provided in Sections 7-1-26 and 7-1-29 NMSA 1978 for the tax imposed by Section 7-17-5 NMSA 1978 and paid on alcoholic beverages destroyed in shipment, spoiled or otherwise damaged as to be unfit for sale or consumption upon submission of proof satisfactory to the department of such destruction, spoilage or damage."

Section 21

Section 21. Section 7-17-12 NMSA 1978 (being Laws 1984, Chapter 85, Section 8) is amended to read:

"7-17-12. INTERPRETATION OF ACT--ADMINISTRATION AND ENFORCEMENT OF TAX.--

A. The department shall interpret the provisions of the Liquor Excise Tax Act.

B. The department shall administer and enforce the collection of the liquor excise tax, and the Tax Administration Act applies to the administration and enforcement of the tax."

Section 22

Section 22. Section 7-20C-3 NMSA 1978 (being Laws 1991, Chapter 176, Section 3, as amended by Laws 1994, Chapter 14, Section 2 and also by Laws 1994, Chapter 101, Section 4) is amended to read:

"7-20C-3. LOCAL HOSPITAL GROSS RECEIPTS TAX--AUTHORITY TO IMPOSE--ORDINANCE REQUIREMENTS.--

A. The majority of the members elected to the governing body of a county may enact an ordinance imposing an excise tax on any person engaging in business in the county for the privilege of engaging in business. This tax is to be referred to as the "local hospital gross receipts tax". The rate of the tax shall be one-half of one percent of the gross receipts of the person engaging in business if the tax is initially imposed before January 1, 1993. The rate of the tax shall be one-eighth of one percent of the gross receipts of the person engaging in business if the tax is initially imposed after January 1, 1993.

B. The local hospital gross receipts tax imposed initially before January 1, 1993 shall be imposed only once for the period necessary for payment of the principal and interest on revenue bonds issued to accomplish the purpose for which the revenue is dedicated, but the period shall not exceed ten years from the effective date of the ordinance imposing the tax.

C. No local hospital gross receipts tax authorized in Subsection A of this section shall be imposed initially after January 1, 1993 unless:

(1) in a county described in Paragraph (2) of Subsection A of Section 7-20C-2 NMSA 1978, the voters of the county have approved the issuance of general obligation bonds of the county sufficient to pay at least one-half of the costs of the county hospital facility or county twenty-four hour urgent care or emergency facility for which the local hospital gross receipts tax revenues are dedicated, including the costs of all acquisition, renovation and equipping of the facility; or

(2) in a county described in Paragraph (3) of Subsection A of Section 7-20C-2 NMSA 1978, the county will not have in effect at the same time a county hospital emergency gross receipts tax and the voters of the county have approved the imposition of a property tax at a rate of one dollar (\$1.00) on each one thousand dollars (\$1,000) of taxable value of property in the county for the purpose of operation and maintenance of a hospital owned by the county and operated and maintained either by the county or by another party pursuant to a lease with the county.

D. Prior to January 1, 1993, the governing body, at the time of enacting an ordinance imposing the rate of the tax authorized in Subsection A of this section, shall dedicate the revenue for acquisition of land for and the design, construction, equipping and furnishing of a county hospital facility to be operated by the county or operated and maintained by another party pursuant to a lease with the county. If the governing body is enacting the ordinance imposing the tax after July 1, 1993, the governing body shall

dedicate the revenue for acquisition, renovation and equipping of a building for a county hospital facility or a county twenty-four hour urgent care or emergency facility or for operation and maintenance of that facility, whether operated and maintained by the county or by another party pursuant to a lease with the county, for the period of time the tax is imposed not to exceed ten years. In any election held, the ballot shall clearly state the purpose to which the revenue will be dedicated and the revenue shall be used by the county for that purpose.

E. The ordinance shall not go into effect until after an election is held and a simple majority of the qualified electors of the county voting in the election votes in favor of imposing the local hospital gross receipts tax, and in the case of a county described in Paragraph (3) of Subsection A of Section 7-20C-2 NMSA 1978, also votes in favor of a property tax at a rate of one dollar (\$1.00) for each one thousand dollars (\$1,000) of taxable value of property in the county. The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is adopted on the question of imposing the tax. The question may be submitted to the qualified electors and voted upon as a separate question in a general election or in any special election called for that purpose by the governing body. A special election upon the question shall be called, held, conducted and canvassed in substantially the same manner as provided by law for general elections. If the question of imposing a local hospital gross receipts tax fails or if the question of imposing both a local hospital gross receipts tax and a property tax fails, the governing body shall not again propose a local hospital gross receipts tax for a period of one year after the election. A certified copy of any ordinance imposing a local hospital gross receipts tax shall be mailed to the department within five days after the ordinance is adopted in any election called for that purpose.

F. Any ordinance enacted pursuant to the provisions of Subsection A of this section shall include an effective date of either July 1 or January 1, whichever date occurs first after the expiration of at least three months from the date the ordinance is approved by the electorate.

G. Any ordinance repealed under the provisions of the Local Hospital Gross Receipts Tax Act shall be repealed effective on either July 1 or January 1.

H. As used in this section, "taxable value of property" means the sum of:

(1) the net taxable value, as that term is defined in the Property Tax Code, of property subject to taxation under the Property Tax Code;

(2) the assessed value of products, as those terms are defined in the Oil and Gas Ad Valorem Production Tax Act;

(3) the assessed value of equipment, as those terms are defined in the Oil and Gas Production Equipment Ad Valorem Tax Act; and

(4) the taxable value of copper mineral property, as those terms are defined in the Copper Production Ad Valorem Tax Act, subject to taxation under the Copper Production Ad Valorem Tax Act."

Section 23

Section 23. REPEAL.--Sections 7-26-10, 7-26-11 and 7-29-4.6 NMSA 1978 (being Laws 1977, Chapter 102, Section 1, Laws 1980, Chapter 62, Section 12 and Laws 1980, Chapter 62, Section 11, as amended) are repealed.

Section 24

Section 24. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

SENATE BILL 43

CHAPTER 71

RELATING TO CAPITAL EXPENDITURES; EXTENDING EXPENDITURE PERIOD OF CERTAIN APPROPRIATIONS TO THE OFFICE OF CULTURAL AFFAIRS; DECLARING AN EMERGENCY.

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

Section 1

Section 1. APPROPRIATIONS--EXTENDING EXPENDITURE PERIOD.--The period of time in which the following appropriations from the general fund to the office of cultural affairs made in Chapter 147 of Laws 1994 may be expended shall be extended through the fiscal year 1996:

A. to build a data base of cultural holdings in state and local museums pursuant to Paragraph (1) of Subsection V of Section 7;

B. for improvements and acquisitions at the palace of the governors in Santa Fe pursuant to Paragraph (4) of Subsection V of Section 7; and

C. to design a state monument interpretive center to commemorate the camino real de tierra adentro in Socorro county pursuant to Paragraph (8) of Subsection V of Section 7.

Section 2

Section 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SEBATE BILL 849 WITH EMERGENCY CLAUSE
SIGNED APRIL 5, 1995

CHAPTER 72

RELATING TO PUBLIC EDUCATION; PROVIDING FOR VOLUNTARY MOMENTS OF SILENT MEDITATION IN THE PUBLIC SCHOOLS.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Meditation in Public School Act".

Section 2

Section 2. FINDINGS--PURPOSE.--

A. The legislature finds that:

(1) the first amendment of the United States constitution protects religious freedom and freedom of speech;

(2) the constitution of New Mexico protects each citizen's rights to worship God according to the dictates of the citizen's conscience; and

(3) the constitution of New Mexico prohibits public schools from requiring attendance or participation by students or teachers in any religious service.

B. The purpose of the Meditation in Public School Act is to foster respect for the educational process and environment and to provide for the right of every public school student to exercise his freedom of conscience on public school grounds without pressure from the state, any public school, teacher, school personnel or other student.

Section 3

Section 3. MOMENT OF SILENT MEDITATION.--Students in the public schools may voluntarily engage in student-initiated moments of silent meditation.

Section 4

Section 4. SEVERABILITY.--If any part or application of the Meditation in Public School Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

SENATE BILL 98

CHAPTER 73

RELATING TO STATE GOVERNMENT BUILDINGS; REQUIRING CONSTRUCTION OF NEW OR RENOVATION OF EXISTING STATE GOVERNMENT BUILDINGS TO PROVIDE FOR WATER CONSERVATION DEVICES; ENACTING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. WATER CONSERVATION DEVICES--STATE GOVERNMENT BUILDING.--The construction of new state government buildings shall provide for water conservation devices, including flow-limiting faucets in lavatories and other water dispensing facilities.

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

SENATE BILL 825

CHAPTER 74

RELATING TO TAXATION; AMENDING CERTAIN SECTIONS OF THE LIQUOR EXCISE TAX ACT TO REMOVE THE REQUIREMENT THAT THE LIQUOR EXCISE TAX BE IMPOSED ON NON-SALE TRANSFERS OF ALCOHOLIC BEVERAGES.

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

Section 1

Section 1. Section 7-17-2 NMSA 1978 (being Laws 1966, Chapter 49, Section 2, as amended) is amended to read:

"7-17-2. DEFINITIONS.--As used in the Liquor Excise Tax Act:

A. "alcoholic beverages" means distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin and aromatic bitters or any similar alcoholic

beverage, including blended or fermented beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half of one percent alcohol, but excluding medicinal bitters:

(1) "spirituous liquors" means alcoholic beverages except fermented beverages such as wine, beer and ale;

(2) "beer" means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt and hops or other cereals in water and includes porter, beer, ale and stout;

(3) "fortified wine" means wine containing more than fourteen percent alcohol by volume when bottled or packaged by the manufacturer, but does not include:

(a) wine that is sealed or capped by cork closure and aged two years or more;

(b) wine that contains more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and has not been produced with the addition of wine spirits, brandy or alcohol; or

(c) vermouth and sherry; and

(4) "wine" includes the words "fruit juices" and means alcoholic beverages obtained by the fermentation of the natural sugar contained in fruit or other agricultural products, with or without the addition of sugar or other products, that do not contain less than one-half of one percent nor more than twenty-one percent alcohol by volume;

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

C. "micro brewer" means any person who produces less than five thousand barrels of beer in a year;

D. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other association; "person" also means, to the extent permitted by law, any federal, state or other governmental unit or subdivision or agency, department or instrumentality thereof;

E. "small winer or winegrower" means any person who produces less than two hundred twenty thousand liters of wine in a year; and

F. "wholesaler" means any person holding a license issued under Section 60-6A-1 NMSA 1978 or any person selling alcoholic beverages that were not purchased from a person holding a license issued under Section 60-6A-1 NMSA 1978."

Section 2

Section 2. Section 7-17-5 NMSA 1978 (being Laws 1993, Chapter 65, Section 8, as amended) is amended to read:

"7-17-5. IMPOSITION AND RATE OF LIQUOR EXCISE TAX.--There is imposed on any wholesaler who sells alcoholic beverages on which the tax imposed by this section has not been paid an excise tax, to be referred to as the "liquor excise tax", at the following rates on alcoholic beverages sold:

A. on spirituous liquors, one dollar sixty cents (\$1.60) per liter;

B. on beer, except as provided in Subsection E of this section, forty-one cents (\$.41) per gallon;

C. on wine, except as provided in Subsections D and F of this section, forty-five cents (\$.45) per liter;

D. on fortified wine, one dollar fifty cents (\$1.50) per liter;

E. on beer manufactured or produced by a micro brewer and sold in this state, provided that proof is furnished to the department that the beer was manufactured or produced by a micro brewer, twenty-five cents (\$.25) per gallon; and

F. on wine manufactured or produced by a small winer or winegrower and sold in this state, provided that proof is furnished to the department that the wine was manufactured or produced by a small winer or winegrower, ten cents (\$.10) per liter on the first eighty thousand liters sold and twenty cents (\$.20) per liter on all liters sold over eighty thousand but less than two hundred twenty thousand."

Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

SENATE BILL 502

CHAPTER 75

RELATING TO CONSERVANCY DISTRICT ASSESSMENTS; AUTHORIZING CERTAIN CONSERVANCY DISTRICTS TO RETAIN PENALTIES AND INTEREST

COLLECTED BY THE COUNTY TREASURER ON AD VALOREM ASSESSMENTS IMPOSED BY SUCH DISTRICTS.

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

Section 1

Section 1. Section 7-38-43 NMSA 1978 (being Laws 1973, Chapter 258, Section 83, as amended) is amended to read:

"7-38-43. DISTRIBUTION OF RECEIPTS FROM COLLECTED PROPERTY TAXES, PENALTIES AND INTEREST.--The county treasurer shall distribute the receipts from collected property taxes to each governmental unit in an amount and in a manner determined in accordance with the law and with the regulations of the department of finance and administration. Penalties and interest collected by the county treasurer, other than as an agent of the department under Section 7-38-62 NMSA 1978 and other than penalties and interest on assessments levied by a conservancy district organized under the provisions of The Conservancy Act of New Mexico, created prior to 1930 and embracing land situate in four or more counties, shall be deposited in the county general fund at the times and in the manner required by regulations of the department of finance and administration. Penalties and interest collected by the county treasurer as agent of the department under Section 7-38-62 NMSA 1978 shall be remitted to the department at the times and in the manner required by regulations of the department of finance and administration."

Section 2

Section 2. Section 73-18-9 NMSA 1978 (being Laws 1939, Chapter 148, Section 9, as amended) is amended to read:

"73-18-9. DISTRICT TREASURER--COUNTY TREASURERS--ASSESSORS--DUTIES--ACCOUNTS--COLLECTION AND DISPOSITION OF ASSESSMENTS.--

A. The district treasurer of a contracting district and the county treasurer of each county in which is located any part of a contracting district shall, in connection with assessments, levies and collections made as authorized under The Conservancy District-Reclamation Contract Act, keep a district bond fund account, a district contract fund account, a district operation and maintenance fund account and a district general fund account. The proceeds of the assessment collected shall be deposited into the respective funds:

(1) the bond fund shall consist of all money collected for principal and interest on the bonds issued by the district;

(2) the district contract fund shall consist of all money received from assessments levied to provide for payment to the United States, including funds for

operation and maintenance required to be paid to the United States under any reclamation contract;

(3) the operation and maintenance fund shall consist of all money received on account of operation and maintenance of the irrigation and drainage system, except money to be paid to the United States pursuant to any contract; and

(4) the general fund shall consist of all money received on account of current and miscellaneous expenses not to be deposited into any other of the funds.

B. It is the duty of the district treasurer to collect and receipt for all per acre assessments levied as provided in The Conservancy District-Reclamation Contract Act in accordance with the resolutions and orders of the board of directors of the district. It is the duty of each of the county treasurers to collect and receipt for all ad valorem assessments levied in the same manner and at the same time as is required in the receipt for and collection of taxes upon real estate for county purposes and on the first Monday of each month to remit to the district treasurer money previously collected or received by him on account of the district, including penalties and interest on ad valorem assessment delinquencies.

C. The district treasurer shall pay out of the bond fund when due the interest and principal of the bonds of the district at the time and place specified in the bonds. The district treasurer shall pay out of the contract fund all payments as they become due to the United States under a reclamation contract at the time and in the manner provided in the contract. The district treasurer shall pay out of the operation and maintenance fund only upon warrants signed by the president and countersigned by the secretary of the district, directed to the party or parties as are due payments for operating and maintaining the irrigation and drainage systems. The district treasurer shall pay out of the general fund only upon orders signed by the president and countersigned by the secretary of the district.

D. The district treasurer on the fifteenth day of each month shall report to the board of directors of the district the amount of money in hand to the credit of the respective funds as provided in this section. All such district taxes collected and paid to the county treasurers shall be received by the treasurers in their official capacity, and they shall respectively be responsible for the safekeeping, disbursement and payment of them the same as for other money collected by them as treasurers.

E. Payment of ad valorem assessments levied pursuant to The Conservancy District-Reclamation Contract Act may be received and receipted for by the county treasurer either together with or separately from taxes upon real estate for state and county purposes.

F. The county assessor of each county embracing any part of the district shall from time to time as the same may be requested by or on behalf of the board of directors of the district furnish abstracts or copies of ad valorem assessments rolls

pertaining to property situated in the district. Upon receipt of a certified copy of resolution of the board of directors making the annual levy of district ad valorem assessments, the county assessor shall certify and extend the assessment and levy upon the assessment rolls."

Section 3

Section 3. APPLICABILITY.--The provisions of this act apply to penalties and interest collected in the 1994 and subsequent property tax years.

SENATE BILL 823

CHAPTER 76

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
PROVIDING FOR CAPITAL EXPENDITURES; MAKING AN APPROPRIATION TO
RENOVATE THE LONG-TERM CARE FACILITY AT MINERS' COLFAX MEDICAL
CENTER; EXTENDING THE EXPENDITURE PERIOD OF AN APPROPRIATION;
DECLARING AN EMERGENCY.

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

Section 1

Section 1. APPROPRIATION--MINERS' TRUST FUND.--Two million seven hundred thousand dollars (\$2,700,000) is appropriated from the miners' trust fund to the board of trustees of miners' Colfax medical center for expenditure in fiscal years 1995 through 1997 to renovate the long-term care facility at miners' Colfax medical center located in Colfax county. Any unexpended or unencumbered balance remaining at the end of fiscal year 1997 shall revert to the miners' trust fund.

Section 2

Section 2. APPROPRIATION--EXTENDING EXPENDITURE PERIOD.--The period of time in which the appropriation made from the miners' trust fund to the miners' Colfax medical center to renovate the long-term care facility set forth in Laws 1993, Chapter 367, Section 42 may be expended is extended through fiscal year 1997. Any unexpended or unencumbered balance remaining at the end of fiscal year 1997 shall revert to the miners' trust fund.

Section 3

Section 3. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 1193 WITH EMERGENCY CLAUSE
SIGNED APRIL 5, 1995

CHAPTER 77

RELATING TO SPACE; AMENDING THE SPACEPORT DEVELOPMENT ACT;
AMENDING CERTAIN SECTIONS OF THE NMSA 1978; DECLARING AN
EMERGENCY.

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

Section 1

Section 1. Section 9-15-4 NMSA 1978 (being Laws 1983, Chapter 297, Section 4, as amended) is amended to read:

"9-15-4. DEPARTMENT ESTABLISHED.--There is created in the executive branch the "economic development department". The department shall be a cabinet department and shall consist of, but not be limited to, seven divisions as follows:

- A. the administrative services division;
- B. the economic development division;
- C. the New Mexico film division;
- D. the technology enterprise division;
- E. the trade division;
- F. the state housing authority; and
- G. the office for space commercialization."

Section 2

Section 2. Section 9-15-43 NMSA 1978 (being Laws 1994, Chapter 127, Section 2) is amended to read:

"9-15-43. DEFINITIONS.--As used in the Spaceport Development Act:

- A. "commission" means the spaceport commission;
- B. "department" means the economic development department;

C. "director" means the director of the office for space commercialization;

D. "secretary" means the secretary of economic development; and

E. "spaceport" means an installation and related facilities utilized for the launching, landing, recovery, servicing and monitoring of vehicles capable of entering or returning from space."

Section 3

Section 3. Section 9-15-44 NMSA 1978 (being Laws 1994, Chapter 127, Section 3) is amended to read:

"9-15-44. OFFICE FOR SPACE COMMERCIALIZATION CREATED--DUTIES OF DIRECTOR.--

A. The "office for space commercialization" is created as a division in the department.

B. The duties of the office for space commercialization shall be discharged by a director, who shall be hired by the secretary.

C. The director shall:

(1) employ such other staff as is necessary to carry out the work of the office for space commercialization and the commission and the purposes of the Spaceport Development Act;

(2) discharge the responsibilities of the office for space commercialization in accordance with the policies established and approved by the secretary;

(3) administer federally funded grants for the purpose of determining the feasibility of developing and operating a regional spaceport;

(4) manage all aspects of the spaceport program;

(5) coordinate the promotion and marketing of space-related resources of New Mexico and a regional spaceport;

(6) serve as the interface between New Mexico and national and international users of the regional spaceport;

(7) schedule user mission support with other elements of the regional spaceport;

(8) develop a comprehensive inventory of New Mexico's space-related assets;

(9) cooperate with the commission in performing tasks necessary to establish the criteria for overflight; and

(10) support the commission in executing the tasks approved by the secretary."

Section 4

Section 4. Section 9-15-45 NMSA 1978 (being Laws 1994, Chapter 127, Section 4) is amended to read:

"9-15-45. COMMISSION CREATED--MEMBERSHIP.--

A. The "spaceport commission" is created. The commission is administratively attached to the department.

B. The commission is composed of up to eleven voting members. Three members shall be ex officio and four shall be appointed by the governor. The ex-officio members are the secretary, the secretary of finance and administration and the lieutenant governor. In selecting the appointed members of the commission, the governor shall appoint at least three members knowledgeable of the commercial space industry. One member shall be a resident of Sierra county.

C. Appointed members of the commission shall serve for terms of three years; provided, when making his initial appointments, the governor shall appoint one member to a term of one year, two members to terms of two years and three members to terms of three years.

D. The governor shall appoint a chairman of the commission from among the appointed members. Other necessary officers shall be elected by the commission from among its membership.

E. Commission members shall meet at the call of the chairman, not less than four times a year.

F. Members of the commission appointed by the governor of the state of New Mexico shall be reimbursed for per diem and mileage pursuant to the Per Diem and Mileage Act, but shall not receive any other compensation, perquisite or allowance."

Section 5

Section 5. Section 9-15-46 NMSA 1978 (being Laws 1994, Chapter 127, Section 5) is amended to read:

"9-15-46. COMMISSION--POWERS--DUTIES.--The commission shall:

A. in cooperation with the office for space commercialization, promote spaceport development and space-related activities in the state;

B. advise the secretary on methods for soliciting and accepting, on behalf of the state, federal, state, local and private funds for the purpose of developing, constructing, maintaining and operating a regional spaceport;

C. act in an advisory capacity to the secretary on matters that pertain to the development and operation of the regional spaceport;

D. advise the secretary on methods for providing for the development, construction and acceptance of a regional spaceport; and

E. report annually to the governor and the legislature on the status of the regional spaceport and other space-related activities and projects undertaken by the commission."

Section 6

Section 6. Section 9-15-47 NMSA 1978 (being Laws 1994, Chapter 127, Section 6) is amended to read:

"9-15-47. ADDITIONAL POWERS OF THE COMMISSION.--The commission may undertake additional specific activities related to monitoring the development, construction, operation and maintenance of the regional spaceport, including:

A. assisting the secretary in defining fees, rents, tolls and charges for the use of a regional spaceport facility or its related services;

B. as directed by the secretary, participating in the acquisition of real and personal property in the name of the state for the purpose of establishing a regional spaceport or space-related facility;

C. as directed by the secretary, initiating environmental, transportation, communication or technical studies necessary or advisable to the establishment of a regional spaceport; and

D. assisting the director in negotiating agreements for the overflight or recovery of space vehicles, rockets, missiles, payloads, boosters, scientific experiments or other space-related materials, debris or parts."

Section 7

Section 7. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE BILL 1087 WITH EMERGENCY CLAUSE
SIGNED APRIL 5, 1995

CHAPTER 78

RELATING TO COUNTY CLERKS; ELIMINATING THE HOSPITAL LIEN DOCKET BOOK AND FEES; PROVIDING ACCESS TO HOSPITAL LIENS.

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

Section 1

Section 1. Section 48-8-4 NMSA 1978 (being Laws 1961, Chapter 227, Section 4) is amended to read:

"48-8-4. COUNTY CLERK TO MAINTAIN HOSPITAL LIEN RECORDS.--Every county clerk shall maintain a proper index of all hospital liens under the name of the injured person."

Section 2

Section 2. REPEAL.--Section 48-8-6 NMSA 1978 (being Laws 1961, Chapter 227, Section 6) is repealed.

SENATE BILL 643

CHAPTER 79

RELATING TO CARNIVAL RIDE REGULATION; PROVIDING FOR CARNIVAL RIDE INSPECTIONS BY THE REGULATION AND LICENSING DEPARTMENT; INCREASING THE MANDATORY LIABILITY INSURANCE FOR OPERATING A CARNIVAL RIDE; INCREASING THE CERTIFICATE OF INSPECTION FILING FEE; AMENDING THE CARNIVAL RIDE INSURANCE ACT; MAKING AN APPROPRIATION.

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

Section 1

Section 1. Section 57-25-2 NMSA 1978 (being Laws 1993, Chapter 284, Section 2) is amended to read:

"57-25-2. DEFINITIONS.--As used in the Carnival Ride Insurance Act:

A. "carnival ride" means any mechanical device, aquatic device or combination of devices that carries or conveys passengers on, along, around, through or over a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, pleasure, thrills or excitement, including bungee jumping facilities and state fair rides, but does not include playground equipment, a single-passenger, coin-operated device secured by a stationary foundation or a small promotional event or operation consisting of fewer than six kiddie rides designed for children twelve years of age or younger, including merry-go-rounds;

B. "department" means the regulation and licensing department;

C. "inspection" means a physical examination of a carnival ride by an inspector of the regulation and licensing department prior to issuing a certificate of inspection, including reinspection;

D. "operator" means a person actually engaged in or directly controlling the operation of a carnival ride; and

E. "owner" means a person, including the state or any political subdivision of the state, who owns or leases a carnival ride."

Section 2

Section 2. Section 57-25-3 NMSA 1978 (being Laws 1993, Chapter 284, Section 3) is amended to read:

"57-25-3. LIABILITY INSURANCE REQUIRED--CERTIFICATE OF INSPECTION REQUIRED--CARNIVAL RIDE INSURANCE FUND CREATED.--

A. No person shall operate a carnival ride without a policy of insurance in an amount not less than five million dollars (\$5,000,000) against liability for injury to persons arising out of the operation of the carnival ride.

B. Either a copy of the policy furnished to the insured or a certificate stating that the insurance required by this section is in effect shall be filed with the department and a local government entity.

C. The policy shall contain a schedule listing by name and serial number each carnival ride insured by the policy. In the event of additions or deletions of carnival rides during the policy terms, such changes shall be shown on a change endorsement, a copy of which shall be submitted to the department and the local government entity.

D. In the event of policy cancellation by either the insured owner or operator or the insurance company, the insured shall furnish notice of the cancellation to the department and the local government entity not later than ten days prior to cancellation.

E. No person, owner or operator of a carnival ride shall operate any carnival ride without obtaining a certificate of inspection for each ride by an inspector of the department or its designee and filing the certificate of inspection with the local government. The certificate of inspection shall be required each time a carnival ride is reassembled and before any member of the public is permitted to board the ride. The certificate of inspection shall state that the carnival ride operator or owner has had the rides independently inspected by a licensed engineer within twelve months of the operation of the ride within the state and whether any deficiencies noted by the engineer have been corrected.

F. The insured shall pay a fifty dollar (\$50.00) per carnival ride per inspection filing fee with the department.

G. The "carnival ride insurance fund" is created in the state treasury. The fund shall consist of all filing fees received by the department pursuant to the Carnival Ride Insurance Act. Money in the carnival ride insurance fund is appropriated to the department for the purpose of carrying out the provisions of the Carnival Ride Insurance Act. The fund shall not be expended for any purpose other than carrying out the provisions of the Carnival Ride Insurance Act."

SENATE BILL 761

CHAPTER 80

RELATING TO TAXATION; PROVIDING A GROSS RECEIPTS DEDUCTION FOR SALE OR LEASE OF PROPERTY OR SALE OF SERVICES TO A QUALIFIED FILM PRODUCTION COMPANY; REPEALING THE FILMMAKER'S CREDIT ACT.

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

Section 1

Section 1. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"DEDUCTION--GROSS RECEIPTS TAX--SALES TO QUALIFIED FILM PRODUCTION COMPANY.--

A. Receipts from selling or leasing property and from performing services may be deducted from gross receipts or from governmental gross receipts if the sale, lease or performance is made to a qualified production company who delivers a nontaxable transaction certificate to the seller, lessor or performer.

B. For the purposes of this section:

(1) "film" means a single media or multimedia program, including advertising messages, fixed on film, videotape, computer disc, laser disc or other similar delivery medium from which the program can be viewed or reproduced and which is exhibited in theaters, licensed for exhibition by individual television stations, groups of stations, networks, cable television stations or other means or licensed for the home viewing market;

(2) "production company" means a person that produces films for exhibition in theaters, on television or elsewhere;

(3) "production costs" include:

(a) the cost of a story and scenario to be used for a film;

(b) salaries of talent, management and labor, including payments to personal services corporations with respect to the services of qualified performing artists, as determined under Section 62b(1)(A) of the Internal Revenue Code of 1986;

(c) cost of set construction and operations, wardrobe, accessories and related services;

(d) costs of sound synchronization, lighting and related services;

(e) costs of editing and related services;

(f) rental of facilities and equipment; or

(g) other direct costs of producing the film; and

(4) "qualified production company" means a production company that produces a film or films, meets the provisions of this section and has registered or will register with the New Mexico film division of the economic development department.

C. A qualified production company may deliver the nontaxable transaction certificates authorized by this section only with respect to production costs."

Section 2

Section 2. REPEAL.--Sections 7-9B-1 through 7-9B-7 NMSA 1978 (being Laws 1992, Chapter 47, Sections 1 through 7, as amended) are repealed.

Section 3

Section 3. TRANSITION PROVISIONS--TEMPORARY PROVISION.--

A. Qualified filmmakers that have applied for and been allowed a filmmaker's credit under the terms of the Filmmaker's Credit Act, as that act is in effect on June 30, 1995, may apply the amount of any approved but unapplied credit in accordance with that act after June 30, 1995 but not later than June 25, 1996. Any credit not applied by June 25, 1996 expires and shall not be applied against any tax.

B. Qualified filmmakers may apply for and the taxation and revenue department may allow credits pursuant to the Filmmaker's Credit Act with respect to qualified payments made on or before July 1, 1995, provided that:

(1) no credit may be applied for or allowed for payments made on or after July 1, 1995; and

(2) no credit may be applied for or allowed after December 31, 1995.

Section 4

Section 4. EFFECTIVE DATE.--The provisions of Sections 1 and 2 of this act are effective July 1, 1996.

SENATE BILL 1058

CHAPTER 81

RELATING TO COMMERCIAL LAW; CREATING THE RECEIVERSHIP ACT;
REPEALING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Receivership Act".

Section 2

Section 2. PURPOSE.--The purpose of the Receivership Act is to provide a framework for the creation and administration of receiverships.

Section 3

Section 3. DEFINITIONS.--As used in the Receivership Act:

A. "applicant" means an interested person who seeks the appointment of a receiver;

B. "business entity" means a sole proprietorship, a profit or nonprofit corporation, a general or limited partnership, business trust, joint venture or other enterprise composed of one or more persons or entities;

C. "interested person" means any secured or unsecured creditor, a shareholder of a corporation, a general or limited partner of a partnership or a person jointly owning or interested in a receivership estate; and

D. "receivership estate" means tangible and intangible property, its proceeds, profits, substitutions, additions, fixtures and accretions for which a receiver is sought.

Section 4

Section 4. GROUNDS FOR APPOINTING A RECEIVER.--

A. Upon application to a district court, the district court shall appoint a receiver in an action by a mortgagee or secured party or in any other action based upon a contract or other written agreement, where such mortgage, security agreement, contract or other written agreement provides for the appointment of a receiver.

B. Upon application to a district court, the district court may appoint a receiver:

(1) when specific statutory provisions authorize the appointment of a receiver;

(2) in an action between or among persons owning or claiming an interest in the receivership estate;

(3) in actions where receivers have customarily been appointed by courts of law or equity;

(4) when a receiver has been appointed for a business entity or other person by a court of competent jurisdiction in another state, and that receiver seeks to collect, take possession or manage assets of the receivership estate located in New Mexico; or

(5) in any other case where, in the discretion of the district court, just cause exists and irreparable harm may result from failure to appoint a receiver.

Section 5

Section 5. APPLICATION FOR APPOINTMENT OF A RECEIVER.--

A. An applicant may apply to the district court for the appointment of a receiver by motion in an action already pending or by a separate petition or complaint.

B. An application for the appointment of a receiver shall be verified and shall contain:

(1) a description of the receivership estate, including the estimated gross monthly income if known, for which the applicant seeks a receiver;

(2) the location of the receivership estate;

(3) a description of the applicant's interest in the receivership estate;

(4) a statement showing that venue in the district court is proper;

(5) a statement of the grounds for the appointment of a receiver; and

(6) a nomination of the proposed receiver.

C. An ex parte hearing to appoint a receiver may be held without written or oral notice to the adverse party or his attorney only if:

(1) it clearly appears from specific facts shown by affidavit or by the verified application that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or his attorney can be heard in opposition; and

(2) the applicant's attorney certifies to the court in writing the efforts, if any, that have been made to give the notice and the reasons supporting his claim that notice should not be required.

D. Every application, proceeding and order for appointment of a receiver granted without notice shall comply with the Rules of Civil Procedure for the District Courts of New Mexico pertaining to temporary restraining orders and appointment of receivers ex parte.

Section 6

Section 6. QUALIFICATIONS FOR RECEIVERS.--A receiver shall meet the following qualifications:

A. the person must be at least eighteen years of age or a corporation or other business entity in good standing authorized to do business in New Mexico;

B. the person must not be otherwise disqualified under applicable state or federal law to administer the receivership estate;

C. before entering on his duties as receiver, the receiver shall sign and file a consent to act as receiver; and

D. upon request and a showing of good cause by an interested party, the district court may require the receiver to post a bond unless the mortgage, security agreement, contract or other written agreement dispenses with the posting of bond. The amount of the bond shall be as ordered by the court.

Section 7

Section 7. POWERS AND DUTIES OF RECEIVERS.--Unless otherwise ordered by the district court, a person who acts as a receiver shall:

A. prepare an inventory of the receivership estate within thirty days of appointment and file that inventory with the district court;

B. collect and manage the receivership estate in a reasonable and prudent manner;

C. file monthly operating reports with the district court and provide copies to all parties who have entered an appearance and allow such parties reasonable access to the books and records of the receivership;

D. enter into contracts reasonably necessary to operate, maintain and preserve the receivership estate;

E. take possession of all available books, records and other documents related to the receivership estate;

F. lease assets of the receivership estate in accordance with the powers and limitations contained in the original order of appointment;

G. bring and defend actions in his capacity as receiver to maintain and preserve the receivership estate;

H. subject to prior order of the district court, engage and retain attorneys, accountants, brokers or any other persons and pay their compensation or fees, sell or mortgage property of the receivership estate, borrow money for the receivership estate, make distributions of receivership proceeds to any party or pay compensation to the receiver; and

I. exercise any other powers expressly granted by statute or an order of the district court.

Section 8

Section 8. COMPENSATION.--A receiver and an attorney, accountant, broker and other person duly engaged and retained by the receiver shall be entitled to receive reasonable compensation, to be paid from the receivership estate, in a sum to be fixed or approved by the district court, for services rendered to the receivership estate.

Section 9

Section 9. REMOVAL, DEATH, RESIGNATION, SUBSTITUTION AND DISCHARGE OF RECEIVER--TERMINATION OF RECEIVERSHIP.--

A. Upon notice and hearing, a receiver may be removed either upon application by an interested person or upon the district court's own motion.

B. The death, resignation or substitution of a receiver, the expiration of a receiver's term of appointment or the dismissal of the action in which a receiver was appointed shall not have the effect of terminating the receivership.

C. A receiver may not resign except by leave of the district court. Leave shall be sought by motion and hearing unless the agreement of all parties obviates the need for a hearing. Leave may provide for the discharge of a receiver, and leave and discharge may be conditioned upon:

- (1) the substitution of another receiver;
- (2) the preparation and filing of a receiver's report;
- (3) the preparation and filing of an accounting;
- (4) the delivery of receivership property, accounts and books to a successor or to a person appointed by the district court;
- (5) the consent of all interested persons;
- (6) the termination of the receivership;
- (7) the conclusion of litigation to which a receiver is party; or
- (8) such other terms as the district court may order.

D. In the event of the death, resignation or removal of a receiver, the district court shall appoint a successor receiver to oversee a receivership estate. A receiver so appointed succeeds to the powers of his predecessor.

E. Upon disposition of the action concerning the receivership estate, the district court shall enter an order that discharges the receiver from his duties and releases him from any claim or demand of any interested person. Upon the termination of the receiver's duties, the receiver shall prepare and file a final report and account of the receivership and serve it upon all parties who have entered an appearance. Any objections to the receiver's final account and report and claims to surcharge must be filed within ten days of service. Upon settlement of the receiver's final account and report, the district court shall enter an order discharging the receiver from all further duties, releasing him from any claim or demand of any interested person and exonerating any bond that the receiver has been required to post in connection with the receivership.

Section 10

Section 10. APPEAL AND STAY OF APPOINTMENT OF A RECEIVER.--If an appeal is taken from a district court from a judgment or an order appointing a receiver, perfecting of an appeal from such judgment or order shall not stay enforcement of the judgment or order unless a bond, in a sum fixed by the district court, is given and posted on condition that if the judgment or order is affirmed on the appeal, or if the appeal is withdrawn or dismissed, the appellant will pay all costs and damages that the respondent may sustain by reason of the stay in the enforcement of the judgment or order.

Section 11

Section 11. REPEAL.--Sections 44-4-1 through 44-4-5 NMSA 1978 (being Laws 1917, Chapter 72, Sections 1 through 5) are repealed.

Section 12

Section 12. SEVERABILITY.--If any part or application of the Receivership Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

SENATE BILL 309

CHAPTER 82

RELATING TO PUBLIC WORKS; AMENDING AND ENACTING CERTAIN SECTIONS OF THE SUBCONTRACTORS FAIR PRACTICES ACT.

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

Section 1

Section 1. A new section of the Subcontractors Fair Practices Act is enacted to read:

"APPLICATION OF ACT.--The Subcontractors Fair Practices Act shall not apply to any transaction occurring after the contractor and the listed subcontractor have executed a subcontract unless subsequent action on the subcontract relates to subcontractor listing requirements."

Section 2

Section 2. Section 13-4-33 NMSA 1978 (being Laws 1988, Chapter 18, Section 3) is amended to read:

"13-4-33. DEFINITIONS.--As used in the Subcontractors Fair Practices Act:

A. "contractor" means the prime contractor on a public works construction project who contracts directly with the using agency;

B. "subcontractor" means a contractor who contracts directly with the contractor;

C. "listing threshold" means the dollar amount, stipulated in the bidding documents, above which subcontractors must be listed;

D. "notice" means information, advice or a written warning intended to apprise a contractor, subcontractor or using agency of some proceeding in which the contractor's, subcontractor's or using agency's interests are involved or to inform him of some fact that is his right to know. Notice may be sent to a contractor, subcontractor or using agency by certified or registered mail and shall be deemed to be completed upon date of mailing; and

E. "using agency" means any state agency or local public body requiring services or construction."

Section 3

Section 3. Section 13-4-34 NMSA 1978 (being Laws 1988, Chapter 18, Section 4, as amended) is amended to read:

"13-4-34. LISTING OF SUBCONTRACTORS--REQUIREMENTS.--

A. Any using agency taking bids for any public works construction project shall provide in the bidding documents prepared for that project a listing threshold which shall be five thousand dollars (\$5,000) or one-half of one percent of the architect's or engineer's estimate of the total project cost, not including alternates, whichever is greater. If the bidding documents do not include a listing threshold, then the using agency shall supply the listing threshold. If the listing threshold has not been included,

the bid opening shall be postponed until the using agency has complied with this section. Any contractor or subcontractor interested in bidding may apply to the district court in the county in which the project will be located for an injunction preventing the bid opening until the using agency has complied with this section. Any person submitting a bid shall in his bid set forth:

(1) the name and the city or county of the place of business of each subcontractor under subcontract to the contractor who will perform work or labor or render service to the contractor in or about the construction of the public works construction project in an amount in excess of the listing threshold; and

(2) the category of the work that will be done by each subcontractor. The contractor shall list only one subcontractor for each category as defined by the contractor in his bid.

B. A bid submitted by a contractor who fails to comply with the provisions of Subsection A of this section is a nonresponsive bid which shall not be accepted by a using agency."

Section 4

Section 4. Section 13-4-36 NMSA 1978 (being Laws 1988, Chapter 18, Section 6) is amended to read:

"13-4-36. SUBSTITUTION OF SUBCONTRACTOR.--

A. No contractor whose bid is accepted shall substitute any person as subcontractor in place of the subcontractor listed in the original bid, except that the using agency shall consent to the substitution of another person as a subcontractor in the following circumstances:

(1) when the subcontractor listed in the bid, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract, when such written contract, based upon the general terms, conditions, plans and specifications for the project involved and the terms of such subcontractor's written bid, is presented to him by the contractor;

(2) when the subcontractor listed in the original bid becomes bankrupt or insolvent prior to execution of a subcontract;

(3) when the using agency refuses to approve the subcontractor listed in the original bid, provided such approval has been reserved in the bidding documents;

(4) when the subcontractor listed in the original bid fails or refuses to perform his subcontract;

(5) when the contractor demonstrates to the using agency or its duly authorized officer that the name of the subcontractor was listed as the result of an inadvertent clerical error;

(6) when a bid alternate accepted by the using agency causes the listed subcontractor's bid not to be low;

(7) when the contractor can substantiate to the using agency that a listed subcontractor's bid is incomplete;

(8) when the listed subcontractor fails or refuses to meet the bond requirements of the contractor; or

(9) when it is determined that the listed subcontractor does not have a proper license to perform the work and the contractor has submitted the name of the subcontractor along with proof that the subcontractor bid work for which he was not licensed by the construction industries division of the regulation and licensing department.

B. Prior to approval of the contractor's request for substitution of a subcontractor, the using agency shall give notice in writing to the listed subcontractor of the contractor's request to substitute and of the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified has five working days within which to submit written objections to the substitution to the using agency. Failure to file written objections shall constitute the listed subcontractor's consent to the substitution. If written objections are filed, the using agency shall give at least five working days notice in writing to the listed subcontractor of a hearing by the using agency on the contractor's request for substitution.

C. No contractor whose bid is accepted shall permit any subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid without the consent of the using agency.

D. No contractor whose bid is accepted, other than in the performance of change orders causing changes or deviations from the original contract, shall sublet or subcontract any portion of the work in excess of the listing threshold as to which his original bid did not designate a subcontractor unless:

(1) the contractor fails to receive a bid for a category of work. Under such circumstances, the contractor may subcontract. The contractor shall designate on the listing form that no bid was received; or

(2) the contractor fails to receive more than one bid for a category of work. Under such circumstances, the contractor may subcontract. The contractor shall state on the listing form that only one subcontractor's bid was received, together

with the name of the subcontractor. This designation shall not occur more than one time on the subcontractor list."

Section 5

Section 5. Section 13-4-37 NMSA 1978 (being Laws 1988, Chapter 18, Section 7) is amended to read:

"13-4-37. BOND REQUIREMENTS.--

A. It is the responsibility of each subcontractor submitting a bid to a contractor to be prepared to submit a faithful performance and payment bond if so requested by the contractor.

B. In the event any subcontractor submitting a bid to a contractor does not, upon the request of the contractor and at the expense of the contractor at the established charge or premium therefor, furnish to the contractor a bond issued by a corporate surety authorized to do business in New Mexico in accordance with the New Mexico Insurance Code and listed in the United States treasury department circular 570 wherein the contractor is named the obligee, guaranteeing prompt and faithful performance of the subcontract and the payment of all claims for labor and materials furnished or used in and about the work to be done and performed under the subcontract, the contractor may reject the bid and make a substitution of another subcontractor subject to the provisions of Section 13-4-36 NMSA 1978. Such bond may be required at the expense of the subcontractor only if the contractor in his written or published request for subcontract bids:

(1) specifies that the expense for the bond shall be borne by the subcontractor; and

(2) clearly specifies the amount and requirements of the bond."

Section 6

Section 6. Section 13-4-38 NMSA 1978 (being Laws 1988, Chapter 18, Section 8) is amended to read:

"13-4-38. FAILURE TO SPECIFY SUBCONTRACTOR.--If a contractor fails to list a subcontractor in excess of the listing threshold and he does not state that no bid was received or that only one bid was received, he represents that he is fully qualified to perform that portion of the work himself and that he shall perform that portion of the work himself. If after the award of the contract the contractor subcontracts any portion of the work, except as provided in the Subcontractors Fair Practices Act, the contractor shall be guilty of violation of the Subcontractors Fair Practices Act and subject to the penalties provided in Section 13-4-41 NMSA 1978."

Section 7

Section 7. Section 13-4-39 NMSA 1978 (being Laws 1988, Chapter 18, Section 9) is amended to read:

"13-4-39. INADVERTENT CLERICAL ERROR.--

A. The contractor, as a condition to assert a claim of inadvertent clerical error in the listing of a subcontractor, shall, within four working days after the time of the prime bid opening by the using agency, give written notice to the using agency and to both the subcontractor he claims to have listed in error and the subcontractor who had bid to the contractor prior to bid opening.

B. Any listed subcontractor who has been notified by the contractor in accordance with the provisions of this section as to an inadvertent clerical error shall be allowed twelve working days from the time of the prime bid opening within which to submit to the using agency and to the contractor written objection to the contractor's claim of inadvertent clerical error. Failure of the listed subcontractor to file written notice within the twelve working days shall be primary evidence of his agreement that an inadvertent clerical error was made.

C. The using agency shall, in the absence of an objection to the contrary by the listed subcontractor in the original bid, consent to the substitution of the intended subcontractor if:

(1) the contractor, the listed subcontractor listed in error and the intended subcontractor each submit an affidavit to the using agency, along with such additional evidence as the parties may wish to submit, that an inadvertent clerical error was in fact made, provided that the affidavits from each of the three parties are filed within twelve working days from the time of the prime bid opening; or

(2) affidavits are filed by both the contractor and the intended subcontractor within the specified time but the subcontractor whom the contractor claims to have listed in error does not submit, within twelve working days from the time of prime bid opening, to the using agency and to the contractor written objection to the contractor's claim of inadvertent clerical error as provided in this section.

D. If affidavits are filed by both the contractor and the intended subcontractor but the listed subcontractor has, within twelve working days from the time of the prime bid opening, submitted to the using agency and to the contractor written objection to the contractor's claim of inadvertent clerical error, the using agency shall investigate the claims of the parties and hold a hearing to determine the validity of the claims, within thirty days after the receipt of the contractor's written objection. Any determination made shall be based on facts contained in the affidavits submitted by all three parties and supported by testimony under oath and subject to cross-examination. The using agency may, on its motion or that of any other party, admit testimony of other

contractors, any bid registries or depositories or any other party in possession of facts that may have a bearing on the decision of the using agency."

Section 8

Section 8. Section 13-4-41 NMSA 1978 (being Laws 1988, Chapter 18, Section 11, as amended) is amended to read:

"13-4-41. PENALTIES.--

A. When a contractor violates any provision of the Subcontractors Fair Practices Act except Section 13-4-34 NMSA 1978, the using agency shall:

(1) in the case of a contractor who substitutes another subcontractor in violation of Section 13-4-36 NMSA 1978, for the subcontractor originally included in the bid, assess the contractor a penalty in an amount equal to the greater of ten percent of the amount bid by the listed subcontractor or the difference between the amount bid by the listed subcontractor and the amount bid by the substituted subcontractor;

(2) in the case of a contractor substituting a listed subcontractor for another subcontractor, and the substituted subcontractor knowingly participated in a violation of Section 13-4-36 NMSA 1978, assess the substituted subcontractor a penalty in an amount equal to the greater of ten percent of the amount bid by the listed subcontractor and the difference between the amount bid by the listed subcontractor and the substituted subcontractor; or

(3) in the case of a contractor who fails to list a subcontractor in excess of the listing threshold as defined in Section 13-4-38 NMSA 1978, assess the contractor a penalty of eight percent of the amount of the subcontract issued for the first violation and thirty percent of the amount of the subcontract issued for any violation thereafter, on any one project.

B. Penalties assessed pursuant to the provisions of this section shall be deposited into the fund from which the contract was awarded.

C. In a proceeding under this section, the contractor shall be entitled to a hearing after notice.

D. A violation of the provisions of the Subcontractors Fair Practices Act constitutes grounds for disciplinary action against a contractor or a subcontractor, pursuant to regulations of the construction industries division of the regulation and licensing department.

E. A contractor or a subcontractor who attempts to circumvent the provisions of the Subcontractors Fair Practices Act shall be subject to the penalties established pursuant to this section.

F. Any listed subcontractor removed in violation of the Subcontractors Fair Practices Act may bring an action in the district court for damages, injunctive or other relief."

SENATE BILL 296

CHAPTER 83

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
PROVIDING FOR THE TRANSFER OF ONE FULL-TIME EQUIVALENT AND
COMPUTER EQUIPMENT FROM THE ADULT PAROLE BOARD TO THE
ADMINISTRATIVE OFFICE OF THE DISTRICT ATTORNEYS; FULFILLING THE
RIGHTS AND SERVICES MANDATED BY THE CONSTITUTIONAL AMENDMENT
ESTABLISHING VICTIMS' RIGHTS AND THE VICTIMS OF CRIME ACT; DECLARING
AN EMERGENCY.

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

Section 1

Section 1. TEMPORARY PROVISION--TRANSFER.--On the effective date of this act, one full-time equivalent and computer equipment used by the adult parole board to provide information to crime victims is transferred to the administrative office of the district attorneys for the purpose of assisting district attorneys offices to fulfill the rights and services mandated by the constitutional amendment establishing victims' rights and the Victims of Crime Act.

Section 2

Section 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 1153 WITH EMERGENCY CLAUSE
SIGNED APRIL 5, 1995

CHAPTER 84

RELATING TO CRIMINAL LAW; REVISING ELEMENTS OF THE CRIMINAL
OFFENSE OF KIDNAPPING; PROVIDING AN ENHANCED PENALTY FOR FALSE

IMPRISONMENT WHEN A DEADLY WEAPON IS USED IN THE COMMISSION OF THAT OFFENSE; AMENDING SECTIONS OF THE CRIMINAL CODE.

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

Section 1

Section 1. Section 30-4-1 NMSA 1978 (being Laws 1963, Chapter 303, Section 4-1, as amended) is amended to read:

"30-4-1. KIDNAPPING.--

A. Kidnapping is the unlawful taking, restraining, transporting or confining of a person, by force, intimidation or deception, with intent:

- (1) that the victim be held for ransom;
- (2) that the victim be held as a hostage or shield and confined against his will;
- (3) that the victim be held to service against the victim's will; or
- (4) to inflict death, physical injury or a sexual offense on the victim.

B. Whoever commits kidnapping is guilty of a first degree felony, except that he is guilty of a second degree felony when he voluntarily frees the victim in a safe place and does not inflict great bodily harm upon the victim."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

SENATE BILL 903

CHAPTER 85

RELATING TO THE CREATION OF A NEW COUNTY; ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. A new Section 4-1A-1 NMSA 1978 is enacted to read:

"4-1A-1. COUNTY CREATED.--A new county is created out of the southern part of Bernalillo county, bounded as follows: beginning at the southwest corner of Bernalillo county, then easterly along the Bernalillo county boundary to the eastern boundary of the Isleta Indian reservation, then northerly along the eastern boundary of the Isleta Indian reservation to the northeast corner of the reservation, then westerly along the northern boundary of the Isleta Indian reservation to the southwest corner of the Kirtland air force base, then northerly to where the western boundary of the Kirtland air force base meets the municipal boundary of the city of Albuquerque, then westerly along the southern boundary of the city of Albuquerque to its intersection with the southern boundary of interstate 40, then westerly to its intersection with the northeastern corner of the Laguna Indian reservation, then westerly along the northern boundary of the Laguna Indian reservation to its intersection with the western boundary of Bernalillo county, then southerly to the point of origin."

Section 2

Section 2. A new Section 4-1A-2 NMSA 1978 is enacted to read:

"4-1A-2. COUNTY SEAT.--The county seat of the new county shall be established at the old Armijo school in the unincorporated community of Armijo."

Section 3

Section 3. A new Section 4-1A-3 NMSA 1978 is enacted to read:

"4-1A-3. TEMPORARY OFFICERS.--The governor shall, within ten days after the effective date of this section, appoint for the new county the county officers now provided by law for counties of this state. The officers so appointed shall serve until the election and qualification of their successors, who shall be elected at the next general election."

Section 4

Section 4. A new Section 4-1A-4 NMSA 1978 is enacted to read:

"4-1A-4. PRECINCTS.--The precincts now existing in the territory to be included within the new county shall remain the same as they are on the effective date of this section until changed according to law."

Section 5

Section 5. A new Section 4-1A-5 NMSA 1978 is enacted to read:

"4-1A-5. TAX RECORDS.--The county assessor of Bernalillo county, as soon as practicable after the effective date of this section and after officers for the new county

have been appointed, shall turn over to the proper officials of the new county all tax records, schedules and assessments upon all classes of property that shall have been assessed in and that pertain to the area constituting the new county."

Section 6

Section 6. A new Section 4-1A-6 NMSA 1978 is enacted to read:

"4-1A-6. UNPAID TAXES.--The new county is entitled to all unpaid taxes that remain unpaid on the effective date of this section upon property within the area of the new county, and any funds in the hands of the treasurer of Bernalillo county at the time that this section becomes effective, or that thereafter come into the treasurer's hands, that are properly transferable by the treasurer of Bernalillo county to the treasurer of the new county shall be transferred in the regular course of the administration of the office upon the demand from such authority to receive those funds."

Section 7

Section 7. A new Section 4-1A-7 NMSA 1978 is enacted to read:

"4-1A-7. UNPAID INDEBTEDNESS.--The new county shall not be required to pay Bernalillo county any portion of any indebtedness incurred by Bernalillo county for public improvements that are made or contracted for after the effective date of this section."

Section 8

Section 8. A new Section 4-1A-8 NMSA 1978 is enacted to read:

"4-1A-8. TRANSITIONAL FUNCTIONS.--The officers of Bernalillo county shall exercise the functions of their several offices over the new county until the officers of the new county take office."

Section 9

Section 9. A new Section 4-1A-9 NMSA 1978 is enacted to read:

"4-1A-9. JUDICIAL MATTERS.--The new county shall, for judicial purposes, be included in the second judicial district. The governor shall, within thirty days after the effective date of this section, appoint for the new county two magistrate judges. The magistrates who are appointed shall serve until the election of their successors, who shall be elected at the next general election."

Section 10

Section 10. A new Section 4-1A-10 NMSA 1978 is enacted to read:

"4-1A-10. CLASSIFICATION.--The new county, for the purposes of classification and fixing the amounts of salaries of county officers taking office at the organization of the new county, shall be classified as a class B county having a valuation under three hundred million dollars (\$300,000,000)."

Section 11

Section 11. A new Section 4-1A-11 NMSA 1978 is enacted to read:

"4-1A-11. UNEXPENDED FUNDS AND SECURITIES.--Upon the effective date of this section, the treasurer of Bernalillo county shall ascertain the amount of unexpended funds and securities in the treasury of Bernalillo county and shall also ascertain the amount of unpaid obligations and expenses of Bernalillo county government that will be required to be paid between the effective date of this section and the end of fiscal year 1996. The excess of those unexpended funds and securities over those obligations and Bernalillo county government expenses shall be divided and paid by the treasurer of Bernalillo county to the new county and Bernalillo county in the proportion that the assessed valuation of all property in each county as of January 1, 1995 bears to the total assessed valuation of all property in both counties as of January 1, 1995."

Section 12

Section 12. A new Section 4-1A-11.1 NMSA 1978 is enacted to read:

"4-1A-11.1. INDEBTEDNESS OWED.--

A. As soon as practicable after the effective date of this section, the treasurer of Bernalillo county shall determine the total outstanding indebtedness of Bernalillo county, less the cash on hand to meet that indebtedness, on the effective date of this section. That figure shall be the shared net indebtedness owed by Bernalillo county and the new county on the effective date of this section.

B. Based on the assessed valuation of all property in the new county and Bernalillo county on the effective date of this section and the proportion that the assessed valuation of all property in each county as of January 1, 1995 bears to the assessed valuation of all property in both counties as of January 1, 1995, the new county shall be proportionately liable to Bernalillo county for the new county's share of the net indebtedness owed."

Section 13

Section 13. A new Section 4-1A-12 NMSA 1978 is enacted to read:

"4-1A-12. VOTING MACHINES.--Bernalillo county, acting by and through its proper officers, upon the effective date of this section, shall transfer to the new county the number of voting machines used in the area in the 1994 general election."

Section 14

Section 14. A new Section 4-1A-13 NMSA 1978 is enacted to read:

"4-1A-13. TRANSFER OF PROPERTY.--Upon the effective date of this section, the new county shall become the owner of all road-working and road-maintaining equipment of every kind and nature, including trucks, pickups and trailers, previously assigned to the county commissioner districts lying within the area segregated into the new county. In addition, the new county at that time shall become the owner of all real estate and improvements thereon or appurtenant thereto located within the boundaries of the new county, title to which is vested in Bernalillo county. The board of county commissioners of Bernalillo county shall execute and deliver to the proper officers of the new county whatever instruments of transfer are necessary to vest title to all such property in the new county."

Section 15

Section 15. A new Section 4-1A-14 NMSA 1978 is enacted to read:

"4-1A-14. CERTIFICATES OF INDEBTEDNESS.--For the purpose of meeting expenses payable out of the general county fund of the new county, contracted and payable for fiscal year 1995, and not otherwise, the new county may issue certificates of indebtedness of the new county not to exceed one million five hundred thousand dollars (\$1,500,000), and tax levies shall be duly made therefor. The certificates of indebtedness shall be issued in a form to be approved by the state board of finance and shall be payable not more than ten years after date of issue. The certificates of indebtedness shall bear interest at a rate not to exceed that permitted by the Public Securities Act. The proceeds of the tax levy shall be pledged to the payment of the principal and interest of the certificates when they fall due."

Section 16

Section 16. A new Section 4-1A-15 NMSA 1978 is enacted to read:

"4-1A-15. REFERENDUM ON CREATION--PROCEDURE.--

A. On or after July 1, 1995, the Bernalillo county clerk shall issue a proclamation in compliance with Sections 1-11-1 through 1-11-4 NMSA 1978 calling for a referendum at the next general election of registered voters within the geographical boundaries of the area proposed to be the new county. The creation and operations of the newly constituted county shall be decided by the majority of votes cast in the referendum.

B. The secretary of state shall provide for due and sufficient notice to be published regarding the referendum, shall provide for registration of eligible voters and shall adopt and publish rules governing the conduct of the election. The referendum question shall be presented on ballots in substantially the following form:

"___ For the creation and operation of a new county, which has boundaries described as follows: beginning at the southwest corner of Bernalillo county, then easterly along the Bernalillo county boundary to the eastern boundary of the Isleta Indian reservation, then northerly along the eastern boundary of the Isleta Indian reservation to the northeast corner of the reservation, then westerly along the northern boundary of the Isleta Indian reservation to the southwest corner of the Kirtland air force base, then northerly to where the western boundary of the Kirtland air force base meets the municipal boundary of the city of Albuquerque, then westerly along the southern boundary of the city of Albuquerque to its intersection with the southern boundary of interstate 40, then westerly to its intersection with the northeastern corner of the Laguna Indian reservation, then westerly along the northern boundary of the Laguna Indian reservation to its intersection with the western boundary of Bernalillo county, then southerly to the point of origin.

___ Against the creation and operation of a new county, which has boundaries described as follows: beginning at the southwest corner of Bernalillo county, then easterly along the Bernalillo county boundary to the eastern boundary of the Isleta Indian reservation, then northerly along the eastern boundary of the Isleta Indian reservation to the northeast corner of the reservation, then westerly along the northern boundary of the Isleta Indian reservation to the southwest corner of the Kirtland air force base, then northerly to where the western boundary of the Kirtland air force base meets the municipal boundary of the city of Albuquerque, then westerly along the southern boundary of the city of Albuquerque to its intersection with the southern boundary of interstate 40, then westerly to its intersection with the northeastern corner of the Laguna Indian reservation, then westerly along the northern boundary of the Laguna Indian reservation to its intersection with the western boundary of Bernalillo county, then southerly to the point of origin."

Squares shall be printed before the affirmative and negative of the referendum question and the voter instructed to mark an "X" in the square before the statement that represents his vote. The description of the new county shall be that set out in Section 4-1A-1 NMSA 1978.

C. Except as may otherwise be provided in this section, the referendum shall be conducted in the same manner as a special district election as that term is used in Section 1-1-19 NMSA 1978. The votes cast in the referendum shall be canvassed by the Bernalillo county canvass board and then certified to the state canvassing board. The state canvassing board shall then certify the results of the referendum pursuant to Sections 1-13-15 through 1-13-18 NMSA 1978 in the same manner as certification of a vote by the voters of more than one county."

Section 17

Section 17. A new Section 4-1A-16 NMSA 1978 is enacted to read:

"4-1A-16. NAMING OF NEW COUNTY.--Within ninety days of their appointment, the county commissioners for the new county who have been appointed pursuant to Section 4-1A-3 NMSA 1978 shall, by majority vote, make an irrevocable selection of a name for the new county."

Section 18

Section 18. A new Section 35-1-39 NMSA 1978 is enacted to read:

"35-1-39. MAGISTRATE COURT--NEW DISTRICT.--In the new county created by Chapter 4, Article 1A NMSA 1978 there shall be two magistrates operating as a single court at the county seat until otherwise provided by law."

Section 19

Section 19. TEMPORARY PROVISION--ANNEXATIONS DELAYED.--The city of Albuquerque is prohibited temporarily from annexing any territory within the boundaries of the proposed new county. This prohibition shall operate from the effective date of Section 4-1A-15 NMSA 1978 until December 1, 1996.

Section 20

Section 20. EFFECTIVE DATE.--Sections 4-1A-1 through 4-1A-14, 4-1A-16 and 35-1-39 NMSA 1978 shall become effective upon certification by the state canvassing board that a majority of votes cast in the referendum conducted pursuant to Section 4-1A-15 NMSA 1978 were for the creation and operation of the new county created by Section 4-1A-1 NMSA 1978.

SENATE BILL 4

CHAPTER 86

MAKING APPROPRIATIONS TO THE COMMISSION ON HIGHER EDUCATION FOR THE TRANSITION OF DIRECT ADMINISTRATION OF THE STATE FINANCIAL AID PROGRAMS BACK TO THE COMMISSION; DECLARING AN EMERGENCY.

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

Section 1

Section 1. APPROPRIATIONS.--Fifteen thousand dollars (\$15,000) from the medical student loan-for-service fund, ten thousand dollars (\$10,000) from the osteopathic student loan-for-service fund and ten thousand dollars (\$10,000) from the nursing student loan-for-service fund is appropriated to the commission on higher education for expenditure in fiscal year 1995 for salaries and benefits for three term exempt positions and for miscellaneous support costs for those positions as necessary to facilitate the transition of direct administration of the state financial aid program back to the commission. Any unexpended or unencumbered balances remaining at the end of fiscal year 1995 shall revert to the appropriate loan-for-service fund.

Section 2

Section 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE BILL 842 WITH EMERGENCY CLAUSE
SIGNED APRIL 5, 1995

CHAPTER 87

RELATING TO LICENSE FEES; AUTHORIZING INCREASES IN FEES FOR CERTAIN GAME AND FISH LICENSES; MAKING AN APPROPRIATION; AMENDING SECTIONS OF THE NMSA 1978; REPEALING LAWS 1992, CHAPTER 28, SECTION 3.

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

Section 1

Section 1. Section 17-3-2 NMSA 1978 (being Laws 1964 (1st S.S.), Chapter 17, Section 2, as amended) is amended to read:

"17-3-2. CLASSES OF LICENSES.--

A. As used with reference to licenses in Chapter 17 NMSA 1978:

(1) "fishing" entitles the licensee to fish for game fish during the open seasons for each species;

(2) "small game" entitles the licensee to hunt game birds, other than wild turkey, and squirrel during the open seasons for each;

(3) "deer" entitles the licensee to hunt deer during the open season;

(4) "general hunting" entitles the licensee to hunt deer, squirrel and game birds during the open seasons for each;

(5) "general hunting and fishing" entitles the licensee to hunt deer, squirrel and game birds and to fish for game fish during the open seasons for each;

(6) "antelope" entitles the licensee to hunt antelope during the open season;

(7) "elk" entitles the licensee to hunt elk during the open season;

(8) "bighorn sheep" entitles the licensee to hunt bighorn sheep during the open season;

(9) "Barbary sheep" entitles the licensee to hunt Barbary sheep during the open season;

(10) "javelina" entitles the licensee to hunt javelina during the open season;

(11) "bear" entitles the licensee to hunt bear during the open season;

(12) "nongame" entitles the licensee to hunt or take any animal or bird not protected by law;

(13) "temporary fishing" entitles the licensee to fish for game fish during a specific period of time indicated on the license;

(14) "bison" entitles the licensee to hunt bison during the open season;

(15) "oryx" entitles the licensee to hunt oryx during the open season;

(16) "ibex" entitles the licensee to hunt ibex during the open season;

(17) "cougar" entitles the licensee to hunt cougar during the open season;

(18) "turkey" entitles the licensee to hunt turkey during the open season;

(19) "special season turkey" entitles the licensee to hunt turkey during special seasons designated by the state game commission;

(20) "quality elk" entitles the licensee to hunt elk during a special quality elk season, to be established by the state game commission, when the timing of the season and hunter density is specially regulated and the elk population is managed with an intent to provide the licensee an increased opportunity to take a mature elk;

(21) "quality deer" entitles the licensee to hunt deer during a special quality deer season, to be established by the state game commission, when the timing of the season and hunter density is specially regulated and the deer population is managed with an intent to provide the licensee an increased opportunity to take a mature deer; and

(22) "gazelle" entitles the licensee to hunt gazelle during the open season.

B. No hunting license entitles the licensee to hunt, kill or take game animals or birds within or upon any park or enclosure licensed or posted as provided by law or within or upon any privately owned enclosure without consent of the owner or within or upon any game refuge or game management area.

C. No fishing license entitles the licensee to fish for or take fish within or upon any park or enclosure licensed or posted as provided by law or within or upon any privately owned enclosure without consent of the owner or in or on any closed waters.

D. A junior-senior fishing license may be purchased by any resident who has reached his twelfth birthday but has not reached his fifteenth birthday or by any resident who has reached his sixty-fifth birthday. A junior-senior fishing license entitles the licensee to fish for game fish during the open season for each species.

E. A nonresident junior fishing license may be purchased by any nonresident who has reached his twelfth birthday but has not reached his fifteenth birthday. A nonresident junior fishing license entitles the licensee to fish for game fish during the open season for each species.

F. None of the classes of trout stamps provided for in Subsection A of this section is required of any person fishing on lands of any Indian pueblo or tribe.

G. A senior general hunting license may be purchased by any resident who has reached his sixty-fifth birthday. A senior general hunting license entitles the licensee to hunt for deer, squirrel and game birds during the open seasons for each species.

H. A handicapped fishing license may be purchased by any resident who has a severe physical impairment that substantially limits one or more major life activities and who can furnish adequate proof of this disability to the state game commission. A handicapped fishing license may be purchased by any resident who has a developmental disability as defined in Subsection H of Section 43-1-3 NMSA 1978

and who can furnish adequate proof of this disability to the state game commission. A handicapped fishing license entitles the licensee to fish for game fish during the open season for each species; provided, however, the class C trout stamp would apply.

I. A handicapped general hunting license may be purchased by any resident who has a severe physical impairment that substantially limits one or more major life activities and who can furnish adequate proof of this disability to the state game commission. A handicapped general hunting license entitles the licensee to hunt for deer, squirrel and game birds during the open season for each species.

J. A fishing license may be obtained at no cost by any resident who has reached his seventieth birthday."

Section 2

Section 2. Section 17-3-13 NMSA 1978 (being Laws 1964 (1st S.S.), Chapter 17, Section 5, as amended) is amended to read:

"17-3-13. LICENSE FEES.--

A. The director of the department of game and fish shall keep a record of all money received and licenses and permits issued by him, numbering each class separately. Upon satisfactory proof that any license or permit has been lost before its expiration, he may issue a duplicate and collect a just and reasonable fee for it as determined by regulation of the state game commission.

B. The director of the department of game and fish shall collect the following fees for each license of the class indicated:

Resident, fishing	\$ 17.50
Resident, small game.....	12.00
Resident, deer.....	23.00
Resident, general hunting.....	25.00
Resident, general hunting and fishing	37.50
Resident, junior-senior handicapped, general hunting and fishing.....	23.00
Resident, antelope.....	30.00
Resident, elk cow.....	45.00

Resident, elk bull or either sex....	75.00
Resident, bighorn sheep.....	90.00
Resident, Barbary sheep.....	80.00
Resident, bear.....	30.00
Resident, turkey.....	15.00
Resident, cougar.....	30.00
Resident, bison.....	100.00
Resident, oryx.....	100.00
Resident, ibex.....	60.00
Resident, gazelle.....	25.00
Resident, javelina.....	40.00
Resident, fur dealer.....	10.00
Resident, furbearer.....	12.00
Resident, junior furbearer.....	5.00
Nonresident, fishing.....	39.00
Nonresident, junior fishing.....	18.50
Nonresident, small game.....	75.00
Nonresident, deer.....	180.00
Nonresident, quality deer.....	300.00
Nonresident, bear.....	150.00
Nonresident, cougar.....	200.00
Nonresident, turkey.....	75.00
Nonresident, antelope.....	186.00

Nonresident, elk cow.....	275.00
Nonresident, elk bull or either sex.	465.00
Nonresident, quality elk.....	750.00
Nonresident, bighorn sheep.....	3,000.00
Nonresident, Barbary sheep.....	300.00
Nonresident, bison.....	200.00
Nonresident, oryx.....	1,500.00
Nonresident, ibex.....	1,500.00
Nonresident, gazelle.....	3,000.00
Nonresident, javelina.....	140.00
Nonresident, fur dealer.....	100.00
Nonresident, furbearer.....	300.00
Nonresident, nongame.....	50.00
Resident, junior-senior handicapped fishing.....	10.50
Temporary fishing, one day.....	8.00
Temporary fishing, five days.....	16.00
Resident, junior-senior handicapped general hunting.....	15.00."

Section 3

Section 3. REPEAL.--Laws 1992, Chapter 28, Section 3 is repealed.

SENATE BILL 747

CHAPTER 88

RELATING TO HEALTH CARE FACILITIES; EXTENDING A MORATORIUM FOR LICENSURE OF INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 24-1-5.3 NMSA 1978 (being Laws 1990, Chapter 97, Section 1, as amended) is amended to read:

"2-1-5.3. INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED--LICENSURE MORATORIUM.--

A. The department shall not issue a license to any new intermediate care facility for the mentally retarded nor shall the department issue a license for an increase over the bed capacity that existed on January 1, 1993 in an existing facility. No such facility shall apply for licensure except as provided in Subsection B of this section.

B. The department may accept applications for and issue licenses to intermediate care facilities for the mentally retarded on and after the earliest of the following dates:

(1) July 1, 1997, provided that the secretary of human services certifies to the secretary of health that the human services department and the department of health have approved and begun implementation of a plan to control the growth of intermediate care facilities for the mentally retarded and to establish the future role of intermediate care facilities for the mentally retarded in the developmental disabilities service system; or

(2) the date the secretary of health certifies to the department of finance and administration that an emergency exists that threatens the health and safety of persons with developmental disabilities provided that licenses granted under this paragraph do not exceed the total statewide bed capacity that existed on January 1, 1993.

C. As used in this section, "intermediate care facility for the mentally retarded" means any intermediate care facility eligible for certification as an intermediate care facility for the mentally retarded."

Section 2

Section 2. DELAYED REPEAL.--Section 1 of this act is repealed effective July 1, 1997.

Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

SENATE BILL 859

CHAPTER 89

RELATING TO TAXATION; REVISING THE VENTURE CAPITAL INVESTMENT ACT; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 7-2D-1 NMSA 1978 (being Laws 1993, Chapter 313, Section 1) is amended to read:

"7-2D-1. SHORT TITLE.--Chapter 7, Article 2D NMSA 1978 may be cited as the "Venture Capital Investment Act"."

Section 2

Section 2. Section 7-2D-2 NMSA 1978 (being Laws 1993, Chapter 313, Section 2) is amended to read:

"7-2D-2. DEFINITIONS.--As used in the Venture Capital Investment Act:

A. "capital gain tax differential" equals either:

(1) an amount equal to fifty percent of the federal income tax paid by the taxpayer on qualified diversifying business net capital gains; or

(2) in the event that the taxpayer makes an election pursuant to Section 7-2D-13 NMSA 1978, and the taxpayer has not previously paid federal income tax on the qualified diversifying business net capital gain that accrued prior to that election, then an amount equal to fifty percent of the federal income tax paid by the taxpayer on the gain on the sale of that qualified diversifying business stock times the percentage derived by dividing the gain on such stock accruing since the election by the total gain on the stock accruing since its original acquisition without regard to the election;

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

C. "Internal Revenue Code" means the federal Internal Revenue Code of 1986, as amended or renumbered;

D. "manufacturing business" means the manufacture of, and the business activities related to the manufacture of, all nondurable and durable goods;

E. "New Mexico income tax" means the tax imposed pursuant to the Income Tax Act;

F. "qualified diversifying business net capital gain" means the net capital gain for the taxable year determined under the Internal Revenue Code by taking into account only gains or losses from sales or exchanges of qualified diversifying business stock with a holding period of more than five years at the time of the sale or exchange;

G. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

H. "taxpayer" means any individual subject to the tax imposed pursuant to the Income Tax Act; and

I. "testing period" means the five-year period a stock is held by a taxpayer, beginning with the first day of the taxpayer's holding period for the stock."

Section 3

Section 3. Section 7-2D-4 NMSA 1978 (being Laws 1993, Chapter 313, Section 4) is amended to read:

"7-2D-4. ADDITIONAL DEFINITION--QUALIFIED DIVERSIFYING BUSINESS STOCK.--

A. For purposes of the Venture Capital Investment Act, "qualified diversifying business stock" means, except as otherwise provided in Section 7-2D-13 NMSA 1978, any stock in a corporation that is originally issued after June 30, 1994 but before July 1, 2001, if:

(1) on the date of issuance the corporation is a qualified diversifying business;

(2) except as otherwise provided in Subsection B of this section and in Sections 7-2D-9 and 7-2D-10 NMSA 1978, the stock is acquired by the taxpayer at its original issue, either:

(a) in exchange for money or other property, not including stock; or

(b) as compensation for services, other than services performed as an underwriter of such stock; and

(3) the corporation throughout the testing period is an active manufacturing business and a New Mexico business and at the end of the testing period is a successful business.

B. For purposes of Paragraph (2) of Subsection A of this section, stock shall not be treated as acquired by the taxpayer at its original issue if:

(1) it is issued directly or indirectly in redemption of, or otherwise in exchange for, stock that is not qualified diversifying business stock; or

(2) it is issued in an exchange described in Section 351 of the Internal Revenue Code in exchange for property other than qualified diversifying business stock if, immediately after the exchange, both the issuer and transferee of the stock are members of the same controlled group of corporations as defined in Section 1563 of the Internal Revenue Code."

Section 4

Section 4. Section 7-2D-5 NMSA 1978 (being Laws 1993, Chapter 313, Section 5) is amended to read:

"7-2D-5. ADDITIONAL DEFINITION--QUALIFIED DIVERSIFYING BUSINESS.--

A. For purposes of the Venture Capital Investment Act, "qualified diversifying business" means, except as otherwise provided in Section 7-2D-13 NMSA 1978, any domestic corporation that has its commercial domicile in New Mexico and with respect to which the aggregate amount of money, other property and services received by the corporation for stock, as a contribution to capital and as paid-in surplus, plus the accumulated earnings and profits of the corporation, does not exceed twenty-five million dollars (\$25,000,000); provided:

(1) the aggregate amount shall be determined at the time of issuance and shall include amounts received in the issuance and all prior issuances; and

(2) in the case of stock issued in a calendar year after 1993, the aggregate amount shall not exceed an amount equal to twenty-five million dollars (\$25,000,000) multiplied by the cost-of-living adjustment determined under Section 1(f)(3) of the Internal Revenue Code for that calendar year by substituting "1992" for "1987" in Subparagraph (B) of that section.

B. For the purpose of determining the aggregate amount in Subsection A of this section:

(1) the amount taken into account with respect to any property other than money shall be an amount equal to the adjusted basis of that property for determining capital gain:

(a) reduced to not below zero by any liability to which the property was subject or that was assumed by the corporation; and

(b) determined at the time the property was received by the corporation; and

(2) the amount taken into account with respect to stock issued for services shall be the value of those services."

Section 5

Section 5. Section 7-2D-6 NMSA 1978 (being Laws 1993, Chapter 313, Section 6) is amended to read:

"7-2D-6. ADDITIONAL DEFINITION--ACTIVE MANUFACTURING BUSINESS.--

A. Except as otherwise provided in this section, for the purposes of the Venture Capital Investment Act, "active manufacturing business" means a corporation that throughout the testing period:

(1) either:

(a) is engaged in the active conduct of a manufacturing business; and

(b) uses substantially all of its assets in the active conduct of a manufacturing trade or business; provided, rights to computer software that produce income described in Section 543(d) of the Internal Revenue Code and any assets that are held for investment and are to be used to finance future research and experimentation or working capital needs of the corporation shall be treated as assets used in the active conduct of a manufacturing business; or

(2) is engaged in any of the following activities, whether or not the corporation has any gross income from such activities at the time of the determination:

(a) start-up activities described in Section 195(c)(1)(A) of the Internal Revenue Code;

(b) activities resulting in the payment or incurring of expenditures that may be treated as research and experimental expenditures under Section 174 of the Internal Revenue Code; or

(c) activities with respect to in-house research expenses described in Section 41(b)(4) of the Internal Revenue Code.

B. A corporation shall not be considered an active manufacturing business if at any time during the testing period:

(1) more than ten percent of the value of its assets in excess of liabilities consists of stock in other corporations that are not subsidiaries of that corporation; provided:

(a) for purposes of this section, stock and debt in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary's assets and to conduct its ratable share of the subsidiary's activities; and

(b) a corporation shall be considered a subsidiary if the parent owns at least fifty percent of the combined voting power of all classes of stock entitled to vote or at least fifty percent in value of all outstanding stock of that corporation; or

(2) more than ten percent of the total value of its assets is real property that is not used in the active conduct of a manufacturing business. The ownership of, dealing in or renting of real property shall not be treated as the active conduct of a manufacturing business."

Section 6

Section 6. Section 7-2D-7 NMSA 1978 (being Laws 1993, Chapter 313, Section 7) is amended to read:

"7-2D-7. ADDITIONAL DEFINITION--NEW MEXICO BUSINESS.-- For the purposes of the Venture Capital Investment Act, "New Mexico business" means a corporation that throughout the testing period meets these conditions:

A. the corporation has its commercial domicile in New Mexico and all of its corporate directors who are also employees of the corporation are full-time residents of New Mexico;

B. at least two-thirds of all of the corporation's employees, at least two-thirds of its employees who perform research, development or design activities and at least two-thirds of its employees who perform manufacturing activities are full-time residents of New Mexico;

C. the corporation maintains an employee stock purchase plan, incentive stock option plan or similar plan pursuant to which employees of the corporation have the opportunity to acquire equity ownership in the corporation; and

D. the corporation employs on a full-time basis an average of at least fifty full-time New Mexico residents."

Section 7

Section 7. Section 7-2D-8 NMSA 1978 (being Laws 1993, Chapter 313, Section 8) is amended to read:

"7-2D-8. ADDITIONAL DEFINITION--SUCCESSFUL BUSINESS.-- For the purposes of the Venture Capital Investment Act, "successful business" means a corporation that, at the end of the taxpayer's holding period, has experienced a net increase in valuation of at least fifteen million dollars (\$15,000,000); provided:

A. the increase in valuation shall be calculated by subtracting the valuation of the corporation at the time it was determined to be a qualified diversifying business from the current valuation of the corporation at the time of the transfer giving rise to the qualified diversifying business net capital gain;

B. the current valuation of the corporation at the time of the transfer giving rise to the qualified diversifying business net capital gain equals the per-share value of the money and property received by the taxpayer on the transfer multiplied by the outstanding shares of the corporation, as calculated using the number of shares that would be outstanding if all outstanding convertible securities were fully converted and all outstanding options and warrants were fully exercised; and

C. in the case of any stock issued in a calendar year after 1994, the net increase in valuation required shall be an amount equal to fifteen million dollars (\$15,000,000) multiplied by the cost-of-living adjustment determined under Section 1(f)(3) of the Internal Revenue Code for that calendar year by substituting "1992" for "1987" in Subparagraph (B) of that section."

Section 8

Section 8. A new section of the Venture Capital Investment Act, Section 7-2D-8.1 NMSA 1978, is enacted to read:

"7-2D-8.1. TAX CREDIT.--

A. Any taxpayer who pays federal income tax on a qualified diversifying business net capital gain may claim a credit against the taxpayer's New Mexico income tax liability equal to a capital gain tax differential, if the taxpayer allocates the qualified diversifying business net capital gain to New Mexico.

B. The tax credit provided in Subsection A of this section may only be deducted from the taxpayer's New Mexico income tax liability. Any portion of the credit

that remains unused at the end of the taxpayer's taxable year may be carried forward and deducted from the taxpayer's New Mexico income tax liability in succeeding years."

Section 9

Section 9. Section 7-2D-9 NMSA 1978 (being Laws 1993, Chapter 313, Section 9) is amended to read:

"7-2D-9. SPECIAL RULES FOR OPTIONS, WARRANTS AND CERTAIN CONVERTIBLE INVESTMENTS.--

A. In the case of stock that is acquired by the taxpayer through the exercise of a nontransferable option or warrant issued in exchange for the performance of services for the corporation issuing it, through the conversion of convertible debt or in exchange for securities of the corporation in a transaction described in Section 368 of the Internal Revenue Code:

(1) the stock shall be treated as acquired by the taxpayer at original issue; and

(2) the stock shall be treated as having been held during the period that the option, warrant or debt was held or that the security was outstanding.

B. For purposes of Subsection A of Section 7-2D-5 NMSA 1978 and notwithstanding Subsection B of that section, in the case of a debt instrument converted to stock or stock issued in exchange for securities in a transaction described in Section 368 of the Internal Revenue Code, such stock shall be treated as issued for an amount equal to the sum of:

(1) the principal amount of the debt or security at the time of the conversion or exchange; and

(2) accrued but unpaid interest on that loan or security."

Section 10

Section 10. Section 7-2D-13 NMSA 1978 (being Laws 1993, Chapter 313, Section 13) is amended to read:

"7-2D-13. ELECTION.--

A. On any date after June 30, 1993, a taxpayer who holds any stock of a corporation that has its commercial domicile in New Mexico and meets the requirements of this section may elect to have the stock treated as a qualified diversifying business stock in accordance with the provisions of this section for purposes of claiming the tax credit pursuant to the Venture Capital Investment Act.

B. On any date after June 30, 1994, if a taxpayer holds any stock of a corporation that has its commercial domicile in New Mexico on that date and which stock, at the time it was issued, would have been treated as qualified diversifying business stock pursuant to the Venture Capital Investment Act but for the facts that the stock was issued on or before June 30, 1994 and that the stock was issued by a corporation that at the time did not have its commercial domicile in New Mexico and the value of such stock on that date exceeds its adjusted basis, the taxpayer may elect to set that date as the election date and treat the stock as having been sold on that date for an amount equal to its value on that date and as having been reacquired on that date for an amount equal to such value.

C. For purposes of determining the tax credit pursuant to Section 7-2D-8.1 NMSA 1978 and whether or not the taxpayer actually incurs federal or New Mexico income tax liability, the gain from sales determined in Subsection B of this section shall be treated as received or accrued and the holding period of the reacquired stock shall be treated as beginning on that election date. Such stock shall be treated after such reacquisition as acquired in the same manner and at the same time as the original acquisition. Neither the requirement of Subsection A of Section 7-2D-4 NMSA 1978 that the stock must have been issued after June 30, 1994 nor the requirement of Subsection A of Section 7-2D-5 NMSA 1978 that the issuing corporation have its commercial domicile in New Mexico shall apply.

D. An election under this section with respect to any stock shall be made in the manner the secretary prescribes. Such an election, once made with respect to any stock, is irrevocable.

E. Notwithstanding the provisions of this section, no credit shall be allowed or claimed on any qualified diversifying business net capital gain arising from the sale of stock prior to July 1, 1998."

Section 11

Section 11. REPEAL.--Section 7-2D-3 NMSA 1978 (being Laws 1993, Chapter 313, Section 3) is repealed.

SENATE BILL 105

CHAPTER 90

RELATING TO COMMUNITY COLLEGE ELECTIONS; AMENDING A SECTION OF THE NMSA 1978 PERTAINING TO THE COMMUNITY COLLEGE BOARD.

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

Section 1

Section 1. Section 21-13-8 NMSA 1978 (being Laws 1963, Chapter 17, Section 7, as amended) is amended to read:

"21-13-8. COMMUNITY COLLEGE BOARD.--

A. If it appears from the records in the office of the executive director of the commission on higher education that the required majority of votes were cast in favor of the organization of the community college district, the executive director shall declare the organization of the "_____ community college district". The executive director of the commission shall notify, by registered mail, all boards of education within the community college district of the results of the election and shall call a meeting of the members of the boards of education, which shall be held at a time and site, within the community college district, selected by the executive director not later than sixty days after the election. The executive director or his appointed delegate shall act as chairman pro tempore of the meeting, and a majority of the members of the boards of education so notified shall constitute a quorum.

B. A majority of all board of education members present shall elect five persons as members of the "_____ community college board". The persons elected shall be assigned position numbers one through five. Board members shall be over twenty-one years of age, qualified electors and residents of the community college district. The members of the board shall continue to serve until the next regular community college election, to be held on the first Tuesday of March of each odd-numbered year, at which time five board members shall be elected by the registered voters of the community college district. The candidates shall file for and be elected to a particular position number. The candidate receiving the highest number of votes for a particular position shall be elected. At the first community college board meeting after the election, the five members shall draw lots for the following terms: one for a term of two years, two for terms of four years and two for terms of six years. Thereafter, board members shall be elected for terms of six years from April 1 succeeding their elections. All vacancies caused in any other manner than by the expiration of the term of office shall be filled by appointment by the remaining members. An individual appointed by the remaining members of the board to fill any vacancy in office shall serve until the next community college board election at which time candidates shall file for and be elected to fill any vacant position to serve the remainder of the unexpired term.

C. Immediately after the election of the five members by the assembled board of education members, the "_____ community college board" shall select from its members a chairman and secretary who shall serve in these offices until the next regular community college board election. After each "_____ community college board" election, the members shall proceed to reorganize."

SENATE BILL 410

CHAPTER 91

RELATING TO SEXUAL CRIMES; ENSURING THAT FREE FORENSIC MEDICAL EXAMS ARE PROVIDED FOR VICTIMS OF SEXUAL CRIMES; AMENDING AND ENACTING SECTIONS OF THE SEXUAL CRIMES PROSECUTION AND TREATMENT ACT.

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

Section 1

Section 1. Section 29-11-3 NMSA 1978 (being Laws 1978, Chapter 27, Section 3) is amended to read:

"29-11-3. DEFINITIONS.--As used in the Sexual Crimes Prosecution and Treatment Act:

A. "administrator" means the director of the mental health division of the department of health, or such person or office as the administrator may designate to act in his stead;

B. "evidence" means that evidence relating to the commission of a sexual crime;

C. "medical and psychological treatment" includes that medical, mental or emotional treatment provided a victim of a sexual crime. In addition to the improved physical and emotional condition of a victim, the treatment should result in the improved ability of a victim to make informed and rational choices about serving as a witness in the prosecution of a suspect of a sexual crime; and

D. "sexual crime" includes any act which may be alleged to be a sexual offense or an attempted sexual offense under the provisions of Sections 30-9-10 through 30-9-16 and 30-10-3 NMSA 1978."

Section 2

Section 2. A new section of the Sexual Crimes Prosecution and Treatment Act is enacted to read:

"FREE FORENSIC MEDICAL EXAMS FOR VICTIMS OF SEXUAL CRIMES.--The administrator shall:

A. provide free forensic medical exams to victims of sexual crimes;

B. arrange for victims of sexual crimes to obtain free forensic medical exams; or

C. reimburse victims of sexual crimes for the cost of forensic medical exams, provided that:

(1) the reimbursement covers the full cost of the forensic medical exam, without any deductible requirement or limit on the amount of the reimbursement;

(2) the victim of a sexual crime is entitled to apply for reimbursement for a period of one year from the date of the forensic medical exam;

(3) reimbursement is provided not later than ninety days after the administrator receives written notification of the expense incurred by the victim for the forensic medical exam; and

(4) all victims of sexual crimes, including victims with limited or no English proficiency, are provided with information at the time of the forensic medical exam regarding how to obtain reimbursement for the cost of the exam."

Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

SENATE BILL 727

CHAPTER 92

RELATING TO METROPOLITAN REDEVELOPMENT; PROVIDING FOR A TWENTY-YEAR TAX INCREMENT PERIOD.

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

Section 1

Section 1. Section 3-60A-23 NMSA 1978 (being Laws 1979, Chapter 391, Section 23, as amended) is amended to read:

"3-60A-23. TAX INCREMENT METHOD APPROVAL.--The tax increment method shall be applicable only to the units of government participating in property tax revenue derived from property within a metropolitan redevelopment project and approving the use of the tax increment method for that property and only to the extent of the approval. An approval may be restricted to certain types or sources of tax revenue. The local governing body of each municipality shall request such approval for up to a twenty-year period for property included in the tax increment funding. The governor or his authorized representative shall approve, partially approve or disapprove the use of the method for state government; the governing body of each other participating unit

shall approve, partially approve or disapprove by ordinance or resolution the use of the method for their respective units. All participating units shall notify the local governing body of the municipality seeking approval within thirty days of receipt of the request. At the expiration of that time, the alternative method of financing set forth in this section shall be effective for a period of up to twenty tax years."

SENATE BILL 460

CHAPTER 93

RELATING TO HEALTH CARE; ENACTING THE MEDICAL CARE SAVINGS ACCOUNT ACT; PROVIDING FOR CONTRIBUTIONS TO EMPLOYEE MEDICAL CARE SAVINGS ACCOUNTS; PROVIDING FOR REGISTRATION OF ACCOUNT ADMINISTRATORS; PROVIDING INCOME TAX EXEMPTIONS.

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

Section 1

Section 1. SHORT TITLE.--Sections 1 through 7 of this act may be cited as the "Medical Care Savings Account Act".

Section 2

Section 2. DEFINITIONS.--As used in the Medical Care Savings Account Act:

A. "account administrator" means any of the following that administers medical care savings accounts:

(1) a national or state chartered bank, savings and loan association, savings bank or credit union;

(2) a trust company authorized to act as a fiduciary in this state;

(3) an insurance company or health maintenance organization authorized to do business in this state pursuant to the New Mexico Insurance Code;

(4) an employer that has a self-insured health plan under the federal Employee Retirement Income Security Act of 1974;

(5) a broker, agent or investment advisor;

(6) a person who holds a certificate or registration as an insurance administrator or for whom the registration has been waived; or

(7) an employer who participates in the medical care savings account program;

B. "deductible" means the total covered medical expense the employee or his dependents must pay prior to any payment by the qualified higher deductible health plan for a calendar year;

C. "department" means the department of insurance;

D. "dependent" means:

(1) a spouse;

(2) an unmarried or unemancipated child of the employee who is a minor and who is:

(a) a natural child;

(b) a legally adopted child;

(c) a stepchild living in the same household who is primarily dependent on the employee for maintenance and support;

(d) a child for whom the employee is the legal guardian and who is primarily dependent on the employee for maintenance and support, as long as evidence of the guardianship is evidenced in a court order or decree; or

(e) a foster child living in the same household, if the child is not otherwise provided with health care or health insurance coverage;

(3) an unmarried child described in Subparagraphs (a) through (e) of Paragraph (2) of this subsection who is between the ages of eighteen and twenty-five and is a full-time student at an accredited educational institution; provided, "full-time student" means a student is enrolled in and taking twelve or more semester hours or equivalent contact hours in secondary, undergraduate or vocational school or nine or more semester hours or equivalent contact hours in graduate school; or

(4) a child over the age of eighteen who is incapable of self-sustaining employment by reason of mental retardation or physical handicap and who is chiefly dependent on the employee for support and maintenance;

E. "eligible medical expense" means an expense paid by the employee for medical care described in Section 213(d) of the Internal Revenue Code of 1986 that is deductible for federal income tax purposes;

F. "employee" includes a self-employed individual;

G. "employer" includes a self-employed individual;

H. "medical care savings account" or "savings account" means an account established by an employer to pay the eligible medical expenses of an employee and his dependents;

I. "program" means the medical care savings account program established by an employer for his employees; and

J. "qualified higher deductible health plan" means a health coverage policy, certificate or contract that provides for payments for covered health care benefits that exceed the policy, certificate or contract deductible and that is purchased by an employer for the benefit of an employee.

Section 3

Section 3. ACCOUNT ADMINISTRATOR--REGISTRATION WITH DEPARTMENT-- DEPARTMENT POWERS AND DUTIES.--

A. An account administrator shall register with the department and pay a registration fee of twenty-five dollars (\$25.00). The registration fee shall be deposited in the general fund. Registration as an account administrator does not affect the regulation of a bank, savings and loan association, credit union, trust company or insurance company as otherwise provided by law.

B. An account administrator shall provide to the department annually a list of the employers for whom it provides account administration and the number of employees and dependents for whom it administers accounts. The information shall be provided in the form requested by the department. The department may request other information it deems appropriate from the account administrator; provided, however, that the department shall not request any information about an individual employee or dependent unless a complaint has been filed with the department by that employee or dependent and the information is required to investigate the complaint.

C. The department may receive, investigate and settle complaints about medical care savings accounts and account administrators or it may refer complaints to other appropriate agencies.

D. The department shall adjust annually the maximum deductible for qualified higher deductible health plans to reflect the last known increase in the medical care component of the consumer price index published by the United States department of labor. For 1995, the maximum deductible shall not be less than one thousand dollars (\$1,000) and not more than three thousand dollars (\$3,000).

E. The department may adjust annually the maximum employer contribution to reflect the last known increase in the medical care component of the

consumer price index. For 1995, the employer's contribution shall not exceed three thousand dollars (\$3,000).

Section 4

Section 4. MEDICAL CARE SAVINGS ACCOUNT PROGRAM.--

A. Except as otherwise provided by statute, contract or collective bargaining agreement, an employer may establish a medical care savings account program for his employees.

B. In establishing the program, the employer shall:

(1) provide a qualified higher deductible health plan for the benefit of his employees;

(2) contribute to medical care savings accounts for the employees;
and

(3) appoint an account administrator to administer the savings accounts.

C. Principal contributed to and interest earned on a medical care savings account and money reimbursed from the savings account to an employee for eligible medical expenses are exempt from taxation under the Income Tax Act. For the purposes of this subsection, "reimbursement" includes advances paid to the employee by the employer for eligible medical expenses as provided in Subsection D of Section 5 of the Medical Care Savings Account Act.

D. Before establishing a program, the employer shall notify all employees in writing of the federal tax status of the program and how federal income taxation affects New Mexico income taxes.

E. Any compensation required by the account administrator to administer the program shall be paid by the employer, and the employer shall not require the employee to contribute to such compensation while the employee participates in the program. If the employee ceases to participate in the program, he shall be responsible for costs associated with his account.

F. Nothing in the Medical Care Savings Account Act prohibits the employer from requiring the employee to contribute to the qualified higher deductible health plan or the medical care savings account.

G. Nothing in the Medical Care Savings Account Act requires an employee to participate in a program. The employer shall offer the program to all employees on a nondiscriminatory basis.

Section 5

Section 5. ACCOUNT ADMINISTRATOR--EMPLOYER AND EMPLOYEE RESPONSIBILITIES.--

A. The employer, in conjunction with the account administrator, shall provide a current written statement to employees that details how money in their medical care savings accounts is or will be invested and the rate of return employees may reasonably anticipate on the investment of the savings accounts. The account administrator shall file the statement with the department.

B. Except as provided in Section 6 of this act, money in the savings account shall be used solely for the purpose of paying the eligible medical expenses of the employee and his dependents.

C. The account administrator shall reimburse the employee from the employee's medical care savings account for eligible medical expenses. When seeking reimbursement, the employee shall submit documentation of eligible medical expenses paid by the employee.

D. If an employer makes contributions to a program on a periodic installment basis, the employer may advance to an employee, interest free, an amount necessary to cover eligible medical expenses incurred that exceed the amount in the employee's savings account if the employee agrees to repay the advance from future installments or when he ceases to be an employee of the employer or a participant in the program. Such advances shall be exempt from taxation under the Income Tax Act.

Section 6

Section 6. WITHDRAWALS.--

A. An employee may withdraw money without penalty from his medical care savings account for a purpose other than reimbursement of eligible medical expenses when he reaches the age of fifty-nine and one-half.

B. Except as provided in Subsection A of this section, if an employee withdraws money from the employee's medical care savings account on the last business day of the account administrator's business year for a purpose not set forth in Section 4 of the Medical Care Savings Account Act, the money withdrawn shall be considered income to the individual, subject to taxation. The withdrawal does not subject the employee to a penalty or make interest earned on the account during the tax year taxable as income to the employee.

C. Except as provided in Subsection A of this section, if an employee withdraws money for a purpose not set forth in Section 4 of the Medical Care Savings

Account Act at any time other than the last business day of the account administrator's business year:

(1) the amount of the withdrawal shall be considered income to the individual subject to taxation;

(2) the administrator shall withdraw and, on behalf of the employee, pay a penalty equal to ten percent of the amount of the withdrawal; and

(3) all interest earned on the balance in the savings account during the tax year in which the withdrawal is made shall be considered income to the individual and subject to taxation.

D. If an individual is no longer employed by an employer that participates in a program or if an employee chooses to cease participating in the program, the individual or employee shall, within sixty days of his final day of employment or participation:

(1) request, in writing, the transfer of his savings account to a new account administrator;

(2) request, in writing, that the former employer's account administrator continue to administer the savings account, including in the request an agreement to pay the cost, if any, of account administration on that savings account; or

(3) withdraw the money from the savings account.

E. No more than thirty days after the expiration of the sixty-day period pursuant to Subsection D of this section, the account administrator shall:

(1) transfer the savings account to a new account administrator as requested;

(2) agree, in writing, to continue to act as the account administrator for the savings account; or

(3) mail a check to the individual or employee at his last known address for the amount in the account as of the day the check was issued, excluding the applicable withdrawal penalty. The penalty shall be paid to the human services department at the same time as the individual's or employee's check is issued.

F. Upon the death of an employee, the account administrator shall distribute the principal and accumulated interest of the savings account to the estate of the employee.

Section 7

Section 7. REPORT.--The superintendent of insurance shall report to the legislature on or before December 1, 1999 on the availability of health care coverage pursuant to the Medical Care Savings Account Act and the market share of programs in comparison with traditional employer-provided health insurance programs; the results of a survey of employer and employee satisfaction with programs; and the results of a loss ratio study relative to programs.

Section 8

Section 8. A new section of the Income Tax Act is enacted to read:

"EXEMPTION--MEDICAL CARE SAVINGS ACCOUNTS.--Except as provided in Section 6 of this act, employer and employee contributions to medical care savings accounts established pursuant to the Medical Care Savings Account Act, the interest earned on those accounts and money reimbursed to an employee for eligible medical expenses from those accounts or money advanced to the employee by the employer for eligible medical expenses pursuant to that act are exempt from taxation."

Section 9

Section 9. APPLICABILITY.--The provisions of Section 8 of this act apply to taxable years beginning on or after January 1, 1995.

SENATE BILL 244

CHAPTER 94

RELATING TO INVESTMENT OF PUBLIC RETIREMENT FUNDS; MODIFYING CERTAIN INVESTMENT AUTHORITY OF THE RETIREMENT BOARD OF THE PUBLIC EMPLOYEES RETIREMENT ASSOCIATION FOR INVESTMENT OF RETIREMENT FUNDS.

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

Section 1

Section 1. Section 10-11-132 NMSA 1978 (being Laws 1987, Chapter 253, Section 132, as amended) is amended to read:

"10-11-132. INVESTMENT OF FUNDS--TYPES OF INVESTMENTS--INDEMNIFICATION OF BOARD MEMBERS.--The funds created by the state retirement system acts are trust funds of which the retirement board is trustee. Members of the retirement board jointly and individually shall be indemnified from the funds by the state from all claims, demands, suits, actions, damages, judgments, costs, charges and expenses, including court costs and attorneys' fees, and against all liability losses and

damages of any nature whatsoever that members shall or may at any time sustain by reason of any decision made in the performance of their duties pursuant to the state retirement system acts. The retirement board may invest and reinvest the funds in the following classes of securities and investments:

A. bonds, notes or other obligations of the United States treasury or those guaranteed by or for which the credit of the United States government is pledged for the payment of the principal and interest;

B. bonds, notes or other obligations of a municipality or other political subdivision of this state that are registered by the United States securities and exchange commission, are publicly traded and are issued pursuant to a law of this state if the issuer, within ten years prior to making the investment, has not been in default in payment of any part of the principal or interest on any debt evidenced by its bonds, notes or other obligations. If any bonds are municipal or county utility revenue bonds or utility district revenue bonds, the revenues of the utility, except for operation and maintenance expenses, shall be pledged wholly to the payment of the interest and principal of the indebtedness and the utility project shall have been completely self-supporting for a period of five years next preceding the date of investment;

C. stocks, bonds, debentures or other obligations issued by any agency or corporation of the United States government under the authority of acts of the United States congress;

D. collateralized obligations held in trust that:

(1) are publicly traded and are registered with the United States securities and exchange commission; and

(2) have underlying collateral that is either an obligation of the United States government or else have a credit rating above or equal to BBB according to the Standard and Poor's rating system or Baa according to the Moody's investors rating system;

E. bonds, notes, commercial paper or other obligations of any corporation organized and operating within the United States or preferred stock, common stock, any security convertible to common stock or American depository receipts that are registered by the United States securities and exchange commission of any corporations whose securities are listed on at least one stock exchange that has been approved by or is controlled by the United States securities and exchange commission or on the national association of securities dealers national market; provided that the corporations shall have minimum net assets of twenty-five million dollars (\$25,000,000); or provided that the securities shall have a minimum credit rating of BBB according to the Standard and Poor's rating system or Baa according to the Moody's investors rating system or their equivalents; provided that the funds for which the retirement board is

trustee shall not at any one time own more than ten percent of the voting stock of a company;

F. securities of non-United States governmental, quasi-governmental or corporate entities; provided:

(1) aggregate non-United States investments shall not exceed ten percent of total assets of the funds;

(2) for non-United States stocks, issues permitted for purchase shall be limited to those issues included in a commonly used and internationally recognized index;

(3) for non-United States bonds and notes, issues permitted for investment shall be limited to sovereign debt issued by those governmental or quasi-governmental entities whose issues are included in a commonly used and internationally recognized index; and

(4) forward currency contracts shall be permitted solely for use of hedging foreign currency exposure;

G. stocks or shares of a diversified investment company registered under the federal Investment Company Act of 1940, which invests primarily in United States or non-United States fixed income securities, equity securities or short-term debt instruments pursuant to Subsections A, B, C, E and F of this section, provided that the investment company has total assets under management of at least one hundred million dollars (\$100,000,000); individual, common or collective trust funds of banks or trust companies, which invest primarily in United States or non-United States fixed income securities, equity securities or short-term debt instruments pursuant to Subsections A, B, C, E and F of this section, provided that the investment manager has assets under management of at least one hundred million dollars (\$100,000,000); the board may allow reasonable administrative and investment expenses to be paid directly from the income or assets of these investments;

H. insured savings deposits or insured savings accounts of banks or savings and loan associations domiciled in this state, the deposits and accounts of which are insured by an agency or corporation of the United States government;

I. industrial revenue bonds issued pursuant to the Industrial Revenue Bond Act where both the principal and interest of the bonds are fully and unconditionally guaranteed by a lease agreement executed by a corporation organized and operating within the United States; provided that none of the funds for which the retirement board is trustee shall at any one time be invested in more than ten percent of the voting stock of a single corporation, and:

(1) each corporation shall have minimum net assets of twenty-five million dollars (\$25,000,000); and

(2) the securities of each corporation shall have a minimum credit rating of BBB according to the Standard and Poor's rating system or Baa according to the Moody's investors rating system;

J. notes or obligations securing loans to New Mexico businesses made by banks and savings and loan associations pursuant to the act of congress of July 30, 1953, known as the Small Business Act of 1953, as amended, only to the extent that both principal and interest are guaranteed by the United States government. The applicant bank or savings and loan association shall be required to enter into an indemnity agreement that meets the approval of the retirement board and to pay off the investments, together with interest and any unpaid costs and expenses in connection therewith, in the event the United States government refuses to honor its guarantee. The retirement board may enter into conventional agreements for the servicing of the loans and the administration of the receipts therefrom. Any servicing agreement may contain such reasonable and customary provisions as the retirement board may deem advisable and as may be agreed upon;

K. notes or obligations securing loans or participation in loans to business concerns or other organizations that are obligated to use the loan proceeds within New Mexico, to the extent the loans are secured by first mortgages on real estate located in New Mexico and are further secured by an assignment of rentals, the payment of which is fully guaranteed by the United States government in an amount sufficient to pay all principal and interest of the mortgages;

L. contracts, including contracts through its designated agent, for the temporary exchange of securities for the use by broker-dealers, banks or other recognized institutional investors, for periods not to exceed one year, for a specified fee or consideration; provided no such contracts shall be entered into unless the contracts are fully secured by a collateralized, irrevocable letter of credit running to the retirement board, cash or equivalent collateral of at least one hundred two percent of the market value of the securities plus accrued interest temporarily exchanged, which collateral shall be delivered to the state fiscal agent or its designee contemporaneously with the transfer of funds or delivery of the securities; and further provided that such contracts may authorize the retirement board to invest cash collateral in instruments or securities that are authorized investments for the funds and may authorize payment of a fee from the funds or from income generated by the investment of cash collateral to the borrower of securities providing cash as collateral, and the retirement board may apportion income derived from the investment of cash collateral to pay its agent in securities lending transactions; and

M. contracts for the present purchase and resale at a specified time in the future, not to exceed one year, of specific securities at specified prices at a price differential representing the interest income to be earned by the retirement board. No

such contract shall be entered into unless the contract is fully secured by obligations of the United States, or other securities backed by the United States, having a market value of at least one hundred two percent of the amount of the contract. The collateral required in this section shall be delivered to the state fiscal agent or his designee contemporaneously with the transfer of funds or delivery of the securities, at the earliest time industry practice permits, but in all cases settlement shall be on a same day basis. No such contract shall be entered into unless the contracting bank, brokerage firm or recognized institutional investor has a net worth in excess of five hundred million dollars (\$500,000,000)."

SENATE BILL 275

CHAPTER 95

RELATING TO HANDICAPPED MOTORISTS; PROVIDING FOR SERVICE AT CERTAIN GASOLINE SERVICE STATIONS; PROVIDING A PENALTY.

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

Section 1

Section 1. FULL-SERVICE GASOLINE STATIONS--DECAL DISPLAY--SERVICE TO HANDICAPPED.--

A. The governor's commission on the concerns of the handicapped shall design and produce a decal for display in full-service gasoline stations signifying that the gasoline station will provide gasoline pumping, window washing, fluid checks and other services provided at its full-service island to any properly permitted or certified handicapped driver at a self-service island.

B. Any full-service gasoline station providing the services described in Subsection A of this section may request and shall receive the decal upon application to the governor's commission on the concerns of the handicapped.

C. No gasoline station shall display the decal issued by the governor's commission on the concerns of the handicapped unless it provides full service to any handicapped driver at a self-service island.

D. Any gasoline station owner or operator who displays a decal signifying that the station will provide additional services to handicapped drivers at a self-service island and who fails to provide that service shall be subject to revocation of their decal for display according to this act.

SENATE BILL 664

CHAPTER 96

RELATING TO HEALTH CARE PROVIDERS; PROVIDING FOR RESTRICTIONS ON THE LICENSURE OF HEALTH CARE PROVIDERS; AMENDING, REPEALING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 61-7-1 NMSA 1978 (being Laws 1976, Chapter 3, Section 1) is amended to read:

"61-7-1. SHORT TITLE.--Chapter 61, Article 7 NMSA 1978 may be cited as the "Impaired Health Care Provider Act"."

Section 2

Section 2. Section 61-7-2 NMSA 1978 (being Laws 1976, Chapter 3, Section 2) is amended to read:

"61-7-2. DEFINITION.--As used in the Impaired Health Care Provider Act, "board" means the boards that license, register or certify health care providers."

Section 3

Section 3. Section 61-7-3 NMSA 1978 (being Laws 1976, Chapter 3, Section 3) is amended to read:

"61-7-3. GROUNDS FOR RESTRICTION, SUSPENSION OR REVOCATION OF LICENSE--REGISTRATION OR CERTIFICATION.--The license, registration or certification of any health care provider to practice in this state shall be subject to restriction, suspension or revocation in case of inability of the health care provider to practice with reasonable skill or safety to patients by reason of one or more of the following:

A. mental illness;

B. physical illness, including but not limited to deterioration through the aging process or loss of motor skill; or

C. habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act, or alcohol."

Section 4

Section 4. Section 61-7-4 NMSA 1978 (being Laws 1976, Chapter 3, Section 4, as amended) is amended to read:

"61-7-4. HEALTH CARE PROVIDER BOARDS--ADDITIONAL POWERS AND DUTIES.--

A. If the board has reasonable cause to believe that a health care provider licensed, registered or certified to practice in this state is unable to practice with reasonable skill and safety to patients because of a condition described in Section 61-7-3 NMSA 1978, the board shall appoint an examining committee as described in Subsection B of this section to examine the health care provider and shall, following the examination, take appropriate action within the provisions of the Impaired Health Care Provider Act.

B. The appropriate board shall designate three licensed health care providers to be members of an examining committee."

Section 5

Section 5. Section 61-7-5 NMSA 1978 (being Laws 1976, Chapter 3, Section 5, as amended) is amended to read:

"61-7-5. EXAMINATION BY COMMITTEE.--

A. The examining committee assigned to examine a health care provider pursuant to referral by the board as provided in Section 61-7-4 NMSA 1978 shall conduct an examination of the health care provider for the purpose of determining the health care provider's fitness to practice with reasonable skill or safety to patients, either on a restricted or unrestricted basis, and shall report its findings and recommendations to the board. The findings and recommendations shall be based on findings by the examining committee that the health care provider examined possesses one or more of the impairments set forth in Section 61-7-3 NMSA 1978 and such impairment does, in fact, affect the ability of the health care provider to skillfully or safely practice. The examining committee shall order the health care provider to appear before it for examination and give the health care provider ten days' notice of time and place of the examination, together with a statement of the cause for examination. Notice shall be served upon the health care provider either personally or by registered or certified mail with return receipt requested.

B. If an examining committee, in its discretion, deems a mental or physical examination of the health care provider necessary to its determination of the fitness of the health care provider to practice, the committee shall order the health care provider to submit to such examination. Any person licensed, registered or certified to practice in this state shall, by so practicing or by making or filing of registration to practice in this state, be deemed to have:

(1) given consent to submit to mental or physical examination when so directed by an examining committee; and

(2) waived all objections to the admissibility of an examining committee's report to the board on the grounds of privileged communication.

C. Any health care provider ordered to an examination before an examining committee pursuant to the provisions of Subsection A of this section may present the results of an independent mental or physical examination to the committee.

D. Any health care provider who submits to a diagnostic mental or physical examination as ordered by an examining committee shall have a right to designate another health care provider to be present at the examination and make an independent report to the board.

E. Failure of a health care provider to comply with an examining committee order made pursuant to provisions of Subsection B of this section to appear before it for examination by the committee or to submit to mental or physical examination under this section shall be reported by the committee to the board and, unless due to circumstances beyond the control of the health care provider, shall be grounds for the immediate and summary suspension by the board of the health care provider's license, registration or certification to practice in this state until the further order of the board."

Section 6

Section 6. Section 61-7-6 NMSA 1978 (being Laws 1976, Chapter 3, Section 6, as amended) is amended to read:

"61-7-6. VOLUNTARY RESTRICTION OF LICENSURE.--A health care provider may request in writing to the board a restriction of the license, registration or certification to practice. The board may grant the request for restriction and shall have authority, if it deems appropriate, to attach conditions to the license, registration or certification of the health care provider to practice within specified limitations and waive the commencement of any proceeding pursuant to provisions of Section 61-7-8 NMSA 1978. Removal of a voluntary restriction on licensure to practice shall be subject to the procedure for reinstatement of license, registration or certification in Section 61-7-9 NMSA 1978."

Section 7

Section 7. Section 61-7-7 NMSA 1978 (being Laws 1976, Chapter 3, Section 7, as amended) is amended to read:

"61-7-7. REPORT TO THE BOARD--ACTION.--

A. An examining committee shall report to the board its findings on the examination of the person as provided in Section 61-7-5 NMSA 1978, the determination of the committee as to the fitness of the person to engage in practice with reasonable skill or safety to patients, either on a restricted or unrestricted basis, and any management that the committee may recommend. Recommendation by the committee shall be advisory only and shall not be binding on the board.

B. The board may accept or reject any finding, determination or recommendation of an examining committee regarding a health care provider's ability to continue to practice with or without any restriction on the license, registration or certification or may refer the matter back to an examining committee for further examination and report.

C. In the absence of a voluntary agreement by a health care provider as provided in Section 61-7-6 NMSA 1978 for restriction of the license, registration or certification of the person to practice, any person shall be entitled to a hearing under and in accordance with the procedure contained in the Uniform Licensing Act before the board and a determination on the evidence as to whether restriction, suspension or revocation of license, registration or certification shall be imposed."

Section 8

Section 8. Section 61-7-8 NMSA 1978 (being Laws 1976, Chapter 3, Section 8, as amended) is amended to read:

"61-7-8. PROCEEDINGS.--

A. The board may formally proceed against a health care provider under the Impaired Health Care Provider Act in accordance with the procedures contained in the Uniform Licensing Act.

B. At the conclusion of a hearing, the board shall make the following findings:

(1) whether the health care provider is impaired by one of the grounds for restriction, suspension or revocation listed in Section 61-7-3 NMSA 1978;

(2) whether the impairment, if found in Paragraph (1) of this subsection, does in fact limit the health care provider's ability to practice skillfully or safely;

(3) to what extent the impairment limits the health care provider's ability to practice skillfully or safely and whether the board finds that the impairment is such that the health care provider's license, registration or certification should be suspended, revoked or restricted; and

(4) if the finding in Paragraph (3) of this subsection recommends suspension or restriction of the health care provider's ability to practice, the board shall make specific recommendations as to the length and nature of the suspension or restriction and shall recommend how the suspension or restriction shall be carried out and supervised.

C. At the conclusion of a hearing, the board shall make a determination of the merits and may order one or more of the following:

(1) placement of the health care provider on probation on such terms and conditions as it deems proper for the protection of the public;

(2) suspension or restriction of the license of the health care provider to practice for the duration of the impairment;

(3) revocation of the license, registration or certification of the health care provider to practice; or

(4) reinstatement of the health care provider's license, registration or certification to practice without restriction.

D. The board may temporarily suspend the license, registration or certification of any health care provider without a hearing, simultaneously with the institution of proceedings under the Impaired Health Care Provider Act or the Uniform Licensing Act, if it finds that the evidence in support of the examining committee's determination is clear and convincing and that the health care provider's continuation in practice would constitute an imminent danger to public health and safety. The health care provider shall be entitled to a hearing to set aside the suspension no later than sixty days after the license is suspended.

E. Neither the record of the proceeding nor any order entered against a health care provider may be used against the health care provider in any other legal proceeding except upon judicial review as provided in Section 61-7-10 NMSA 1978."

Section 9

Section 9. Section 61-7-9 NMSA 1978 (being Laws 1976, Chapter 3, Section 9, as amended) is amended to read:

"61-7-9. REINSTATEMENT OF LICENSE.--A health care provider whose license, registration or certification has been restricted, suspended or revoked pursuant to provisions of the Impaired Health Care Provider Act, voluntarily or by action of the board, shall have a right, at reasonable intervals, to petition for reinstatement and to demonstrate that the health care provider can resume the competent practice with reasonable skill and safety to patients. Petition shall be made in writing and on a form prescribed by the board. Action of the board on the petition shall be initiated by referral

to and examination by an examining committee pursuant to the provisions of Sections 61-7-4 and 61-7-5 NMSA 1978. The board may, in its discretion and upon written recommendation of the examining committee, restore the license, registration or certification of the health care provider on a general or limited basis."

Section 10

Section 10. Section 61-7-10 NMSA 1978 (being Laws 1976, Chapter 3, Section 10, as amended) is amended to read:

"61-7-10. JUDICIAL REVIEW.--All orders of the board made pursuant to provisions of Subsection C of Section 61-7-8 NMSA 1978 shall be subject to judicial review as provided for in the Uniform Licensing Act. The decision of the board shall not be stayed or enjoined pending review by a district court but may be stayed or enjoined pending review by the court of appeals or the New Mexico supreme court."

Section 11

Section 11. Section 61-7-11 NMSA 1978 (being Laws 1976, Chapter 3, Section 11, as amended) is amended to read:

"61-7-11. PROTECTED ACTION AND COMMUNICATION.--There shall be no liability on the part of and no action for damages against:

A. any member of an examining committee of the board for any action undertaken or performed by such member within the scope of the functions or such committee or board under the Impaired Health Care Provider Act when acting in good faith and in the reasonable belief that the action taken is warranted; or

B. any person providing information to an examining committee or to the board in good faith in the reasonable belief that the information is accurate."

Section 12

Section 12. Section 61-7-12 NMSA 1978 (being Laws 1987, Chapter 204, Section 2) is amended to read:

"61-7-12. IMPAIRED HEALTH CARE PROVIDER TREATMENT PROGRAM.--

A. The board has the authority to enter into an agreement to implement an impaired health care provider treatment program.

B. For the purposes of this section, "impaired health care provider treatment program" means a program of care and rehabilitation services provided by those organizations authorized by the board to provide for the detection, intervention and monitoring of impaired health care providers."

CHAPTER 97

RELATING TO THE OCCUPANCY TAX; AUTHORIZING THE USE OF OCCUPANCY TAX PROCEEDS PURSUANT TO THE LODGERS TAX ACT FOR PUBLIC TRANSPORTATION PURPOSES NEAR CERTAIN SKI AREAS.

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

Section 1

Section 1. Section 3-38-21 NMSA 1978 (being Laws 1969, Chapter 199, Section 9, as amended) is amended to read:

"3-38-21. USE OF TAX PROCEEDS.--A municipality or county imposing an occupancy tax may use the proceeds thereof to defray costs of:

- A. collecting and otherwise administering the tax;
- B. establishing and operating, constructing, purchasing, otherwise acquiring, reconstructing, extending, bettering or otherwise improving fairgrounds, exposition buildings, fieldhouses, auditoriums, welcome centers, tourist information centers, museums, performing arts facilities in operation prior to January 1, 1989, convention halls or other convention facilities of the municipality, of the county within which the municipality is located or of the county and acquiring improvements incidental thereto;
- C. equipping and furnishing such facilities, as specified in Subsection B of this section, of the municipality or county;
- D. acquiring a suitable site, grounds or other real property or any interest therein for such facilities of the municipality or county;
- E. the principal of and interest on any prior redemption premiums due in connection with and any other charges pertaining to revenue bonds authorized by Section 3-38-23 or 3-38-24 NMSA 1978;
- F. advertising, publicizing and promoting such facilities of the municipality or county and tourist facilities or attractions within the area; except that a municipality located in a class A county or a class A county imposing an occupancy tax of more than two percent shall use not less than one-half of the proceeds derived from the tax for the purposes of this subsection; provided that this use of the proceeds of the occupancy tax shall not affect the payment of principal and interest on outstanding bonds issued prior to July 1, 1977 pursuant to Section 3-38-23 or 3-38-24 NMSA 1978 which shall be

made in accordance with the retirement schedules of the bonds established at the time of issuance. The amount of expenditures required by this subsection shall be reduced each year, if necessary, to make the required payments of principal and interest of all outstanding bonds issued prior to July 1, 1977;

G. provision of public transportation within a three-mile area of a ski lift facility, provided such a ski lift facility originates inside the boundaries or within three hundred feet of the boundaries of a municipality;

H. the operation, maintenance and capital costs associated with a public transportation system serving the ski area and other tourist areas within a nineteen mile radius of a town that has a population of more than four thousand but less than four thousand five hundred according to the 1990 federal decennial census; or

I. any combination of the foregoing purposes or transactions stated in this section."

SENATE BILL 1028

CHAPTER 98

RELATING TO MUNICIPAL ELECTIONS; AMENDING SECTIONS OF THE NMSA 1978 TO REMOVE THE REQUIREMENT THAT MUNICIPAL ELECTION ABSENTEE BALLOT MAILING ENVELOPES BE SIGNED UNDER OATH.

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

Section 1

Section 1. Section 3-9-6 NMSA 1978 (being Laws 1973, Chapter 375, Section 7, as amended) is amended to read:

"3-9-6. FORM OF ABSENTEE BALLOT--FORM OF ABSENTEE BALLOT ENVELOPES.--

A. The form of the absentee ballot shall be, as nearly as practicable, in the same form as prescribed by the municipal clerk for emergency paper ballots or paper ballots used in lieu of voting machines. However, to reduce weight and bulk for transport of absentee ballots, the size and weight of the paper for envelopes, ballots and instructions shall be reduced as much as is practicable. The ballots shall provide for sequential numbering.

B. Absentee ballots and envelopes shall be delivered by the printer to the municipal clerk not later than thirty-five days prior to the date of the election to be held.

C. The municipal clerk shall prescribe the form of:

(1) official inner envelopes for use in sealing the completed absentee ballot;

(2) official mailing envelopes for use in returning the official inner envelope to the municipal clerk;

(3) absentee ballot instructions, describing proper methods for completion of the ballot and returning it; and

(4) official transmittal envelopes for use by the municipal clerk in mailing absentee ballot materials.

D. Official transmittal envelopes and official mailing envelopes for transmission of absentee ballot materials to and from the municipal clerk and federal voters and federal qualified electors shall be printed in blue in the form prescribed by postal regulations and the Federal Voting Assistance Act of 1955. Official transmittal envelopes and official mailing envelopes for transmission of absentee ballot materials to and from the municipal clerk shall be printed in green in substantially similar form. All official inner envelopes shall be printed in green.

E. The reverse of each official mailing envelope shall contain a form to be signed by the person completing the absentee ballot. The form shall identify the person and shall contain the following statement: "I will not vote in this election other than by the enclosed ballot. I will not receive or offer any compensation or reward for giving or withholding any vote."."

Section 2

Section 2. Section 3-9-7 NMSA 1978 (being Laws 1973, Chapter 375, Section 8, as amended) is amended to read:

"3-9-7. MANNER OF VOTING.--

A. Any person voting an absentee ballot under the provisions of the Municipal Election Code shall secretly mark the ballot in the manner provided in the Municipal Election Code for marking emergency paper ballots, remove any visible number on the ballot, place the ballot in the official inner envelope and securely seal the envelope. The person voting shall then place the official inner envelope inside the official mailing envelope and securely seal the envelope. The person voting shall then fill in the form on the reverse of the official mailing envelope.

B. Federal voters and federal qualified electors shall either deliver or mail the official mailing envelope to the municipal clerk of their municipality of residence or deliver it to a person designated by federal authority to receive executed ballots for transmission to the municipal clerk of the municipality of residence. Voters shall either

deliver or mail the official mailing envelope to the municipal clerk of their municipality of residence."

Section 3

Section 3. Section 3-9-11 NMSA 1978 (being Laws 1985, Chapter 208, Section 99) is amended to read:

"3-9-11. HANDLING ABSENTEE BALLOTS BY ABSENT VOTER PRECINCT BOARDS.--

A. Before opening any official mailing envelope, an election judge shall determine that the required signature has been placed on the reverse side of the official mailing envelope.

B. If the voter's signature is missing, an election judge shall write "rejected" on the front of the official mailing envelope. The election clerks shall write the notation "rejected - missing signature" in the "notations" column on the absentee voter list. An election judge shall place the official mailing envelope unopened in an envelope provided for rejected ballots, seal the envelope, write the voter's name on the front of the envelope and deposit it in the locked ballot box.

C. Declared challengers certified by the municipal clerk may examine the official mailing envelope and may challenge the ballot of any absent voter for the following reasons:

(1) the official mailing envelope has been opened prior to being received by the precinct board; or

(2) the person offering to vote is not a federal voter, federal qualified elector or voter as provided in the Municipal Election Code.

Upon the challenge of an absentee ballot, an election judge shall generally follow the same procedure as when ballots are challenged when a person offers to vote in person. If a challenged ballot is not to be counted, it shall not be opened and shall be placed in an envelope provided for challenged ballots.

D. If the official mailing envelopes have proper signatures and the voters have not been challenged:

(1) an election judge shall open the official mailing envelopes and deposit the ballots in their still sealed official inner envelopes in the locked ballot box; and

(2) the election clerks shall mark the notation "AB" opposite the voter's name in the "notations" column of the absentee voter list.

E. Prior to the closing of the polls, an election judge may remove the absentee ballots from the official inner envelopes and either count and tally the results of absentee balloting by hand or register the results of each absentee ballot on a voting machine the same as if the absent voter had been present and voted in person. It shall be unlawful for any person to disclose the results of such count and tally or such registration on a voting machine of absentee ballots prior to the closing of the polls.

F. The municipal clerk shall, prior to the opening of the polls on election day, notify the absent voter precinct board in writing whether absentee ballots are to be counted and tallied or registered on a voting machine. The procedures shall be such as to insure the secrecy of the ballot.

G. Absent voter precinct polls shall be closed at 7:00 p.m. on the day of the election by the absent voter precinct board."

SENATE BILL 412

CHAPTER 99

RELATING TO GAME AND FISH; PROVIDING FOR APPLICATION AND PURCHASE OF HUNTING AND FISHING LICENSES BY TELEPHONE; PROVIDING A FEE; PROVIDING A PENALTY.

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

Section 1

Section 1. Section 17-3-5 NMSA 1978 (being Laws 1923, Chapter 129, Section 1, as amended) is amended to read:

"17-3-5. APPLICATION FOR HUNTING OR FISHING LICENSES--CONTENTS--FILING.--

A. The director of the department of game and fish shall prepare and furnish blank applications for all persons applying for fishing or hunting licenses within the state. Except as provided in Subsection B of this section, each person, before receiving any fishing or hunting license, shall make application on a blank so provided. Among other matters that may be shown by the application shall be a statement showing the exact residence of the applicant. Except as provided in Subsection B of this section, the application shall be signed by the applicant. All applications for licenses shall be filed with and issued by license vendors appointed by the director. All fishing and hunting licenses and the applications therefor shall contain the place of residence of the person to whom any license may be issued.

B. License vendors, as authorized by the director of the department of game and fish, shall be allowed to take applications for hunting and fishing licenses or authorizations via telephone. The vendor shall fill out a license application and collect the same information as required for other applications. The vendor shall mail the license to the applicant, and the license must be in the possession of the hunter or angler unless otherwise provided in Chapter 17 NMSA 1978. All money collected through telephone sales shall be remitted to the director by the tenth day of the month following the sale. An individual receiving a license pursuant to this subsection is not required to sign an application prior to issuance of the license; provided, however, that such individual is subject to prosecution pursuant to Section 17-3-6 NMSA 1978 for any false or fraudulent statement or other misrepresentation as if he had signed an application for license.

C. Upon request, the applicant for a fishing or small game license shall receive an authorization number as assigned by the director of the department of game and fish through the vendor. The authorization number may be used in lieu of the actual license only by the individual who applies and meets the requirements for a license. The authorization number shall serve as a license for the purposes of Sections 17-3-1 and 17-3-17 NMSA 1978. It is a misdemeanor to hunt or fish with an invalid authorization number or a number issued to another person.

D. Each license vendor authorized to sell licenses via telephone may collect the actual cost, not to exceed five dollars (\$5.00), of shipping and handling the application and license issuance."

Section 2

Section 2. Section 17-3-7 NMSA 1978 (being Laws 1912, Chapter 85, Section 48, as amended) is amended to read:

"17-3-7. BLANK FORMS--LICENSE ISSUED ONLY ON APPLICATION--FALSE STATEMENT VOIDS LICENSE--RECORDS--REPORTS--ACCOUNTING FOR FEES COLLECTED.--

A. The director of the department of game and fish shall prescribe and procure the printing of all forms and blanks that may be required to carry out the intent of Chapter 17 NMSA 1978. All necessary blanks shall be furnished by the director to the several license collectors. No license shall be issued except as provided in Section 17-3-5 NMSA 1978. Any false statement in any application shall render the license issued void.

B. Each license collector shall keep a correct and complete record of such license issued by him, which record shall remain in his office and be open to inspection by the public at all times.

C. Each license collector may collect and retain a vendor fee for each license or permit issued; provided the fee shall be just and reasonable, as determined by regulation of the state game commission, and shall not exceed one dollar (\$1.00) for each license or permit issued; and provided further that no such fee shall be collected by the department of game and fish from the purchaser of a special license. "Special license" includes those licenses for the following species: antelope, elk, Barbary sheep, bighorn sheep, bison, oryx, ibex, gazelle and javelina.

D. Each license collector shall remit to the director of the department of game and fish the statutory fee of all licenses and permits sold by him on or before the tenth day of the month following and shall by the same time report the number and kind of licenses issued.

E. The director of the department of game and fish shall forthwith turn over all money so received to the state treasurer to be credited by him to the game protection fund."

SENATE BILL 866

CHAPTER 100

RELATING TO TAXATION; REQUIRING PERSONS ENGAGED IN SELLING REAL ESTATE TO REPORT GROSS RECEIPTS BY LOCATION OF THE REAL PROPERTY SOLD.

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

Section 1

Section 1. Section 7-1-14 NMSA 1978 (being Laws 1969, Chapter 145, Section 1, as amended) is amended to read:

"7-1-14. SECRETARY MAY DETERMINE WHERE CERTAIN GROSS RECEIPTS ARE TO BE REPORTED--PLACE OF BUSINESS FOR CONSTRUCTION PROJECTS AND CERTAIN REAL PROPERTY SALES.--

A. By regulation, the secretary may require any person maintaining one or more places of business to report the person's taxable gross receipts and deductions for each municipality or county or area within an Indian reservation or pueblo grant in which the person maintains a place of business.

B. For persons engaged in the construction business, the place where the construction project is performed is a "place of business", and all receipts from that project are to be reported from that place of business.

C. The secretary may, by regulation, also require any person maintaining a business outside the boundaries of a municipality on land owned by that municipality to report the person's taxable gross receipts for that municipality.

D. For a person engaged in the business of selling real estate, the location of the real property sold is the "place of business", and all receipts from that sale are to be reported from that place of business."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

SENATE BILL 434

CHAPTER 101

RELATING TO TAXATION; REPEALING THE CONTROLLED SUBSTANCE TAX ACT.

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

Section 1

Section 1. REPEAL.--Sections 7-18A-1 through 7-18A-7 NMSA 1978 (being Laws 1989, Chapter 327, Sections 2 through 8, as amended) are repealed.

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

SENATE BILL 12

CHAPTER 102

RELATING TO PUBLIC PROCUREMENT; AMENDING A SECTION OF THE PROCUREMENT CODE TO MAKE CERTAIN BID DOCUMENTS MORE EASILY AVAILABLE.

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

Section 1

Section 1. Section 13-1-104 NMSA 1978 (being Laws 1984, Chapter 65, Section 77, as amended) is amended to read:

"13-1-104. COMPETITIVE SEALED BIDS--PUBLIC NOTICE.--

A. The invitation for bids or a notice thereof shall be published not less than ten calendar days prior to the date set forth for the opening of bids. In the case of purchases made by the state purchasing agent, the invitation or notice shall be published at least once in at least three newspapers of general circulation in this state. In the case of purchases made by other central purchasing offices, the invitation or notice shall be published at least once in a newspaper of general circulation in the area in which the central purchasing office is located. These requirements of publication are in addition to any other procedures which may be adopted by central purchasing offices to notify prospective bidders that bids will be received, including but not limited to publication in a trade journal, if available. If there is no newspaper of general circulation in the area in which the central purchasing office is located, such other notice may be given as is commercially reasonable.

B. The state purchasing agent and all central purchasing offices shall send copies of the notice or invitation for bids involving the expenditure of more than five thousand dollars (\$5,000) to those businesses which have signified in writing an interest in submitting bids for particular categories of items of tangible personal property, construction and services and which have paid any required fees. The state purchasing agent or a central purchasing office may set different registration fees for different categories of services, construction or items of tangible personal property, but such fees shall be related to the actual, direct cost of furnishing copies of the notice or invitation for bids to the prospective bidders. The fees shall be used exclusively for the purpose of furnishing copies of the notice or invitation for bids of proposed procurements to prospective bidders.

C. As used in this subsection "prospective bidders" includes persons considering submission of a bid as a general contractor for the construction contract and persons who may submit bids to a general contractor for work to be subcontracted pursuant to the construction contract. The state purchasing agent and all central purchasing offices shall make copies of invitations for bids for construction contracts available to prospective bidders. The state purchasing agent or a central purchasing office may require prospective bidders who have requested documents for bid on a construction contract to pay a deposit for a copy of the documents for bid. The deposit shall equal the full cost of reproduction and delivery of the documents for bid. The deposit, less delivery charges, shall be refunded if the documents for bid are returned in usable condition within the time limits specified in the documents for bid, which time limits shall be no less than ten calendar days from the date of the bid opening. All forfeited deposits shall be credited to the funds of the state purchasing agent or central purchasing office, whichever is applicable."

CHAPTER 103

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; MAKING AN APPROPRIATION FOR EVALUATION AND EXPANSION OF A MATHEMATICS, ENGINEERING AND SCIENCE ACHIEVEMENT PROGRAM; MAKING AN APPROPRIATION TO EXPAND A STATEWIDE INITIATIVE FOR FAMILY DEVELOPMENT TRAINING PROGRAMS.

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

Section 1

Section 1. APPROPRIATION.--One hundred thousand dollars (\$100,000) is appropriated from the general fund to the commission on higher education for expenditure in fiscal year 1996 for the purpose of evaluating and expanding a mathematics, engineering and science achievement program. Any unexpended or unencumbered balance remaining at the end of fiscal year 1996 shall revert to the general fund.

Section 2

Section 2. APPROPRIATION.--Two hundred thousand dollars (\$200,000) is appropriated from the general fund to the board of regents of the university of New Mexico for expenditure in fiscal year 1996 for the purpose of expanding a statewide initiative for family development program to increase participation of low-income parents in the education of their children. This appropriation is contingent on the state department of public education providing one hundred fifty thousand dollars (\$150,000) in matching funds from its special projects appropriation. Any unexpended or unencumbered balance remaining at the end of fiscal year 1996 shall revert to the general fund.

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 1170

CHAPTER 104

RELATING TO HEALTH; AUTHORIZING REGISTERED NURSES IN NURSING HOMES TO PRONOUNCE DEATH; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 24-14-20 NMSA 1978 (being Laws 1961, Chapter 44, Section 18, as amended) is amended to read:

"24-14-20. DEATH REGISTRATION.--

A. A death certificate for each death that occurs in this state shall be filed within five days after the death and prior to final disposition. The death certificate shall be registered by the state registrar if it has been completed and filed in accordance with this section, subject to the exception provided in Section 24-14-24 NMSA 1978; provided that:

(1) if the place of death is unknown but the dead body is found in this state, a death certificate shall be filed with a local registrar within ten days after the occurrence. The place where the body is found shall be shown as the place of death. If the date of death is unknown, it shall be approximated by the state medical investigator; and

(2) if death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in this state, the death shall be registered in this state and the place where the body is first removed shall be considered the place of death. When a death occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the body is first removed from the conveyance in this state, the death shall be registered in this state, but the certificate shall show the actual place of death insofar as can be determined by the state medical investigator.

B. The funeral service practitioner or person acting as a funeral service practitioner who first assumes custody of a dead body shall file the death certificate. He shall obtain the personal data from the next of kin or the best qualified person or source available. He shall obtain the medical certification of cause of death.

C. The medical certification shall be completed and signed within forty-eight hours after death by the physician in charge of the patient's care for the illness or condition that resulted in death, except when inquiry is required by law. Except as provided in Subsection D of this section, in the absence of the physician, or with his approval, the medical certification may be completed and signed by his associate physician, the chief medical officer of the institution in which death occurred or the physician who performed an autopsy on the decedent, provided that individual has access to the medical history of the case, views the deceased at or after death, and death is due to natural causes.

D. A registered nurse employed by a nursing home may pronounce the death of a resident of the nursing home unless there is reasonable cause to believe the death is not due to natural causes. The nurse shall have access to the medical history of the case and view the deceased at or after death, and the individual who completes the medical certification shall not be required to view the deceased at or after death. The death shall be pronounced pursuant to procedures or facility protocols prescribed by the physician who is the medical director of the nursing home. The procedures or

facility protocols shall ensure that the medical certification of death is completed in accordance with the provisions of Subsection C of this section.

E. For purposes of this section, "nursing home" means any nursing institution or facility required to be licensed under state law as a nursing facility by the public health division of the department of health, whether proprietary or nonprofit, including skilled nursing home facilities.

F. When death occurs without medical attendance as set forth in Subsection C or D of this section or when death occurs more than ten days after the decedent was last treated by a physician, the case shall be referred to the state medical investigator for investigation to determine and certify the cause of death.

G. An amended death certificate based on an anatomical observation must be filed within thirty days of the completion of an autopsy."

SENATE BILL 637

CHAPTER 105

CHANGING THE PURPOSE FOR WHICH PROCEEDS FROM SEVERANCE TAX BONDS WERE APPROPRIATED FOR A SENIOR CITIZEN CENTER IN ARTESIA LOCATED IN EDDY COUNTY; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1

Section 1. SEVERANCE TAX BONDS--STATE AGENCY ON AGING--CHANGE IN PURPOSE--APPROPRIATION.--One hundred fifty thousand dollars (\$150,000) of the proceeds from the sale of severance tax bonds appropriated to the state agency on aging authorized in Subsection O of Section 2 of Chapter 367 of Laws 1993 shall not be expended for its original purpose, but is appropriated to the state agency on aging to construct and renovate meal sites for senior citizens in Artesia located in Eddy county. Any unexpended or unencumbered balance remaining six months after completion of the project shall revert to the severance tax bonding fund.

Section 2

Section 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE BILL 807 WITH EMERGENCY CLAUSE
SIGNED APRIL 5, 1995

CHAPTER 106

RELATING TO CRIMINAL LAW; ENACTING THE SEX OFFENDER REGISTRATION ACT; REQUIRING REGISTRATION OF SEX OFFENDERS; AUTHORIZING EXCHANGE OF REGISTRATION INFORMATION; PRESCRIBING CRIMINAL PENALTIES.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Sex Offender Registration Act".

Section 2

Section 2. FINDINGS--PURPOSE.--

A. The legislature finds that:

(1) sex offenders pose a significant risk of recidivism; and

(2) the efforts of law enforcement agencies to protect their communities from sex offenders are impaired by the lack of information available concerning convicted sex offenders who live within the agencies' jurisdiction.

B. The purpose of the Sex Offender Registration Act is to assist law enforcement agencies' efforts to protect their communities by:

(1) requiring sex offenders to register with the county sheriff of the county in which the sex offender resides; and

(2) requiring the establishment of a central registry for sex offenders.

Section 3

Section 3. DEFINITIONS.--As used in the Sex Offender Registration Act:

A. "sex offender" means:

(1) a person convicted of a sex offense on or after July 1, 1995; or

(2) a person who changes his residence to New Mexico, when that person has been convicted of a sex offense in another state on or after July 1, 1995; and

B. "sex offense" means:

(1) criminal sexual penetration in the first, second, third or fourth degree, as provided in Section 30-9-11 NMSA 1978;

(2) criminal sexual contact in the fourth degree, as provided in Section 30-9-12 NMSA 1978;

(3) criminal sexual contact of a minor in the third or fourth degree, as provided in Section 30-9-13 NMSA 1978;

(4) sexual exploitation of children, as provided in Subsection A, B or C of Section 30-6A-3 NMSA 1978; or

(5) sexual exploitation of children by prostitution, as provided in Section 30-6A-4 NMSA 1978.

Section 4

Section 4. REGISTRATION OF SEX OFFENDERS--INFORMATION REQUIRED--
CRIMINAL PENALTY FOR NONCOMPLIANCE.--

A. A sex offender residing in this state shall register with the county sheriff for the county in which the sex offender resides.

B. A sex offender who is a current resident of New Mexico shall register with the county sheriff no later than thirty days after being released from the custody of the corrections department or being placed on probation or parole. A sex offender who changes his residence to New Mexico shall register with the county sheriff no later than forty-five days after establishing residence in this state. When a sex offender registers with the county sheriff, he shall provide the following information:

(1) his legal name and any other names or aliases that the sex offender is using or has used;

(2) his date of birth;

(3) his social security number;

(4) his current address;

(5) his place of employment;

(6) the sex offense for which he was convicted; and

(7) the date and place of his sex offense conviction.

C. When a sex offender registers with a county sheriff, the sheriff shall obtain:

(1) a photograph of the sex offender and a complete set of the sex offender's fingerprints; and

(2) a description of any tattoos, scars or other distinguishing features on the sex offender's body that would assist in identifying the sex offender.

D. When a sex offender who is registered changes his residence within the same county, the sex offender shall send written notice of his change of address to the county sheriff no later than ten days after establishing his new residence.

E. When a sex offender who is registered changes his residence to a new county in New Mexico, the sex offender shall register with the county sheriff of the new county no later than ten days after establishing his new residence. The sex offender shall also send written notice of the change in residence to the county sheriff with whom he last registered no later than ten days after establishing his new residence.

F. A sex offender who willfully fails to comply with the registration requirements set forth in this section is guilty of a misdemeanor and shall be punished by imprisonment for a definite term less than one year or a fine of not more than one thousand dollars (\$1,000), or both.

G. A sex offender who provides false information when complying with the registration requirements set forth in this section is guilty of a misdemeanor and shall be punished by imprisonment for a definite term less than one year or a fine of not more than one thousand dollars (\$1,000), or both.

Section 5

Section 5. LOCAL REGISTRY--CENTRAL REGISTRY--ADMINISTRATION BY DEPARTMENT OF PUBLIC SAFETY--EXCHANGE OF REGISTRATION INFORMATION WITH OTHER STATES--RULES AND REGULATIONS.--

A. A county sheriff may maintain a local registry of sex offenders in his jurisdiction required to register pursuant to the provisions of the Sex Offender Registration Act.

B. The county sheriff shall forward registration information obtained from sex offenders to the department of public safety. The registration information shall be forwarded by the county sheriff no later than ten working days after the information is

obtained from a sex offender.

C. The department of public safety shall maintain a central registry of sex offenders required to register pursuant to the provisions of the Sex Offender Registration Act. The department may enter into interstate compact agreements providing for the exchange of information regarding sex offenders, provided that the other state does not permit dissemination of information regarding sex offenders to any persons or entities other than law enforcement agencies.

D. The department of public safety shall retain registration information regarding sex offenders convicted for the following sex offenses for a period of twenty years following the sex offender's conviction, release from prison or release from probation or parole, whichever occurs later:

(1) criminal sexual penetration in the first or second degree, as provided in Section 30-9-11 NMSA 1978;

(2) criminal sexual contact of a minor in the third degree, as provided in Section 30-9-13 NMSA 1978; or

(3) sexual exploitation of children, as provided in Subsection A, B or C of Section 30-6A-3 NMSA 1978.

E. The department of public safety shall retain registration information regarding sex offenders convicted for the following offenses for a period of ten years following the sex offender's conviction, release from prison or release from probation or parole, whichever occurs later:

(1) criminal sexual penetration in the third or fourth degree, as provided in Section 30-9-11 NMSA 1978;

(2) criminal sexual contact in the fourth degree, as provided in Section 30-9-12 NMSA 1978;

(3) criminal sexual contact of a minor in the fourth degree, as provided in Section 30-9-13 NMSA 1978; or

(4) sexual exploitation of children by prostitution, as provided in Section 30-6A-4 NMSA 1978.

F. The department of public safety shall adopt rules and regulations necessary to carry out the provisions of the Sex Offender Registration Act.

Section 6

Section 6. RESTRICTION ON DISSEMINATION OF INFORMATION REGARDING SEX OFFENDERS.--Information obtained from a sex offender pursuant to the provisions of the Sex Offender Registration Act shall not be disseminated to persons or entities other than law enforcement agencies.

Section 7

Section 7. NOTICE TO SEX OFFENDERS OF DUTY TO REGISTER.--

A. A court shall provide a sex offender adjudicated guilty in that court with written notice of his duty to register pursuant to the provisions of the Sex Offender Registration Act. The written notice shall be included in judgment and sentence forms provided to the sex offender.

B. The corrections department, at the time of release of a sex offender in the department's custody, shall provide written notification to the sex offender of his duty to register pursuant to the provisions of the Sex Offender Registration Act. The corrections department shall also provide written notification regarding a sex offender's release to the sheriff of the county in which the sex offender is released.

C. The department of public safety, at the time it is notified by officials from another state that a sex offender will be establishing residence in New Mexico, shall provide written notification to the sex offender of his duty to register pursuant to the provisions of the Sex Offender Registration Act.

Section 8

Section 8. IMMUNITY.--Nothing in the Sex Offender Registration Act creates a cause of action on behalf of a person against a public employer, public employee or public agency responsible for enforcement of the provisions of that act, so long as the public employer, public employee or public agency complies with the provisions of that act.

Section 9

Section 9. SEVERABILITY.--If any part or application of the Sex Offender Registration Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 10

Section 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 481

CHAPTER 107

RELATING TO DRIVER'S LICENSES; AMENDING SECTION 66-5-21 NMSA 1978 (BEING LAWS 1978, CHAPTER 35, SECTION 243, AS AMENDED) TO PROVIDE FOR RENEWAL BY MAIL.

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

Section 1

Section 1. Section 66-5-21 NMSA 1978 (being Laws 1978, Chapter 35, Section 243, as amended) is amended to read:

"66-5-21. EXPIRATION OF LICENSE--FOUR-YEAR ISSUANCE PERIOD.--All driver's licenses shall be issued for a period of four years, except those provided for in Section 66-5-19 NMSA 1978 and as otherwise provided in Section 66-5-67 NMSA 1978, and each license shall expire thirty days after the applicant's birthday in the fourth year after the effective date of the license. The license is renewable within ninety days prior to its expiration or at an earlier date approved by the department. The fee for the license shall be as provided in Section 66-5-44 NMSA 1978. The department may provide for renewal by mail pursuant to rules adopted by the department and may require an examination upon renewal of the driver's license."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

SENATE BILL 141

CHAPTER 108

RELAINING TO MUNICIPALITIES; PROVIDING FOR INCORPORATION OF TERRITORY INCLUDING CERTAIN RESORT AREAS.

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

Section 1

Section 1. Section 3-2-2 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-2-2, as amended) is amended to read:

"3-2-2. CHARACTERISTICS OF TERRITORY PROPOSED TO BE INCORPORATED AS A MUNICIPALITY.--

A. Any territory proposed to be incorporated as a municipality shall:

(1) not be within the boundary of another municipality;

(2) have a population density of not less than one person per acre, except for a class B county with net taxable value of property for property tax purposes in 1990 of over ninety-five million dollars (\$95,000,000) and a population of less than ten thousand according to the 1990 federal decennial census and where the population density of the territory proposed to be incorporated is not less than one person per four acres; and

(3) contain not less than one hundred fifty persons.

B. In the alternative to the requirements of Paragraph 2 of Subsection A of this section, any territory proposed to be incorporated as a municipality shall:

(1) contain within its boundaries a resort area having more than fifty thousand visitors a year; and

(2) have more than one hundred fifty single-family residences, as shown by the property tax rolls."

SENATE BILL 914

CHAPTER 109

RELATING TO CAPITAL EXPENDITURES; REAUTHORIZING AND APPROPRIATING FUNDS FOR A SENIOR CENTER IN SILVER CITY LOCATED IN GRANT COUNTY; DECLARING AN EMERGENCY.

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

Section 1

Section 1. SEVERANCE TAX BONDS--STATE AGENCY ON AGING--CHANGE IN PURPOSE--APPROPRIATION.--The appropriation from severance tax bonds to the state agency on aging pursuant to Subsection CC of Section 4 of Chapter 148 of Laws 1994 shall not be expended for its original purpose but is reauthorized and appropriated to be expended for the purpose of making improvements to the building and to the parking lot of the Silver City senior center located in Grant county. Any unexpended or unencumbered balance remaining six months after completion of the project shall revert to the severance tax bonding fund. If the state agency on aging has not certified the need for the issuance of the bonds by the end of fiscal year 1997, the authorization provided in this section shall be void.

Section 2

Section 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE BILL 330 WITH EMERGENCY CLAUSE
SIGNED APRIL 5, 1995

CHAPTER 110

RELATING TO STATE PUBLICATIONS; AMENDING, REPEALING, ENACTING AND RECOMPILING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 14-4-1 NMSA 1978 (being Laws 1967, Chapter 275, Section 1) is amended to read:

"14-4-1. SHORT TITLE.--Chapter 14, Article 4 NMSA 1978 may be cited as the "State Rules Act"."

Section 2

Section 2. Section 14-4-3 NMSA 1978 (being Laws 1967, Chapter 275, Section 3, as amended) is amended to read:

"14-4-3. FORMAT OF RULES--FILING--DISTRIBUTION.--Each agency promulgating any rule shall place the rule in the format and style required by rule of the records center and shall deliver one original paper copy and one electronic copy to the records center. The records center shall note thereon the date and hour of filing. The records center shall maintain the original copy as a permanent record open to public inspection during office hours and shall have the rule published in a timely manner in the New Mexico register and compiled into the New Mexico Administrative Code. At the time of filing, an agency may submit to the records center an additional paper copy, for annotation with the date and hour of filing, to be returned to the agency."

Section 3

Section 3. Section 14-4-4 NMSA 1978 (being Laws 1967, Chapter 275, Section 5, as amended) is amended to read:

"14-4-4. PUBLICATION FILING AND DISTRIBUTION--OFFICIAL DEPOSITORY.--Each agency issuing any publication, pamphlet, report, notice,

proclamation or similar instrument shall immediately file five copies thereof with the records center. The records center shall deliver three copies to the state library, which shall keep one copy available for public inspection during office hours. All other copies may be circulated. The state library is designated to be an official depository of all such publications, pamphlets, reports, notices, proclamations and similar instruments."

Section 4

Section 4. Section 14-4-5 NMSA 1978 (being Laws 1967, Chapter 275, Section 6, as amended) is amended to read:

"14-4-5. FILING AND COMPLIANCE REQUIRED FOR VALIDITY.--No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register as provided by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register. Emergency regulations may go into effect immediately upon filing with the records center, but shall be effective no more than thirty days unless they are published in the New Mexico register."

Section 5

Section 5. Section 14-4-7.1 NMSA 1978 (being Laws 1989, Chapter 38, Section 1) is amended to read:

"14-4-7.1. NEW MEXICO REGISTER.--

A. The state records administrator shall provide for publication of a New Mexico register at least twice a month. The New Mexico register shall be published in such a way as to minimize the cost to the state. To accomplish this, the state records administrator is authorized to provide for charges for subscriptions and for publication of notice and other items, including advertising, in the register.

B. The New Mexico register shall be the official publication for all notices of rule makings and filings of adopted rules, including emergency rules, by agencies.

(1) The register shall include the full text of any adopted rules, including emergency rules. Proposed rules may be published in full or in part at the discretion of the issuing agency.

(2) Upon request of an issuing agency, the state records administrator may determine that publication in the register of the full text of an adopted rule would be unduly cumbersome, expensive or otherwise inexpedient, and may publish instead a synopsis of the adopted rule and a statement that a copy of the rule is available from the issuing agency.

C. The New Mexico register shall be available by subscription and single copy purchase to any person, including agencies of the executive, judicial and legislative branches of state government and its political subdivisions, at a reasonable charge approved by the state records administrator. The administrator may authorize distribution of a certain number of copies of the register without charge to agencies or political subdivisions as deemed economically feasible and appropriate.

D. The New Mexico register may include a summary or the text of any governor's executive order, a summary, listing or the text of any attorney general's opinion, a calendar listing the date, time and place of all or selected agency rule-making hearings, a list of gubernatorial appointments of state officials and board and commission members or other material related to administrative law and practice.

E. The state records administrator shall adopt and promulgate rules necessary for the implementation and administration of this section."

Section 6

Section 6. A new section of the State Rules Act, Section 14-4-7.2 NMSA 1978, is enacted to read:

"14-4-7.2. NEW MEXICO ADMINISTRATIVE CODE.--

A. The state records administrator shall create and have published a New Mexico Administrative Code, which shall contain all adopted rules. The administrator shall adopt regulations setting forth procedures for the compilation of the code and prescribing the format and structure of the code, including provisions for at least annual supplementation or revision.

B. All rulemaking agencies shall revise, restate and repromulgate their existing rules as needed to expedite publication of the New Mexico Administrative Code."

Section 7

Section 7. Section 14-3-1 NMSA 1978 (being Laws 1959, Chapter 245, Section 1) is amended to read:

"14-3-1. SHORT TITLE.--Chapter 14, Article 3 NMSA 1978 may be cited as the "Public Records Act".

Section 8

Section 8. Section 15-1-9 NMSA 1978 (being Laws 1986, Chapter 81, Section 9, as amended) is recompiled as a new section of the Public Records Act and is amended to read:

"RECORDS OF STATE AGENCIES--PUBLIC RECORDS--COPY FEES--
COMPUTER DATABASES--CRIMINAL PENALTY.--

A. Except as otherwise provided by federal or state law, information contained in information systems databases shall be a public record and shall be subject to disclosure in printed or typed format by the state agency that has inserted that information into the database, in accordance with the Public Records Act, upon the payment of a reasonable fee for the service.

B. The administrator shall recommend to the commission the procedures, schedules and technical standards for the retention of computer databases.

C. The state agency that has inserted data in a database may authorize a copy to be made of a computer tape or other medium containing a computerized database of a public record for any person if the person agrees:

(1) not to make unauthorized copies of the database;

(2) not to use the database for any political or commercial purpose unless the purpose and use is approved in writing by the state agency that created the database;

(3) not to use the database for solicitation or advertisement when the database contains the name, address or telephone number of any person unless such use is otherwise specifically authorized by law;

(4) not to allow access to the database by any other person unless the use is approved in writing by the state agency that created the database; and

(5) to pay a royalty or other consideration to the state as may be agreed upon by the state agency that created the database.

D. If more than one state agency is responsible for the information inserted in the database, the agencies shall enter into an agreement designating a lead agency. If the agencies cannot agree as to the designation of a lead state agency, the commission shall designate one of the state agencies as the lead agency to carry out the responsibilities set forth in this section.

E. Subject to any confidentiality provisions of law, any state agency may permit another state agency access to all or any portion of a computerized database created by a state agency.

F. If information contained in a database is searched, manipulated or retrieved or a copy of the database is made for any private or nonpublic use, a fee shall be charged by the state agency permitting access or use of the data base.

G. Except as authorized by law or rule of the commission, any person who reveals to any unauthorized person information contained in a computer database or who uses or permits the unauthorized use or access of any computer database is guilty of a misdemeanor, and upon conviction the court shall sentence that person to jail for a definite term not to exceed one year or to payment of a fine not to exceed five thousand dollars (\$5,000) or both. That person shall not be employed by the state for a period of five years after the date of conviction."

Section 9

Section 9. TEMPORARY PROVISION--RECOMPILATION.--Sections 14-3-24 and 14-3-25 NMSA 1978 (being Laws 1967, Chapter 275, Sections 8 and 9, as amended) are recompiled as Sections 14-4-10 and 14-4-11 NMSA 1978.

Section 10

Section 10. TEMPORARY PROVISION.--Notwithstanding the provisions of Section 14-4-5 NMSA 1978, rules filed prior to July 1, 1995 shall continue in effect if such rules were filed with the state records center in accordance with the law applicable at the time of filing, and they have not otherwise been repealed, amended or superseded.

Section 11

Section 11. REPEAL.--Section 12-8-6 NMSA 1978 (being Laws 1969, Chapter 252, Section 6) is repealed.

Section 12

Section 12. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

SENATE BILL 515

CHAPTER 111

RELATING TO LIVESTOCK; AMENDING SECTIONS OF THE LIVESTOCK CODE TO CHANGE DEFINITIONS AND ESTABLISH NEW PERSONNEL CLASSIFICATIONS FOR COMMISSIONED LIVESTOCK INSPECTOR AND NONCOMMISSIONED BRAND INSPECTOR; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 77-2-1.1 NMSA 1978 (being Laws 1993, Chapter 248, Section 2) is amended to read:

"77-2-1.1. DEFINITIONS.--As used in The Livestock Code, unless the context clearly indicates otherwise:

A. "animals" or "livestock" means all domestic or domesticated animals used or raised on a farm or ranch, including the carcasses thereof, and exotic animals in captivity and includes all horses and cattle. "Animals" or "livestock" does not include canine or feline animals. For the purpose of the rules and regulations governing meat inspection, wild animals, poultry and birds used for human consumption shall also be included within the meaning of "livestock" or "animal";

B. "bill of sale" means an instrument in substantially the form specified in The Livestock Code by which the owner or his authorized agent transfers to the buyer the title to animals described therein;

C. "board" means the New Mexico livestock board;

D. "bond" means cash or an insurance agreement from a New Mexico licensed surety or insurance corporation pledging surety for financial loss caused to another, including but not limited to certificate of deposit, letter of credit or other surety as may be approved by the United States department of agriculture, packers and stockyards administration or the board;

E. "brand" means a mark, notch or device in a form approved by and recorded with the board as may be sufficient to readily distinguish livestock should they become intermixed with other animals or livestock. No animal shall be branded at any location more than once such that no subsequent brand shall be placed upon an existing brand, thus altering the prior placed brand;

F. "bureau" means the United States department of agriculture animal and plant health inspection service or its successor agencies;

G. "carcasses" means dead or dressed bodies or parts thereof, not less than one-quarter of a carcass;

H. "cattle" means animals of the genus bos only and does not include any other kind of domestic animals;

I. "commissioned livestock inspector" means a livestock inspector certified and granted full law enforcement powers for enforcement of The Livestock Code;

J. "dairy cattle" means animals of the genus bos raised not for consumption but for dairy products and distinguished from meat breed cattle;

K. "disease" means any communicable, infectious or contagious disease;

L. "estrays" means any livestock found running at large upon public or private lands, either fenced or unfenced, whose owner is unknown, or that is branded with a brand that is not on record in the office of the board or is a freshly branded or marked offspring not with its branded or marked mother, unless other proof of ownership is produced;

M. "mark" refers to a sheep ear tag or ownership mark;

N. "meat" means the edible flesh of poultry, birds or animals sold for human consumption and includes livestock, poultry and livestock and poultry products;

O. "noncommissioned brand inspector" means a brand inspector not certified as a peace officer; and

P. "person" includes an individual, firm, partnership, association or corporation."

Section 2

Section 2. Section 77-2-7 NMSA 1978 (being Laws 1967, Chapter 213, Section 6, as amended) is amended to read:

"77-2-7. ADDITIONAL POWERS OF THE BOARD.--

A. In addition to the powers transferred from the cattle and sheep sanitary boards, the board has the following powers to:

(1) exercise general regulatory supervision over the livestock industry of this state in order to protect the industry from theft and contagious or infectious diseases and in order to protect the public from diseased or unwholesome meat or meat products;

(2) appoint and fix the salary of an executive director who shall file an oath and be bonded in an amount fixed by the board. The executive director shall manage the affairs of the board under the direction of the board. He shall be chosen solely on qualifications and fitness for the office. He shall devote his entire time to the duties of the office;

(3) employ clerical help and purchase equipment;

(4) employ commissioned livestock inspectors and noncommissioned brand inspectors and other personnel necessary to carry out the purposes of The Livestock Code. All commissioned livestock inspectors appointed by

the board shall have the same powers as any other peace officer in the enforcement of The Livestock Code;

(5) appoint a state veterinarian and subordinate veterinarians as are necessary to carry out the duties of the board. All veterinarians employed by the board shall be licensed by the board of veterinary examiners;

(6) make and publish rules and regulations to control the importation of animals into this state;

(7) establish quarantine, provide its boundaries and give notice of the quarantine and to do all other things necessary to effect the object of the quarantine and to protect the livestock industry of this state from contagious or infectious disease and prevent the spread of disease;

(8) make and publish rules and regulations for meat inspection, including the slaughter and disposition of the carcasses of animals affected with contagious or infectious diseases when the action appears necessary to prevent the spread of any contagion or infection among livestock;

(9) make and publish rules and regulations governing the importation, manufacture, sale, distribution or use within the state of serums, vaccine and other biologicals intended for diagnostic or therapeutic uses with animals and to regulate the importation, manufacture or use of virulent blood or living virus of any diseases affecting animals;

(10) set fees or charges, not to exceed twenty dollars (\$20.00) per call, for any services rendered by the board or its employees which are deemed necessary by the board and for which no fee has been set by statute;

(11) consider the views of the livestock industry in the administration of The Livestock Code; and

(12) make and publish rules and regulations to otherwise carry out the purposes of The Livestock Code.

B. The board may hold hearings and subpoena witnesses for the purpose of investigating or enforcing The Livestock Code or rules established thereunder."

Section 3

Section 3. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

CHAPTER 112

RELATING TO JAILS; PROVIDING STANDARDS FOR DEDUCTION OF TIME FROM THE TERM OF A SENTENCE FOR GOOD BEHAVIOR; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 33-3-9 NMSA 1978 (being Laws 1969, Chapter 207, Section 1, as amended) is amended to read:

"33-3-9. COUNTY JAILS--DEDUCTION OF TIME FOR GOOD BEHAVIOR.--

A. The sheriff or jail administrator of any county, with the approval of the committing judge or presiding judge, may grant any person imprisoned in the county jail a deduction of time from the term of his sentence for good behavior and industry and shall establish rules for the accrual of "good time". Deductions of time shall not exceed one-half of the term of the prisoner's original sentence. If a prisoner is under two or more cumulative sentences, the sentences shall be treated as one sentence for the purpose of deducting time for good behavior.

B. A prisoner shall not accrue good time for the mandatory portion of a sentence imposed pursuant to the provisions of:

(1) Sections 66-8-102 and 66-5-39 NMSA 1978; or

(2) a county or municipal ordinance that prohibits driving while under the influence of intoxicating liquor or drugs, or driving with a revoked or suspended driver's license.

C. A part or all of the prisoner's accrued deductions may be forfeited for any conduct violation. The sheriff or jail administrator shall establish rules and procedures for the forfeiture of accrued deductions and keep a record of all forfeitures of accrued deductions and the reasons for the forfeitures. In addition, any independent contractor shall also keep a duplicate record of such forfeitures.

D. No other time allowance or credits in addition to deductions of time permitted under this section may be granted to any prisoner.

E. If a private independent contractor operates a jail, he shall make reports of disciplinary violations and good behavior to the sheriff of the county in which the jail is located. All action on such reports and awards or forfeitures of good time shall be made by the sheriff. The independent contractor shall not have the power to award or cause the forfeiture of good time pursuant to this section."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE BILL 79

CHAPTER 113

RELATING TO ANIMALS; PROHIBITING TRIPPING OF AN EQUINE FOR SPORT OR ENTERTAINMENT; PRESCRIBING PENALTIES; ENACTING A NEW SECTION OF THE CRIMINAL CODE.

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

Section 1

Section 1. A new section of the Criminal Code, to be compiled in Chapter 30, Article 18 NMSA 1978, is enacted to read:

"UNLAWFUL TRIPPING OF AN EQUINE--EXCEPTION.--

A. Unlawful tripping of an equine consists of intentionally using a wire, pole, stick, rope or any other object to cause an equine to lose its balance or fall, for the purpose of sport or entertainment.

B. The provisions of Subsection A of this section do not apply to laying an equine down for medical or identification purposes.

C. As used in this section, "equine" means a horse, pony, mule, donkey or hinny.

D. Whoever commits unlawful tripping of an equine is guilty of a misdemeanor.

E. Whoever commits unlawful tripping of an equine that causes the maiming, crippling or death of the equine is guilty of a fourth degree felony."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE BILL 212

CHAPTER 114

RELATING TO PUBLIC OFFICERS AND EMPLOYEES; EXEMPTING FROM CERTAIN PROVISIONS OF THE PUBLIC EMPLOYEES RETIREMENT ACT THOSE EMPLOYEES WHO BECOME REEMPLOYED UNDER THE EDUCATIONAL RETIREMENT ACT; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 10-11-3 NMSA 1978 (being Laws 1987, Chapter 253, Section 3, as amended) is amended to read:

"10-11-3. MEMBERSHIP--REQUIREMENTS--EXCLUSIONS--

TERMINATION.--

A. Except as may be provided for in the Volunteer Firefighters Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act, the Educational Retirement Act and the provisions of Sections 29-4-1 through 29-4-11 NMSA 1978 governing the state police pension fund, each employee and elected official of every affiliated public employer shall be a member of the association, unless excluded from membership in accordance with Subsection B of this section.

B. The following employees and elected officials are excluded from membership in the association:

(1) elected officials who file with the association a written application for exemption from membership within thirty days of taking office;

(2) elected officials who file with the association a written application for exemption from membership within thirty days of the date the elected official's public employer becomes an affiliated public employer;

(3) employees designated by the affiliated public employer as seasonal or student employees;

(4) employees who file with the association a written application for exemption from membership within thirty days of the date the employee's public employer becomes an affiliated public employer;

(5) employees of an affiliated public employer that is making contributions to a private retirement program on behalf of the employee as part of a compensation arrangement who file with the association a written application for exemption within thirty days of employment, unless the employee has previously retired under the provisions of the Public Employees Retirement Act; and

(6) employees of an affiliated public employer who have retired under and are receiving a pension pursuant to the provisions of the Educational Retirement Act.

C. Employees designated as seasonal and student employees shall be notified in writing by their affiliated public employer of the designation and the consequences of the designation with respect to membership, service credit and benefits. A copy of the notification shall be filed with the association within thirty days of the date of employment.

D. An exemption from membership by an elected official shall expire at the end of the term of office for which filed.

E. Employees and elected officials who have exempted themselves from membership may subsequently withdraw the exemption by filing a membership application. Membership shall commence the first day of the first pay period following the date the application is filed.

F. The membership of an employee or elected official shall cease if the employee terminates employment with an affiliated public employer or the elected official leaves office and the employee or elected official requests and receives a refund of member contributions."

Section 2

Section 2. Section 10-11-8 NMSA 1978 (being Laws 1987, Chapter 253, Section 8, as amended) is amended to read:

"10-11-8. NORMAL RETIREMENT--SUSPENSION.--

A. A member may retire upon fulfilling the following requirements:

(1) a written application for normal retirement, in the form prescribed by the association, is filed with the association prior to the selected date of retirement;

(2) employment is terminated with all employers covered by any state system or the educational retirement system prior to the selected date of retirement;

(3) the member selects an effective date of retirement that is the first day of a calendar month; and

(4) the member meets the age and service credit requirement for normal retirement specified in the coverage plan applicable to the member.

B. The amount of normal retirement pension is determined in accordance with the coverage plan applicable to the member.

C. If a member retires and is subsequently employed by any affiliated public employer, the retired member's pension will be suspended effective the first day of the month following the month in which the previously retired member earns one hundred percent or more of the amount that causes a decrease or suspension of an old age benefit under the federal social security program or fifteen thousand dollars (\$15,000), whichever is less. When the pension is suspended, the following conditions shall apply:

(1) the retired member who is subsequently employed by an affiliated public employer shall become a member. The previously retired member and the subsequent affiliated public employer shall make the required employee and employer contributions, and the previously retired member shall accrue service credit for the period of subsequent employment; and

(2) when a previously retired member terminates the subsequent employment with an affiliated public employer, he shall retire according to the provisions of the Public Employees Retirement Act, subject to the following conditions:

(a) payment of the pension shall resume in accordance with the provisions of Subsection A of this section;

(b) unless the previously retired member accrued at least three years of service credit on account of the subsequent employment, the recalculation of pension shall: 1) employ the form of payment selected by the previously retired member at the time of the first retirement; and 2) use the provisions of the coverage plan applicable to the member on the date of the first retirement; and

(c) the recalculated pension shall not be less than the amount of the suspended pension.

D. The provisions of Subsection C of this section shall not apply to a retired member who is appointed chief of police of an affiliated public employer, other than of the affiliated public employer from which retired, or who is appointed undersheriff if the retired member files an irrevocable exemption from membership with the association within thirty days of appointment. For purposes of this subsection, each sheriff's office shall be limited to one undersheriff. The irrevocable exemption shall be for the chief of police's or the undersheriff's term of office. Filing of an irrevocable exemption shall irrevocably bar the retired member from acquiring service credit for the period of exemption from membership.

E. The provisions of Subsection C of this section shall not apply to any retired member who is subsequently employed by an employer who is not an affiliated public employer.

F. The provisions of Subsection C of this section shall not apply to a retired member who is elected to serve a term as an elected official if the retired member files an irrevocable exemption from membership with the association within thirty days of taking office. Filing of an irrevocable exemption shall irrevocably bar the retired member from acquiring service credit for the period of exemption from membership.

G. The pension of a member who has three or more years of service credit under each of two or more coverage plans shall be determined in accordance with the coverage plan that produces the highest pension. The pension of a member who has service credit under two or more coverage plans but who has three or more years of service credit under only one of those coverage plans shall be determined in accordance with the coverage plan in which the member has three or more years of service credit. If the service credit is acquired under two different coverage plans applied to the same affiliated public employer as a consequence of an election by the members, adoption by the affiliated public employer or a change in the law that results in the application of a coverage plan with a greater pension, the greater pension shall be paid a member retiring from the affiliated public employer under which the change in coverage plan took place regardless of the amount of service credit under the coverage plan producing the greater pension, provided the member has three or more years of continuous employment with that affiliated public employer immediately preceding or immediately preceding and immediately following the date the coverage plan changed. The provisions of each coverage plan for the purpose of this subsection shall be those in effect at the time the member ceased to be covered by the coverage plan. "Service credit", for the purposes of this subsection, shall be only personal service rendered an affiliated public employer and credited to the member under the provisions of Subsection A of Section 10-11-4 NMSA 1978. Service credited under any other provision of the Public Employees Retirement Act shall not be used to satisfy the three-year service credit requirement of this subsection."

HOUSE BILL 406

CHAPTER 115

RELATING TO PUBLIC RETIREMENT; MODIFYING, CLARIFYING AND ADDING PROVISIONS TO THE PUBLIC EMPLOYEES RETIREMENT ACT, THE JUDICIAL RETIREMENT ACT AND THE MAGISTRATE RETIREMENT ACT; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 10-11-2 NMSA 1978 (being Laws 1987, Chapter 253, Section 2, as amended) is amended to read:

"10-11-2. DEFINITIONS.--As used in the Public Employees Retirement Act:

A. "accumulated member contributions" means the amounts deducted from the salary of a member and credited to the member's individual account, together with interest, if any, credited to that account;

B. "affiliated public employer" means the state and any public employer affiliated with the association as provided in the Public Employees Retirement Act, but does not include an employer pursuant to the Magistrate Retirement Act, the Judicial Retirement Act or the Educational Retirement Act;

C. "association" means the public employees retirement association established under the Public Employees Retirement Act;

D. "disability retired member" means a retired member who is receiving a pension pursuant to the disability retirement provisions of the Public Employees Retirement Act;

E. "disability retirement pension" means the pension paid pursuant to the disability retirement provisions of the Public Employees Retirement Act;

F. "educational retirement system" means that retirement system provided for in the Educational Retirement Act;

G. "employee" means any employee of an affiliated public employer;

H. "federal social security program" means that program or those programs created and administered pursuant to the act of congress approved August 14, 1935, Chapter 531, 49 Stat. 620, as that act may be amended;

I. "final average salary" means the final average salary calculated in accordance with the provisions of the applicable coverage plan;

J. "form of payment" means the applicable form of payment of a pension provided for in Section 10-11-117 NMSA 1978;

K. "former member" means a person who was previously employed by an affiliated public employer, who has terminated that employment and who has received a refund of member contributions;

L. "fund" means the funds included under the Public Employees Retirement Act;

M. "member" means a currently employed, contributing employee of an affiliated public employer, or a person who has been but is not currently employed by an

affiliated public employer, who has not retired and who has not received a refund of member contributions; "member" also includes the following:

(1) "hazardous duty member" means a state policeman who is a member and who is a juvenile or adult correctional officer employed by a corrections facility of the corrections department or its successor agency;

(2) "municipal fire member" means any member who is employed as a full-time nonvolunteer firefighter by an affiliated public employer and who has taken the oath prescribed for firefighters;

(3) "municipal police member" means any member who is employed as a police officer by an affiliated public employer, other than the state, and who has taken the oath prescribed for police officers; and

(4) "state police member" means any member who is an officer of the New Mexico state police and who has taken the oath prescribed for such officers;

N. "membership" means membership in the association;

O. "pension" means a series of monthly payments to a retired member or survivor beneficiary as provided in the Public Employees Retirement Act;

P. "public employer" means the state, any municipality, city, county, metropolitan arroyo flood control authority, economic development district, regional housing authority, soil and water conservation district, entity created pursuant to a joint powers agreement, council of government, conservancy district, water and sanitation district, water district and metropolitan water board, including the boards, departments, bureaus and agencies of a public employer, so long as these entities fall within the meaning of governmental plan as that term is used in Section 414(d) of the Internal Revenue Code of 1986, as amended;

Q. "refund beneficiary" means a person designated by the member, in writing, in the form prescribed by the association, as the person who would be refunded the member's accumulated member contributions payable if the member dies and no survivor pension is payable or who would receive the difference between pension paid and accumulated member contributions if the retired member dies before receiving in pension payments the amount of the accumulated member contributions;

R. "retire" means to:

(1) terminate employment with all employers covered by any state system or the educational retirement system; and

(2) receive a pension from a state system or the educational retirement system;

S. "retired member" means a person who has met all requirements for retirement and who is receiving a pension from the fund;

T. "retirement board" means the retirement board provided for in the Public Employees Retirement Act;

U. "salary" means the base salary or wages paid a member, including longevity pay, for personal services rendered an affiliated public employer. "Salary" shall not include overtime pay, allowances for housing, clothing, equipment or travel, payments for unused sick leave, unless the unused sick leave payment is made through continuation of the member on the regular payroll for the period represented by that payment, and any other form of remuneration not specifically designated by law as included in salary for Public Employees Retirement Act purposes. Salary in excess of the limitations set forth in Section 401(a) (17) of the Internal Revenue Code of 1986, as amended shall be disregarded. The limitation on compensation for eligible employees shall not be less than the amount that was allowed to be taken into account under the state retirement system acts in effect on July 1, 1993. For purposes of this section, "eligible employee" means an individual who was a member of a state system before the first plan year beginning after December 31, 1995;

V. "state system" means the retirement programs provided for in the Public Employees Retirement Act, the Magistrate Retirement Act and the Judicial Retirement Act;

W. "state retirement system acts" means collectively the Public Employees Retirement Act, the Magistrate Retirement Act, the Judicial Retirement Act and the Volunteer Firefighters Retirement Act; and

X. "survivor beneficiary" means a person who receives a pension or who has been designated to be paid a pension as a result of the death of a member or retired member."

Section 2

Section 2. Section 10-11-130 NMSA 1978 (being Laws 1987, Chapter 253, Section 130, as amended) is amended to read:

"10-11-130. RETIREMENT BOARD--AUTHORITY-- MEMBERSHIP.--

A. The "retirement board" is hereby created and shall be the trustee of the association and the funds created by the state retirement system acts and shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the state retirement system acts, including, in addition to any specific powers provided for in the Public Employees Retirement Act but without limiting the generality of the foregoing, the power:

(1) to administer the state retirement system acts, including the management of the association and making effective the provisions of those acts, as well as to administer and manage any other employee benefit acts as provided by law;

(2) in addition to utilizing services of the attorney general, to employ competent legal counsel to handle the legal matters of the retirement board and the association and to give advice and counsel in regard to any matter connected with the duties of the retirement board;

(3) to administer oaths;

(4) to adopt and use a seal for authentication of records, processes and proceedings;

(5) to create and maintain records relating to all members, affiliated public employers and all activities and duties required of the retirement board;

(6) to issue subpoenas and compel the production of evidence and attendance of witnesses in connection with any hearings or proceedings of the retirement board;

(7) to make and execute contracts;

(8) to purchase, acquire or hold land adjacent to the state capitol grounds or other suitable location and build thereon a building to house the association and its employees and, in the event additional office space is available in the building after the retirement board and its employees have been housed, to rent or lease the additional space to any public agency or private person; provided that first priority for the rental or leasing shall be to public agencies and further provided that for the purpose of purchasing, acquiring or holding the land and the building thereon, the retirement board may use funds from the income fund and any other funds controlled by the retirement board the use of which for such purposes is not prohibited by law;

(9) to make and adopt such reasonable rules and regulations as may be necessary or convenient to carry out the duties of the retirement board and activities of the association, including any rules and regulations necessary to preserve the status of the association as a qualified pension plan under the provisions of the Internal Revenue Code of 1986, as amended, or under successor or related provisions of law; and

(10) to designate committees and to designate committee members, including individuals who may not be members of the association.

B. The retirement board shall consist of:

(1) the secretary of state;

(2) the state treasurer;

(3) four members under a state coverage plan to be elected by the members under state coverage plans;

(4) four members under a municipal coverage plan to be elected by the members under municipal coverage plans, provided one member shall be a municipal member employed by a county; and

(5) two retired members to be elected by the retired members of the association.

C. The elections of elected members of the retirement board shall be held at the time of the annual meeting of the association and shall be conducted according to rules and regulations the retirement board shall from time to time adopt.

D. The regular term of office of the elected members of the retirement board shall be four years. The term of one retirement board member under a state coverage plan shall expire annually on December 31. The terms of retirement board members under a municipal coverage plan shall expire on December 31 of noncoinciding years in the pattern set by the retirement board. Members of the retirement board shall serve until their successors have qualified.

E. A member elected to the retirement board who fails to attend four consecutively scheduled meetings of the retirement board, unless in each case excused for cause by the retirement board members in attendance, shall be considered to have resigned from the retirement board, and the retirement board shall by resolution declare the office vacated as of the date of adoption of the resolution. A vacancy occurring on the retirement board, except in the case of an elected official, shall be filled by the remaining retirement board members, without requirement that a quorum be present, until the next election of the association, at which time a successor shall be elected for the remainder of the vacated term.

F. Members of the retirement board shall serve without additional salary for their services as retirement board members, but they shall receive as their sole remuneration for services as members of the retirement board those amounts authorized under the Per Diem and Mileage Act.

G. The retirement board shall hold four regular meetings each year and shall designate in advance the time and place of the meetings. Special meetings and emergency meetings of the retirement board may be held upon call of the chairman or any three members of the retirement board. Written notice of special meetings shall be sent to each member of the retirement board at least seventy-two hours in advance of the special meeting. Verbal notice of emergency meetings shall be given to as many members as is feasible at least eight hours before the emergency meeting, and the meeting shall commence with a statement of the nature of the emergency. The

retirement board shall adopt its own rules of procedure and shall keep a record of its proceedings. All meetings of the retirement board shall comply with the Open Meetings Act. A majority of retirement board members shall constitute a quorum. Each attending member of the retirement board is entitled to one vote on each question before the retirement board, and at least a majority of a quorum shall be necessary for a decision by the retirement board.

H. Annual meetings of the members of the association shall be held in Santa Fe at such time and place as the retirement board shall from time to time determine. Special meetings of the members of the association shall be held in Santa Fe upon call of any seven retirement board members. The retirement board shall send a written notice to the last known residence address of each member currently employed by an affiliated public employer at least ten days prior to any meeting of the members of the association. The notice shall contain the call of the meeting and the principal purpose of the meeting. All meetings of the association shall be public and shall be conducted according to procedures the retirement board shall from time to time adopt. The retirement board shall keep a record of the proceedings of each meeting of the association."

Section 3

Section 3. Section 10-11-136 NMSA 1978 (being Laws 1987, Chapter 253, Section 136, as amended) is amended to read:

"10-11-136. DIVISION OF FUNDS AS COMMUNITY PROPERTY.--A court of competent jurisdiction, solely for the purposes of effecting a division of community property in a divorce or legal separation proceeding, may provide by appropriate order for a determination and division of a community interest in the pensions or other benefits provided for in the Public Employees Retirement Act. In so doing, the court shall fix the manner in which warrants shall be issued, may order direct payments to a person with a community interest in the pensions or other benefits, may require the election of a specific form of payment and designation of a specific survivor pension beneficiary, refund beneficiary or survivor pension beneficiary designated in accordance with Section 10-11-14.5 NMSA 1978 and may restrain the refund of accumulated member contributions. Payments made pursuant to such orders shall only be made when member contributions are refunded or a pension is payable in accordance with the provisions of the Public Employees Retirement Act. The court shall not alter the manner in which the amount of pensions or other benefits is calculated by the association or cause any increase in the actuarial present value of the pensions or other benefits to be paid by the association."

Section 4

Section 4. A new section of the Judicial Retirement Act is enacted to read:

"ADJUSTMENT OF PENSION.--

A. If payment of a pension or other retirement benefit causes a decrease in the amount of monetary payments or other needs-based benefits due to a payee from any other governmental agency, the pension or other retirement benefit shall be reduced for the period during which the pension or other retirement benefit prevents payment of another needs-based benefit to result in payment of the maximum amount possible by the association and the other governmental agency to the payee. Any amounts that would otherwise be paid out that are not paid in accordance with the provisions of this section shall not be recoverable by a payee at any later date.

B. If there is a change in the effect of pension or other retirement benefit on any monetary payments or other needs-based benefits due to a payee from any other governmental agency, the pension or other retirement benefits shall be adjusted to result in the maximum total benefit to the payee. In no event shall any pension be increased in an amount greater than that authorized by the Judicial Retirement Act.

C. The provisions of this section are mandatory and shall not be waived or declined by a payee. Each payee shall provide the association with all information necessary for the association to carry out the requirements imposed by this section.

D. If the payee fails to provide all the facts necessary to comply with the requirements imposed by this section, and payment of a pension or other retirement benefit is made without making the adjustment required by this section, neither the retirement board, the executive secretary nor any officer or employee of the association or the retirement board shall be liable to any third party because the adjustment was not made as required.

E. As used in this section:

(1) "pension" means a normal retirement, survivor or disability retirement pension payable to a retired member or survivor beneficiary pursuant to the Judicial Retirement Act;

(2) "governmental agency" means the federal government, any department or agency of the federal government, any state and any department, agency or political subdivision of a state;

(3) "total benefits" means pensions plus any other monetary payments or other needs-based benefits due to the payee from any governmental agency;

(4) "needs-based benefit" means monetary or other benefits for which a determination of eligibility is based upon the recipient's level of income and resources; and

(5) "payee" means a retired member or the refund beneficiary or survivor beneficiary of a retired member."

Section 5

Section 5. A new section of the Judicial Retirement Act is enacted to read:

"CORRECTIONS OF ERRORS AND OMISSIONS--ESTOPPEL.--

A. If an error or omission in an application or its supporting documents results in overpayment to a member or beneficiary of a member, the association shall recover all overpayments made for a period of up to one year prior to the date the error or omission was discovered.

B. A person who is paid more than the amount that is lawfully due him as a result of fraudulent information provided by the member or beneficiary shall be liable for the repayment of that amount to the association plus interest on that amount at the rate set by the board plus all costs of collection, including attorneys' fees if necessary. Recovery of such overpayment shall extend back to the date the first payment was made based on the fraudulent information.

C. Statements of fact or law made by board members or employees of the board or the association shall not estop the board or the association from acting in accordance with the applicable statutes."

Section 6

Section 6. Section 10-12B-3 NMSA 1978 (being Laws 1992, Chapter 111, Section 3) is amended to read:

"10-12B-3. JUDICIAL RETIREMENT FUND ESTABLISHED--ADMINISTRATION OF FUND--ACCOUNTING FUNDS.--

A. There is established in the state treasury the "judicial retirement fund". The fund is comprised of money received from docket fees of district courts, the court of appeals and the supreme court, employer and employee contributions and any investment earnings on fees and contributions. The board is the trustee of the fund and shall administer and invest the fund. Investment of the fund shall be conducted pursuant to the provisions of the Public Employees Retirement Act. The provisions of the Judicial Retirement Act shall be administered by the board. The board is authorized to promulgate rules and regulations. Expenses related to the investment of the fund and administration of the Judicial Retirement Act shall be paid from the fund.

B. For purposes of this section, the accounting funds shall be known as the "member contribution fund", "employer's accumulation fund", "retirement reserve fund" and "income fund". The maintenance of separate accounting funds shall not require the actual segregation of the assets of the fund.

C. The accounting funds provided for in this section are trust funds and shall be used only for the purposes provided for in the Judicial Retirement Act.

D. The member contribution fund is the accounting fund in which shall be accumulated contributions of members and from which shall be made refunds and transfers of accumulated member contributions as provided in the Judicial Retirement Act. The member's court shall cause member contributions to be deducted from the salary of the member and shall remit the deducted member contributions to the association in accordance with procedures and schedules established by the association. The association may assess an interest charge and a penalty charge on any late remittance. Each member shall be deemed to consent and agree to the deductions made and provided for in this section. Contributions by members shall be credited to the members' individual accounts in the member contribution fund. A member's accumulated member contributions shall be transferred to the retirement reserve fund when a pension becomes payable.

E. The employer's accumulation fund is the accounting fund in which shall be accumulated the contributions paid by the state through the member's court. The state, through the member's court, shall remit its contributions to the association in accordance with procedures and schedules established by the association. The board may assess an interest charge and a penalty charge on any late remittance.

F. The retirement reserve fund is the accounting fund from which shall be paid all pensions to retired members and survivor beneficiaries and all residual refunds to refund beneficiaries of retired members and survivor beneficiaries.

G. Each year, following receipt of the report of the annual actuarial valuation, the excess, if any, of the reported actuarial present value of pensions being paid and likely to be paid to retired members and survivor beneficiaries and residual refunds likely to be paid to refund beneficiaries of retired members and survivor beneficiaries over the balance in the retirement reserve fund shall be transferred to the retirement reserve fund from the employer's accumulation fund.

H. The income fund is the accounting fund to which shall be credited all interest, dividends, rents and other income from investments of the fund, all gifts and bequests, all unclaimed member contributions and all other money the disposition of which is not specifically provided for in the Judicial Retirement Act. Expenses related to the administration of the Judicial Retirement Act shall be paid for from the income fund.

I. The association shall at least annually distribute all or a portion of the balance in the income fund to the member contribution fund, the retirement reserve fund and the employer's accumulation fund. Distribution rates shall be determined by the board and may vary for the respective accounting funds."

Section 7

Section 7. Section 10-12B-6 NMSA 1978 (being Laws 1992, Chapter 111, Section 6) is amended to read:

"10-12B-6. REFUND OF CONTRIBUTIONS.--

A. If a member leaves office, the member may, with the written consent of the member's spouse, if any, withdraw the member's accumulated member contributions upon making written request in a form prescribed by the association. Upon written request of the member in the form prescribed by the association, a refund of member contributions may be made by a trustee-to-trustee transfer of the contributions from the member contribution fund directly to another qualified plan as allowed by the Internal Revenue Code of 1986. Withdrawal of member contributions shall result in forfeiture of the service credit accrued for the period during which the contributions were made.

B. A member shall, upon commencement of membership, designate a refund beneficiary who shall receive the refund of the member contributions, plus interest, if the member dies and no survivor pension is payable. If the member is married at the time of designation, written spousal consent shall be required if the designated refund beneficiary is a person other than the spouse. Marriage subsequent to the designation shall automatically revoke a previous designation, and the spouse shall become the refund beneficiary unless or until another designation is filed with the association. Divorce subsequent to the designation shall automatically revoke designation of the former spouse as refund beneficiary if no designation has been filed, and the refund shall be paid to the deceased member's estate unless the member filed a designation of refund beneficiary subsequent to the divorce. The refund shall be paid to the refund beneficiary named in the most recent designation of refund beneficiary on file with the association unless that beneficiary is deceased. If there is not a living refund beneficiary named in the most recent designation of refund beneficiary on file with the association, the deceased member's accumulated member contributions shall be paid to the estate of the deceased member."

Section 8

Section 8. Section 10-12B-7 NMSA 1978 (being Laws 1992, Chapter 111, Section 7) is amended to read:

"10-12B-7. FUNDS NOT SUBJECT TO LEGAL PROCESS--DIVISION OF FUNDS AS COMMUNITY PROPERTY--LEGAL PROCESS TO SATISFY CHILD SUPPORT OBLIGATIONS.--

A. Except as provided in Subsections B and C of this section, none of the money, pensions or other benefits provided pursuant to the provisions of the Judicial Retirement Act shall be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment or other legal process.

B. A court of competent jurisdiction, solely for the purposes of effecting a division of community property in a divorce or legal separation proceeding, may provide by appropriate order for a determination and division of a community interest in the pensions or other benefits provided for in the Judicial Retirement Act. The court shall fix the manner in which warrants are issued, may order direct payments to a person with a community interest in the pensions or other benefits, may require the election of a specific form of payment and designation of a specific survivor beneficiary or refund beneficiary and may restrain the refund of accumulated member contributions. Payments made pursuant to such orders shall only be made when member contributions are refunded or a pension is payable in accordance with the provisions of the Judicial Retirement Act. The court shall not alter the manner in which the amount of pensions or other benefits are calculated by the association or cause any increase in the actuarial present value of the pensions or other benefits to be paid by the association.

C. A court of competent jurisdiction, solely for the purposes of enforcing current or delinquent child-support obligations, may provide by appropriate order for withholding amounts due in satisfaction of current or delinquent child-support obligations from the pensions or other benefits provided for in the Judicial Retirement Act and for payment of such amounts to third parties. The court shall not alter the manner in which the amount of pensions or other benefits are calculated by the association. The court shall not cause any increase in the actuarial present value of the pensions or other benefits to be paid from the fund. Payments made pursuant to such orders shall only be made when member contributions are refunded or when a pension is payable in accordance with the provisions of the Judicial Retirement Act. In no case shall more money be paid out, either in a lump sum or in monthly pension payments, of the fund in enforcement of current or delinquent child-support obligations than would otherwise be payable at that time."

Section 9

Section 9. A new section of the Magistrate Retirement Act is enacted to read:

"ADJUSTMENT OF PENSION.--

A. If payment of a pension or other retirement benefit causes a decrease in the amount of monetary payments or other needs-based benefits due to a payee from any other governmental agency, the pension or other retirement benefit shall be reduced for the period during which the pension or other retirement benefit prevents payment of another needs-based benefit to result in payment of the maximum amount possible by the association and the other governmental agency to the payee. Any amounts that would otherwise be paid out that are not paid in accordance with the provisions of this section shall not be recoverable by a payee at any later date.

B. If there is a change in the effect of a pension or other retirement benefit on any monetary payments or other needs-based benefits due to a payee from any

other governmental agency, the pension or other retirement benefits shall be adjusted to result in the maximum total benefit to the payee. In no event shall any pension be increased in an amount greater than that authorized by the Magistrate Retirement Act.

C. The provisions of this section are mandatory and shall not be waived or declined by a payee. Each payee shall provide the association with all information necessary for the association to carry out the requirements imposed by this section.

D. If the payee fails to provide all the facts necessary to comply with the requirements imposed by this section, and payment of a pension or other retirement benefit is made without making the adjustment required by this section, neither the retirement board, the executive secretary nor any officer or employee of the association or the retirement board shall be liable to any third party because the adjustment was not made as required.

E. As used in this section:

(1) "pension" means a normal retirement, survivor or disability retirement pension payable to a retired member or survivor beneficiary pursuant to the Magistrate Retirement Act;

(2) "governmental agency" means the federal government, any department or agency of the federal government, any state and any department, agency or political subdivision of a state;

(3) "total benefits" means pensions plus any other monetary payments or other needs-based benefits due to the payee from any governmental agency;

(4) "needs-based benefit" means monetary or other benefits for which a determination of eligibility is based upon the recipient's level of income and resources; and

(5) "payee" means a retired member or the refund beneficiary or survivor beneficiary of a retired member."

Section 10

Section 10. A new section of the Magistrate Retirement Act is enacted to read:

"CORRECTION OF ERRORS AND OMISSIONS--ESTOPPEL.--

A. If an error or omission in an application or its supporting documents results in an overpayment to a member or beneficiary of a member, the association shall correct the error or omission and adjust all future payments accordingly. The

association shall recover all overpayment made for a period of up to one year prior to the date the error or omission was discovered.

B. A person who is paid more than the amount that is lawfully due him as a result of fraudulent information provided by the member or beneficiary shall be liable for the repayment of that amount to the association plus interest on that amount at the rate set by the board plus all costs of collection, including attorneys' fees if necessary. Recovery of such overpayment shall extend back to the date the first payment was made based on the fraudulent information.

C. Statements of fact or law made by board members or employees of the board or the association shall not estop the board or the association from acting in accordance with the applicable statutes."

Section 11

Section 11. Section 10-12C-3 NMSA 1978 (being Laws 1992, Chapter 118, Section 3) is amended to read:

"10-12C-3. MAGISTRATE RETIREMENT FUND ESTABLISHED--
ADMINISTRATION OF FUND--ACCOUNTING FUNDS.--

A. There is established in the state treasury the "magistrate retirement fund". The fund is comprised of money received from docket fees of magistrate and metropolitan courts, employer and member contributions and any investment earnings on fees and contributions. The board is the trustee of the fund and shall administer and invest the fund. Investment of the fund shall be conducted pursuant to the provisions of the Public Employees Retirement Act. The provisions of the Magistrate Retirement Act shall be administered by the board. The board is authorized to promulgate rules and regulations. Expenses related to the investment of the fund and administration of the Magistrate Retirement Act shall be paid from the fund.

B. For purposes of this section, the accounting funds shall be known as the "member contribution fund", "employer's accumulation fund", "retirement reserve fund" and "income fund". The maintenance of separate accounting funds shall not require the actual segregation of the assets of the fund.

C. The accounting funds provided for in this section are trust funds and shall be used only for the purposes provided for in the Magistrate Retirement Act.

D. The member contribution fund is the accounting fund in which shall be accumulated contributions of members and from which shall be made refunds and transfers of accumulated member contributions as provided in the Magistrate Retirement Act. The member's court shall cause member contributions to be deducted from the salary of the member and shall remit the deducted member contributions to the association in accordance with procedures and schedules established by the

association. The association may assess an interest charge and a penalty charge on any late remittance. Each member shall be deemed to consent and agree to the deductions made and provided for in this section. Contributions by members shall be credited to the members' individual accounts in the member contribution fund. A member's accumulated member contributions shall be transferred to the retirement reserve fund when a pension becomes payable.

E. The employer's accumulation fund is the accounting fund in which shall be accumulated the contributions paid by the state through the administrative office of the courts. The state, through the administrative office of the courts, shall remit its contributions to the association in accordance with procedures and schedules established by the association. The board may assess an interest charge and a penalty charge on any late remittance.

F. The retirement reserve fund is the accounting fund from which shall be paid all pensions to retired members and survivor beneficiaries and all residual refunds to refund beneficiaries of retired members and survivor beneficiaries.

G. Each year, following receipt of the report of the annual actuarial valuation, the excess, if any, of the reported actuarial present value of pensions being paid and likely to be paid to retired members and survivor beneficiaries and residual refunds likely to be paid to refund beneficiaries of retired members and survivor beneficiaries over the balance in the retirement reserve fund shall be transferred to the retirement reserve fund from the employer's accumulation fund.

H. The income fund is the accounting fund to which shall be credited all interest, dividends, rents and other income from investments of the fund, all gifts and bequests, all unclaimed member contributions and all other money the disposition of which is not specifically provided for in the Magistrate Retirement Act. Expenses related to the administration of the Magistrate Retirement Act shall be paid for from the income fund.

I. The association shall at least annually distribute all or a portion of the balance in the income fund to the member contribution fund, the retirement reserve fund and the employer's accumulation fund. Distribution rates shall be determined by the board and may vary for the respective accounting funds."

Section 12

Section 12. Section 10-12C-6 NMSA 1978 (being Laws 1992, Chapter 118, Section 6) is amended to read:

"10-12C-6. REFUND OF CONTRIBUTIONS.--

A. If a member leaves office, the member may, with the written consent of the member's spouse, if any, withdraw the member's accumulated member

contributions, upon making written request in a form prescribed by the association. Upon written request of the member in the form prescribed by the association, a refund of member contributions may be made by a trustee-to-trustee transfer of the contributions from the member contribution fund directly to another qualified plan as allowed by the Internal Revenue Code of 1986. Withdrawal of member contributions shall result in forfeiture of the service credit accrued for the period during which the contributions were made.

B. A member shall, upon commencement of membership, designate a refund beneficiary who shall receive the refund of the member contributions, plus interest if any, if the member dies and no survivor pension is payable. If the member is married at the time of designation, written spousal consent shall be required if the designated refund beneficiary is a person other than the spouse. Marriage subsequent to the designation shall automatically revoke a previous designation, and the spouse shall become the refund beneficiary unless or until another designation is filed with the association. Divorce subsequent to the designation shall automatically revoke designation of the former spouse as refund beneficiary, or the right of the former spouse to be refund beneficiary if no designation has been filed, and the refund shall be paid to the deceased member's estate unless the member filed a designation of refund beneficiary subsequent to the divorce. The refund shall be paid to the refund beneficiary named in the most recent designation of refund beneficiary on file with the association unless that beneficiary is deceased. If there is not a living refund beneficiary named in the most recent designation of refund beneficiary on file with the association, the deceased member's accumulated member contributions shall be paid to the estate of the deceased member."

Section 13

Section 13. Section 10-12C-7 NMSA 1978 (being Laws 1992, Chapter 118, Section 7) is amended to read:

"10-12C-7. FUNDS NOT SUBJECT TO LEGAL PROCESS--DIVISION OF FUNDS AS COMMUNITY PROPERTY--LEGAL PROCESS TO SATISFY CHILD SUPPORT OBLIGATIONS.--

A. Except as provided in Subsections B and C of this section, none of the money, pensions or other benefits provided pursuant to the provisions of the Magistrate Retirement Act shall be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment or other legal process.

B. A court of competent jurisdiction, solely for the purposes of effecting a division of community property in a divorce or legal separation proceeding, may provide by appropriate order for a determination and division of a community interest in the pensions or other benefits provided for in the Magistrate Retirement Act. The court shall fix the manner in which warrants are issued, may order direct payments to a person with a community interest in the pensions or other benefits, may require the election of a

specific form of payment and designation of a specific survivor beneficiary or refund beneficiary and may restrain the refund of accumulated member contributions. Payments made pursuant to such orders shall only be made when member contributions are refunded or a pension is payable in accordance with the provisions of the Magistrate Retirement Act. The court shall not alter the manner in which the amount of pensions or other benefits is calculated by the association or cause any increase in the actuarial present value of the pensions or other benefits to be paid by the association.

C. A court of competent jurisdiction, solely for the purposes of enforcing current or delinquent child-support obligations, may provide by appropriate order for withholding amounts due in satisfaction of current or delinquent child-support obligations from the pensions or other benefits provided for in the Magistrate Retirement Act and for payment of such amounts to third parties. The court shall not alter the manner in which the amount of pensions or other benefits is calculated by the association. The court shall not cause any increase in the actuarial present value of the pensions or other benefits to be paid from the fund. Payments made pursuant to such orders shall only be made when member contributions are refunded or when a pension is payable in accordance with the provisions of the Magistrate Retirement Act. In no case shall more money be paid out, either in a lump sum or in monthly pension payments, of the fund in enforcement of current or delinquent child-support obligations than would otherwise be payable at that time."

HOUSE BILL 444

CHAPTER 116

RELATING TO ANATOMICAL GIFTS; ENACTING THE UNIFORM ANATOMICAL GIFT ACT (1987); IMPLEMENTING PROCEDURES FOR DONATION OF BODY PARTS; PROVIDING FOR CRIMINAL AND CIVIL IMMUNITY; IMPOSING A CRIMINAL PEALTY; REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. DEFINITIONS.--As used in the Uniform Anatomical Gift Act (1987):

A. "anatomical gift" means a donation of all or part of a human body to take effect upon or after death;

B. "decedent" means a deceased individual and includes a stillborn infant or fetus;

C. "document of gift" means a card, a statement attached to or imprinted on a motor vehicle driver's license, a will or other writing used to make an anatomical gift;

D. "donor" means an individual who makes an anatomical gift of all or part of the individual's body;

E. "enucleator" means an individual who has completed a course in eye enucleation conducted and certified by an accredited school of medicine and who possesses a certificate of competence issued upon completion of the course;

F. "hospital" means a facility licensed, accredited, or approved as a hospital under the law of any state or a facility operated as a hospital by the United States government, a state or a subdivision of a state;

G. "part" means an organ, tissue, eye, bone, artery, blood, fluid or other portion of a human body;

H. "person" means an individual, corporation, business trust, estate, trust, partnership, joint venture, limited liability company, association, government, governmental subdivision or agency or any other legal or commercial entity;

I. "physician" means an individual licensed or otherwise authorized to practice medicine or osteopathic medicine under the laws of any state;

J. "procurement organization" means a person licensed, accredited or approved under the laws of any state for procurement, distribution or storage of human bodies or parts. The term includes a nonprofit agency which is organized to procure eye tissue for the purpose of transplantation or research and which meets the medical standards set by the eye bank association of America;

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

L. "technician" means an individual who, under the supervision of a physician, removes or processes a part.

Section 2

Section 2. MAKING, AMENDING, REVOKING AND REFUSING TO MAKE ANATOMICAL GIFTS--BY INDIVIDUAL.--

A. An individual who is at least sixteen years of age may:

(1) make an anatomical gift for any of the purposes stated in Section 6 of the Uniform Anatomical Gift Act (1987);

(2) limit an anatomical gift to one or more of those purposes; or

(3) refuse to make an anatomical gift.

B. An anatomical gift may be made only by a document of gift signed by the donor or by complying with the provisions of Section 66-5-10 NMSA 1978. If the donor cannot sign, the document of gift must be signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and of each other, and state that it has been so signed. Revocation, suspension, expiration or cancellation of the license does not invalidate the anatomical gift.

C. A document of gift may designate a particular physician to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the anatomical gift may employ or authorize any physician, technician or enucleator to carry out the appropriate procedures.

D. An anatomical gift by will takes effect upon death of the testator, whether or not the will is probated. If, after death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected.

E. A donor may amend or revoke an anatomical gift, not made by will, only by:

(1) a signed statement;

(2) an oral statement made in the presence of two individuals;

(3) any form of communication during a terminal illness or injury addressed to a physician; or

(4) the delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

F. The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in Subsection E of this section.

G. An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor's death.

H. An individual may refuse to make an anatomical gift of the individual's body or part by:

(1) a writing signed in the same manner as a document of gift;

(2) complying with the provisions of Section 66-5-10 NMSA 1978;

or

(3) any other writing used to identify the individual as refusing to make an anatomical gift. During a terminal illness or injury, the refusal may be an oral statement or other form of communication.

I. In the absence of contrary indications by the donor, an anatomical gift of a part is neither a refusal to give other parts nor a limitation on an anatomical gift under Section 3 of the Uniform Anatomical Gift Act (1987) or on a removal or release of other parts under Section 4 of that act.

J. In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not a refusal to make another anatomical gift. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor shall make the refusal pursuant to Subsection H of this section.

Section 3

Section 3. MAKING, REVOKING AND OBJECTING TO ANATOMICAL GIFTS--BY OTHERS.--

A. Any member of the following classes of persons, in the order of priority listed, may make an anatomical gift of all or a part of the decedent's body for an authorized purpose, unless the decedent, at the time of death, has made an unrevoked refusal to make that anatomical gift:

(1) a guardian of the person of the decedent at the time of death, if expressly authorized by the court to make health care decisions for the decedent;

(2) an agent under a durable power of attorney which expressly authorizes the agent to make health care decisions on behalf of the decedent;

(3) the spouse of the decedent unless legally separated or unless there is a pending petition for annulment, divorce, dissolution of marriage or separation;

(4) an adult son or daughter of the decedent;

(5) either parent of the decedent;

(6) an adult brother or sister of the decedent;

(7) a grandparent of the decedent; or

(8) an adult who has exhibited special care and concern for the decedent and who is familiar with the decedent's values.

B. An anatomical gift may not be made by a person listed in Subsection A of this section if:

(1) a person in a prior class is available at the time of death to make an anatomical gift;

(2) the person proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent; or

(3) the person proposing to make an anatomical gift knows of an objection to making an anatomical gift by a member of the person's class or a prior class.

C. An anatomical gift by a person authorized under Subsection A of this section must be made by:

(1) a document of gift signed by the person; or

(2) the person's telegraphic, recorded telephonic or other recorded message or other form of communication from the person that is contemporaneously reduced to writing and signed by the recipient.

D. An anatomical gift by a person authorized under Subsection A of this section may be revoked by any member of the same or a prior class if, before procedures have begun for the removal of a part from the body of the decedent, the physician, technician or enucleator removing the part knows of the revocation.

E. A failure to make an anatomical gift under Subsection A of this section is not an objection to the making of an anatomical gift.

Section 4

Section 4. AUTHORIZATION BY OFFICE OF MEDICAL INVESTIGATOR.--

A. The office of the state medical investigator may release and permit the removal of a part from a body within that official's custody, for transplantation or therapy, if:

(1) the official has received a request for the part from a hospital, physician, surgeon or procurement organization;

(2) a procurement organization has made a reasonable effort, taking into account the useful life of the part, to locate and examine the decedent's medical records and inform persons listed in Subsection A of Section 3 of the Uniform Anatomical Gift Act (1987) of their option to make, or object to making, an anatomical gift;

(3) the official does not know of a refusal or contrary indication by the decedent or objection by a person having priority to act as listed in Subsection A of Section 3 of the Uniform Anatomical Gift Act (1987);

(4) the removal will be by a physician, surgeon or technician; but in the case of eyes, by one of them or by an enucleator;

(5) the removal will not interfere with any autopsy or investigation;

(6) the removal will be in accordance with accepted medical standards; and

(7) cosmetic restoration will be done, if appropriate.

B. If the office of the state medical investigator permits the removal of a part, it shall maintain a permanent record of the name of the decedent, the person making the request, the date and purpose of the request, the part requested and the person to whom it was released.

Section 5

Section 5. REQUIRED REQUEST--SEARCH AND NOTIFICATION--CIVIL OR CRIMINAL IMMUNITY.--

A. If, at or near the time of death of a patient, there is no medical record that the patient has made or refused to make an anatomical gift, the hospital administrator or a representative designated by the administrator shall discuss the option to make or refuse to make an anatomical gift and request the making of an anatomical gift pursuant to Subsection A of Section 3 of the Uniform Anatomical Gift Act (1987). The request shall be made with reasonable discretion and sensitivity to the circumstances of the family. A request is not required if the gift is not suitable, based upon accepted medical standards, for a purpose specified in Section 6 of the Uniform Anatomical Gift Act (1987). An entry shall be made in the medical record of the patient, stating the name and affiliation of the individual making the request, and of the name, response and relationship to the patient of the person to whom the request was made. The secretary of health may adopt regulations to implement this subsection.

B. The following persons shall make a reasonable search for a document of gift or other information identifying the bearer as a donor or as an individual who has refused to make an anatomical gift:

(1) a law enforcement officer, firefighter, emergency medical technician, emergency medical services first responder or other emergency rescuer finding an individual who the searcher believes is dead or near death; and

(2) a hospital, upon the admission of an individual at or near the time of death, if there is not immediately available any other source of that information.

C. If a document of gift or evidence of refusal to make an anatomical gift is located by the search required by Paragraph (1) of Subsection B of this section and the individual or body to whom it relates is taken to a hospital, the hospital shall be notified of the contents and the document or other evidence shall be sent to the hospital.

D. If, at or near the time of death of a patient, a hospital knows that an anatomical gift has been made pursuant to Subsection A of Section 3 of the Uniform Anatomical Gift Act (1987) or a release and removal of a part has been permitted pursuant to Section 4 of that act, or that a patient or an individual identified as in transit to the hospital is a donor, the hospital shall notify the donee if one is named and known to the hospital; if not, it shall notify an appropriate procurement organization. The hospital shall cooperate in the implementation of the anatomical gift or release and removal of a part.

E. A person who fails to discharge the duties imposed by this section is not subject to criminal or civil liability but is subject to appropriate administrative sanctions.

Section 6

Section 6. PERSONS WHO MAY BECOME DONEES--PURPOSES FOR WHICH ANATOMICAL GIFTS MAY BE MADE.--

A. The following persons may become donees of anatomical gifts for the purposes stated:

(1) a hospital, physician, procurement organization or an accredited medical school, dental school, college or university, for transplantation, therapy, medical or dental education, research or advancement of medical or dental science; or

(2) a designated individual, for transplantation or therapy needed by that individual. A donee may not be designated on the basis of the donee's race, age, religion, color, national origin, ancestry, gender, sexual orientation or physical or mental handicaps.

B. An anatomical gift may be made to a designated donee or without designating a donee. If a donee is not designated or if the donee is not available or rejects the anatomical gift, the anatomical gift may be accepted by any hospital or procurement organization.

C. If the donee knows of the decedent's refusal or contrary indications to make an anatomical gift or that an anatomical gift by a member of a class having priority to act is opposed by a member of the same class or a prior class under Subsection A of

Section 3 of the Uniform Anatomical Gift Act (1987), the donee shall not accept the anatomical gift.

Section 7

Section 7. DELIVERY OF DOCUMENT OF GIFT.--

A. Delivery of a document of gift during the donor's lifetime is not required for the validity of an anatomical gift.

B. If an anatomical gift is made to a designated donee, the document of gift, or a copy, may be delivered to the donee to expedite the appropriate procedures after death. The document of gift, or a copy, may be deposited in any hospital, procurement organization or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of an interested person, upon or after the donor's death, the person in possession shall allow the interested person to examine or copy the document of gift.

Section 8

Section 8. RIGHTS AND DUTIES AT DEATH.--

A. Rights of a donee created by an anatomical gift are superior to rights of others except with respect to autopsies under Section 11 of the Uniform Anatomical Gift Act (1987). A donee may accept or reject an anatomical gift. If a donee accepts an anatomical gift of an entire body, the donee, subject to the terms of the gift, may allow embalming and use of the body in funeral services. If the gift is of a part of a body, the donee, upon the death of the donor and before embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the person under obligation to dispose of the body.

B. The time of death must be determined by a physician who attends the donor at death or, if none, the physician who certifies the death. Neither the physician who attends the donor at death nor the physician who determines the time of death may participate in the procedures for removing or transplanting a part unless the document of gift designates a particular physician pursuant to Section 2 of the Uniform Anatomical Gift Act (1987).

C. If there has been an anatomical gift, a technician may remove any donated parts and an enucleator may remove any donated eyes or parts of eyes, after determination of death by a physician.

Section 9

Section 9. COORDINATION OF PROCUREMENT AND USE.--Each hospital in this state may consult with other hospitals and procurement organizations and may

establish agreements or affiliations for coordination of procurement and use of human bodies and parts.

Section 10

Section 10. SALE OR PURCHASE OF PARTS PROHIBITED--CRIMINAL PENALTY.--

A. A person may not knowingly, for valuable consideration, purchase or sell a part for transplantation or therapy.

B. Valuable consideration does not include reasonable payment for the removal, processing, disposal, preservation, quality control, storage, transportation or implantation of a part.

C. All costs which are incurred at the request of a donee or procurement organization and which are related to the evaluation of a potential gift or the removal, processing, disposal, preservation, quality control, storage, transportation and implantation of a part shall be paid by the donee or procurement organization. The donor and next of kin and the estate of the donor shall not be responsible for payment of any of these costs.

D. A person who violates this section is guilty of a fourth degree felony.

Section 11

Section 11. EXAMINATION--AUTOPSY--LIABILITY.--

A. An anatomical gift authorizes any reasonable examination necessary to assure medical acceptability of the gift for the purposes intended.

B. The provisions of the Uniform Anatomical Gift Act (1987) are subject to the laws of New Mexico governing autopsies.

C. A hospital, physician, surgeon, medical investigator, local public health officer, enucleator, technician, nurse, law enforcement officer, firefighter, emergency medical technician, emergency medical services first responder, employee of the motor vehicle division or department of health or other person who acts in accordance with the Uniform Anatomical Gift Act (1987) or with the applicable anatomical gift law of another state, or attempts in good faith to do so, is not liable for that act in a civil action or criminal proceeding.

D. An individual who makes an anatomical gift pursuant to Section 2 or 3 of the Uniform Anatomical Gift Act (1987) and the individual's estate are not liable for any injury or damage that may result from the making or the use of the anatomical gift.

Section 12

Section 12. TRANSITIONAL PROVISIONS.--The Uniform Anatomical Gift Act (1987) applies to a document of gift, revocation or refusal to make an anatomical gift signed by the donor or a person authorized to make or object to making an anatomical gift before, on, or after the effective date of that act.

Section 13

Section 13. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--The Uniform Anatomical Gift Act (1987) shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of that act among states enacting it.

Section 14

Section 14. SEVERABILITY.--If any provision of the Uniform Anatomical Gift Act (1987) or its application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act which can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

Section 15

Section 15. SHORT TITLE.--Sections 1 through 15 of this act may be cited as the "Uniform Anatomical Gift Act (1987)".

Section 16

Section 16. REPEAL.--Sections 24-6-1 through 24-6-11 NMSA 1978 (being Laws 1969, Chapter 105, Sections 1 through 9 and Laws 1987, Chapter 74, Sections 3 and 4, as amended) are repealed.

Section 17

Section 17. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE BILL 482

CHAPTER 117

RELATING TO LICENSES; EXPANDING THE MEDICATION AIDE PROGRAM TO INCLUDE SERVICE TO PARTICIPANTS IN THE DEVELOPMENTALLY DISABLED MEDICAID WAIVER PROGRAM; AMENDING AND ENACTING SECTIONS OF THE NURSING PRACTICE ACT.

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

Section 1

Section 1. A new Section 61-3-10.3 NMSA 1978 is enacted to read:

"61-3-10.3. MEDICATION AIDES.--

A. This section permits the operation of a trial program for certification of medication aides and medication aide training programs to serve income-eligible persons participating in the developmentally disabled medicaid waiver program. The purpose of the trial program is to effectuate a cost-containment and efficient program for the administration of the medicaid program. The trial program shall be evaluated by the board and a report of the results submitted to the first session of the forty-third legislature.

B. The developmental disabilities division of the department of health shall, through contract or agreement, provide remuneration to developmental disabilities service providers and to medication aides for services rendered to medicaid waiver program participants. Developmental disabilities service providers shall, through contract or agreement, provide remuneration to the board for administrative and other costs associated with oversight of the medication aide program.

C. For the purposes of this section, "medication aide" means a person who, under the supervision of a licensed nurse, is permitted to administer oral medications to participants in the developmentally disabled medicaid waiver program according to standards adopted by the board.

D. Medication aides who serve participants in the developmentally disabled medicaid waiver program shall make application and obtain training and certification as provided in Section 61-3-10.2 NMSA 1978 and shall be subject to all other regulations pertaining to medication aides as determined by the board."

Section 2

Section 2. Section 61-3-29 NMSA 1978 (being Laws 1968, Chapter 44, Section 25, as amended by Laws 1991, Chapter 190, Section 20 and also by Laws 1991, Chapter 209, Section 2) is amended to read:

"61-3-29. EXCEPTIONS.--The Nursing Practice Act shall not apply to or affect:

A. gratuitous nursing by friends or members of the family;

B. nursing assistance in case of emergencies;

C. nursing by students when enrolled in approved schools of nursing or approved courses for the education of professional or practical nurses when such nursing is part of the educational program;

D. nursing in this state by a legally licensed nurse of another state whose employment requires the nurse to accompany and care for a patient temporarily residing in this state, provided that the temporary residence does not exceed three months and the nurse does not claim to be licensed in this state;

E. nursing in this state by any person who is employed by the United States government or any bureau, division or agency thereof, while in the discharge of his official duties;

F. the practice of midwifery by any person other than a registered nurse who is certified or licensed in this state to practice midwifery;

G. any person working as a home health aide, unless performing acts defined as professional nursing or practical nursing under the Nursing Practice Act;

H. any nursing aide or orderly, unless performing acts defined as professional nursing or practical nursing under the Nursing Practice Act;

I. any registered nurse holding a current license in another jurisdiction who is enrolled in any professional course requiring nursing practice as a part of the educational program;

J. performance by a personal care provider in a noninstitutional setting of bowel and bladder assistance for an individual whom a health care provider certifies is stable, not currently in need of medical care and able to communicate and assess his own needs; or

K. medication aides working in licensed intermediate care facilities for the mentally retarded or serving persons who are participating in the developmentally disabled medicaid waiver program and who have completed a board-approved medication aide training program and who are certified by the board to administer routine oral medications, which may be expanded to include all medications except subcutaneous, intramuscular and intravenous injections, unless the medication aide is performing acts defined as professional or practical nursing under the Nursing Practice Act."

Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE BILL 518

CHAPTER 118

RELATING TO LICENSES; GRANTING PERMANENT STATUS TO THE MEDICATION AIDE TRAINING PROGRAM; AMENDING A SECTION OF THE NURSING PRACTICE ACT.

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

Section 1

Section 1. Section 61-3-10.2 NMSA 1978 (being Laws 1991, Chapter 209, Section 1, as amended) is amended to read:

"61-3-10.2. MEDICATION AIDES.--

A. This section shall permit the operation of a program for certification of medication aides and medication aide training programs in licensed intermediate care facilities for the mentally retarded. The purpose of the program is to effectuate a cost containment and efficient program for the administration of the medicaid program. It is the intention of the legislature that costs of continuing the program shall be provided through appropriate agreements between the board and licensed intermediate care facilities for the mentally retarded.

B. For the purposes of this section, "medication aide" means a person who, under the supervision of a licensed nurse in a licensed intermediate care facility for the mentally retarded, is permitted to administer oral medications according to the standards adopted by the board.

C. Unless certified as a medication aide under the Nursing Practice Act, no person shall:

(1) practice as a medication aide; or

(2) use the titles "certified medication aide" or "medication aide" or any other title, abbreviation, letters, figures, signs or devices to indicate or imply that the person is a certified medication aide.

D. The board shall:

(1) maintain a permanent register of all persons to whom certification to practice as a certified medication aide is provided;

(2) adopt rules and regulations that set reasonable requirements for medication aide educational or training programs and certification that protect the health and well-being of the mentally retarded while facilitating low-cost access to medication services;

(3) adopt rules and regulations governing the supervision of medication aides by licensed nurses which shall include, but not be limited to, standards for medication aides and performance evaluations of medication aides; and

(4) conduct hearings upon charges relating to discipline of a certified medication aide or the denial, suspension or revocation of a medication aide certificate in accordance with the Uniform Licensing Act.

E. Every applicant for certification as a medication aide shall pay the required application fee, submit written evidence of having completed a board-approved program for the certification of medication aides and successfully complete a board-approved examination.

F. The board shall issue a certificate enabling a person to function as a medication aide to any person who fulfills the requirements for medication aides set by law.

G. Every certificate issued by the board to practice as a medication aide shall be renewed biennially upon payment of the required fee. The medication aide seeking renewal shall submit proof of employment as a medication aide and proof of having met any continuing education requirements adopted by the board.

H. Applicants for certification or renewal of certification as certified medication aides shall pay the following fees:

(1) for initial certification by examination or certification after a failure to renew timely an initial certification, the fee shall be set by the board not to exceed thirty dollars (\$30.00); and

(2) for renewal of certification, the fee shall be set by the board not to exceed thirty dollars (\$30.00).

I. The board shall:

(1) prescribe standards and approve curricula for educational or training programs preparing persons as medication aides;

(2) set a reasonable fee for the review and approval of educational or training programs for certification as certified medication aides not to exceed one hundred fifty dollars (\$150) for each initial review and approval or fifty dollars (\$50.00) for each subsequent review and approval in case of change or modification in a training program, except where the change or modification has been required by a change in board policy or board rules and regulations, in which case the fee for each review and approval shall not exceed twenty-five dollars (\$25.00);

(3) provide for periodic evaluation at intervals of no less than two years of educational or training programs preparing persons for certification as certified medication aides, including setting a reasonable fee for each periodic evaluation, which shall not exceed seventy-five dollars (\$75.00); and

(4) grant, deny or withdraw approval from education aide programs for failure to meet prescribed standards; provided that in the event of a denial or withdrawal of approval, none of the fees provided for in this section shall be refundable."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE BILL 519

CHAPTER 119

RELATING TO MUNICIPALITIES; REMOVING THE LIMITATION ON COMPENSATION FOR THE GOVERNING BODY OF A NONCHARTER MUNICIPALITY; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 3-10-3 NMSA 1978 (being Laws 1971, Chapter 194, Section 1) is amended to read:

"3-10-3. NONCHARTER MUNICIPALITIES--GOVERNING BODIES--COMPENSATION.--A noncharter municipality may provide by ordinance for the compensation of the mayor and other individual members of the governing body."

HOUSE BILL 539

CHAPTER 120

RELATING TO MEAT AND MEAT PRODUCTS; AMENDING A SECTION OF THE MEAT INSPECTION ACT TO PROTECT CONSUMERS FROM UNFAIR TRADE PRACTICES AND DECEPTIVE ADVERTISING; PROVIDING PENALTIES; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 25-3-15 NMSA 1978 (being Laws 1969, Chapter 89, Section 10) is amended to read:

"25-3-15. PROHIBITED ACTS--PENALTY.--Except as provided in the Meat Inspection Act, it is a:

A. misdemeanor for any person to:

(1) slaughter any livestock or poultry or prepare any livestock products or poultry products for human consumption except in compliance with the provisions of the Meat Inspection Act;

(2) sell or transport any adulterated, misbranded, condemned or uninspected meats, livestock products or poultry products;

(3) falsely represent that any article has been inspected and passed or is exempted under the Meat Inspection Act or knowingly make any false statement in any certificate provided for by board regulation;

(4) sell or transport any slaughtered poultry from which the blood, feathers, feet, head or viscera have not been removed;

(5) fail to keep any records required by the Meat Inspection Act;

(6) forge any official device, mark or certificate;

(7) use, alter, deface, detach or destroy any official device, mark or certificate without authorization;

(8) fail to use or fail to detach, deface or destroy any official device, mark or certificate contrary to regulations prescribed by the board;

(9) knowingly possess any counterfeit certificate, device or label or the carcass or parts of the carcass of any animal bearing any counterfeit or improperly altered official mark;

(10) sell or transport any equine carcass or parts thereof, unless they are conspicuously marked or otherwise identified to show the kind of animal from which they were derived; or

(11) buy, sell or transport any livestock products or poultry products not intended for human food, unless they are naturally inedible by humans or are denatured or identified as required by board regulations; and

B. fourth degree felony for any person to:

(1) engage in the business of buying, selling or transporting dead, dying, disabled or diseased animals or any parts of the carcasses of any animals that died otherwise than by slaughter or buy, sell or transport any dead, dying, disabled or diseased livestock or poultry or the products of any such livestock or poultry that died otherwise than by slaughter unless in accordance with such regulations as the board may prescribe to assure that such animals or the unwholesome parts or products are prevented from being used for human food purposes; or

(2) engage in unfair trade practices, inaccurate or deceptive advertising, bait and switch selling, product misrepresentation or knowingly engage in price misrepresentation of meat, livestock products or poultry products, as defined in Subsections D and E of Section 25-3-7 NMSA 1978."

Section 2

Section 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 548

CHAPTER 121

RELATING TO PHARMACY; PROVIDING PHARMACIST CLINICIANS WITH AUTHORITY TO ADMINISTER DRUGS; AMENDING A SECTION OF THE PHARMACIST PRESCRIPTIVE AUTHORITY ACT.

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

Section 1

Section 1. Section 61-11B-2 NMSA 1978 (being Laws 1993, Chapter 191, Section 2) is amended to read:

"61-11B-2. DEFINITIONS.--As used in the Pharmacist Prescriptive Authority Act:

A. "administer" means the direct application of a drug by any means to the body of a person;

B. "board" means the board of pharmacy;

C. "dangerous drug" means a drug that, because of any potentiality for harmful effect or the methods of its use or the collateral measures necessary to its use, is not safe except under the supervision of a practitioner licensed by law to direct the use of such drug and the drug prior to dispensing is required by federal law and state

law to bear the manufacturer's legend "Caution: Federal law prohibits dispensing without a prescription";

D. "guidelines or protocol" means a written agreement between a pharmacist clinician or group of pharmacist clinicians and a practitioner or group of practitioners that delegates prescriptive authority;

E. "monitor dangerous drug therapy" means the review of the dangerous drug therapy regimen of patients by a pharmacist clinician for the purpose of evaluating and rendering advice to the prescribing practitioner regarding adjustment of the regimen. "Monitor dangerous drug therapy" includes:

(1) collecting and reviewing patient dangerous drug histories;

(2) measuring and reviewing routine patient vital signs, including pulse, temperature, blood pressure and respiration; and

(3) ordering and evaluating the results of laboratory tests relating to dangerous drug therapy, including blood chemistries and cell counts, controlled substance therapy levels, blood, urine, tissue or other body fluids, culture and sensitivity tests when performed in accordance with guidelines or protocols applicable to the practice setting;

F. "pharmacist" means a person duly licensed by the board of pharmacy to engage in the practice of pharmacy pursuant to the Pharmacy Act;

G. "pharmacist clinician" means a pharmacist with additional training, at least equivalent to the training received by a physician assistant, required by regulations adopted by the board in consultation with the New Mexico board of medical examiners and the New Mexico academy of physician assistants, who exercises prescriptive authority in accordance with guidelines or protocol;

H. "practitioner" means a physician duly authorized by law in New Mexico to prescribe controlled substances; and

I. "prescriptive authority" means the authority to prescribe, administer or modify dangerous drug therapy."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE BILL 631

CHAPTER 122

RELATING TO LICENSURE; AMENDING SECTIONS OF THE NMSA 1978 RELATED TO WINEGROWER'S AND WINER'S LICENSING REQUIREMENTS AND LOCAL OPTION DISTRICT PROVISIONS.

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

Section 1

Section 1. Section 60-6A-11 NMSA 1978 (being Laws 1981, Chapter 39, Section 28, as amended) is amended to read:

"60-6A-11. WINEGROWER'S LICENSE.--

A. Exempt from the procurement of any other license under the terms of the Liquor Control Act, but not from the procurement of a winegrower's license, is any person in this state who produces wine. Except during periods of shortage or reduced availability, at least fifty percent of a winegrower's overall annual production of wine shall be produced from grapes or other agricultural products grown in this state pursuant to regulations adopted by the director.

B. Any person issued a winegrower's license pursuant to Subsection A of this section may do any of the following:

(1) produce wine, including blending, mixing, flavoring, coloring, bottling and labeling, whether the wine is produced by or for the winegrower;

(2) store, transport, import or export wines;

(3) sell wines to a holder of a New Mexico winegrower's, winer's, wine wholesaler's, wholesaler's or wine exporter's license;

(4) sell wines in other states or foreign jurisdictions to the holders of any license issued under the authority of that state or foreign jurisdiction authorizing such a purchase of wine;

(5) buy wine or distilled wine products from other persons, including licensees and permittees under the Liquor Control Act, for use in blending, mixing or bottling of wines;

(6) conduct wine tastings and sell, by the glass or in unbroken packages, wine of his own production on the winegrower's premises; and

(7) at no more than two off-premises locations, conduct wine tastings and sell in unbroken packages for consumption off premises, but not for resale, wine of his own production after the director has determined that the off-premises

locations meet the requirements of the Liquor Control Act and the department regulations for new liquor license locations.

C. Except as limited by Subsection D of Section 60-7A-1 NMSA 1978, sales of wine as provided in Paragraphs (6) and (7) of Subsection B of this section shall be permitted between the hours of 7:00 a.m. and midnight Monday through Saturday, and the holder of a winegrower's license may conduct wine tastings and sell, by the glass or in unbroken packages, wine of his own production on the winegrower's premises between the hours of 12:00 noon and midnight on Sunday.

D. At public celebrations off the winegrower's premises in any local option district permitting the sale of alcoholic beverages, the holder of a winegrower's license, upon the payment of ten dollars (\$10.00) to the department for a "winegrower's public celebration permit", to be issued under rules adopted by the director, may conduct tastings, sell in unbroken packages for consumption at other than the public celebration, but not for resale, and sell, for consumption at a public celebration, wine of his own production. Upon request, the department may issue to a holder of a winegrower's license a public celebration permit for a location at the public celebration that is to be shared with other permittees. As used in this subsection, "public celebration" includes any state or county fair, community fiesta, cultural or artistic event or sporting competition of a seasonal nature or activities held on an intermittent basis.

E. Every application for the issuance or annual renewal of a winegrower's license shall be on a form prescribed by the director and accompanied by a license fee to be computed as follows on the basis of total annual wine produced or blended:

(1) less than five thousand gallons per year, twenty-five dollars (\$25.00) per year;

(2) between five thousand and one hundred thousand gallons per year, one hundred dollars (\$100) per year; and

(3) over one hundred thousand gallons per year, two hundred fifty dollars (\$250) per year."

Section 2

Section 2. Section 60-6A-23 NMSA 1978 (being Laws 1983, Chapter 280, Section 4, as amended) is amended to read:

"60-6A-23. WINER'S LICENSE.--

A. In any local option district, a person qualified under the provisions of the Liquor Control Act, except as otherwise provided in the Domestic Winery and Small Brewery Act, may apply for and be issued a winer's license.

B. A winer's license authorizes the person to whom it is issued to do any of the following:

- (1) become a manufacturer or producer of wine;
- (2) to package, rectify, blend, mix, flavor, color, label and export wine, whether manufactured or produced by him or any other person;
- (3) to sell only such wine as is packaged by or for him to a person holding a New Mexico wine wholesaler's, wholesaler's, winegrower's, winer's or wine exporter's license or to a winer's agent;
- (4) to deal in warehouse receipts for wine;
- (5) on the winer's premises, to conduct wine tastings and sell, by the glass or in unbroken packages, wine produced and bottled by or for the winer;
- (6) at no more than two other locations off the winer's premises, after the director has determined that the off-premises locations meet the requirements of the Liquor Control Act and department regulations for new liquor license locations and has issued a winer's off-premises permit for each off-premises location, to conduct wine tastings and sell in unbroken packages for consumption off the winer's off-premises location, but not for resale, wine produced and bottled by or for the winer;
- (7) at public celebrations off the winer's premises, after the winer has paid the applicable fee specified in Subsection G of Section 60-6A-27 NMSA 1978 for a winer's public celebrations permit, to conduct wine tastings and sell by the glass or in unbroken packages, but not for resale, wine produced and bottled by or for the winer; and
- (8) to be deemed a manufacturer for purposes of the Gross Receipts and Compensating Tax Act.

C. Except as limited by Subsection D of Section 60-7A-1 NMSA 1978, sales of wine as authorized by Subsections A and B of this section shall be permitted between the hours of 7:00 a.m. and midnight Monday through Saturday, and the holder of a winer's license may conduct wine tastings and sell, by the glass or in unbroken packages, wine produced and bottled by or for him on the winer's premises between the hours of noon and midnight on Sunday."

HOUSE BILL 659

CHAPTER 123

RELATING TO CRIMINAL LAW; REDEFINING THE CRIMINAL OFFENSE KNOWN AS ABANDONMENT OF DEPENDENT; AMENDING A SECTION OF THE CRIMINAL CODE.

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

Section 1

Section 1. Section 30-6-2 NMSA 1978 (being Laws 1963, Chpter 303, Section 6-2, as amended) is amended to read:

"30-6-2. ABANDONMENT OF DEPENDENT.--Abandonment of dependent consists of a person having the ability and means to provide for his spouse or minor child's support and abandoning or failing to provide for the support of such dependent.

Whoever commits abandonment of dependent is guilty of a fourth degree felony."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE BILL 680

CHAPTER 124

RELATING TO ELECTIONS; AMENDING CERTAIN SECTIONS OF THE ELECTION CODE.

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

Section 1

Section 1. Section 1-1-9 NMSA 1978 (being Laws 1969, Chapter 240, Section 8, as amended) is amended to read:

"1-1-9. MAJOR POLITICAL PARTY--MINOR POLITICAL PARTY.-- As used in the Election Code:

A. "major political party" means any qualified political party, any of whose candidates received as many as five percent of the total number of votes cast at the last preceding general election for the office of governor, or president of the United States, as the case may be and whose membership totals not less than one-third of one percent of the statewide registered voter file on the day of the governor's primary election proclamation; and

B. "minor political party" means any qualified political party, none of whose candidates received five percent or more of the total number of votes cast at the last preceding general election for the office of governor, or president of the United States, as the case may be."

Section 2

Section 2. Section 1-2-12 NMSA 1978 (being Laws 1969, Chapter 240, Section 32, as amended by Laws 1993, Chapter 314, Section 4 and also by Laws 1993, Chapter 316, Section 4) is amended to read:

"1-2-12. PRECINCT BOARD--NUMBER FOR EACH PRECINCT--MULTIPARTISAN.--

A. When absentee ballots are counted, the precinct board shall consist of:

- (1) a presiding judge;
- (2) one election judge from each of the major political parties;
- (3) one clerk from each of the major political parties; and
- (4) if a major party has no registered, qualified elector who is able to fill the position as election judge or election clerk, a registered, qualified elector from another major party, chosen by the county clerk to fill the vacant position.

B. When one voting machine is to be used in a precinct, the precinct board shall consist of:

- (1) a presiding judge;
- (2) two election judges who shall be of different political parties; and
- (3) one election clerk who shall be of a different political party than the presiding judge.

C. When two voting machines are to be used in a precinct, the precinct board shall consist of:

- (1) a presiding judge;
- (2) two election judges who shall be of different political parties; and
- (3) two election clerks who shall be of different political parties.

D. When three voting machines are used in a precinct, the precinct board shall consist of:

- (1) a presiding judge;
- (2) two election judges who shall be of different political parties; and
- (3) three election clerks, not more than two of whom shall belong to the same political party.

E. If the county clerk determines that additional election clerks are needed in a precinct, the clerk may appoint such additional election clerks as he deems necessary; provided, however, that such appointments shall be made in the manner that provides for representation from all major political parties.

F. In addition to the members of the precinct board provided for in this section, the county clerk may appoint an additional election clerk for the purpose of making changes in the certificate of registration of any voter who has voted in that election at the polling place."

Section 3

Section 3. Section 1-4-21 NMSA 1978 (being Laws 1969, Chapter 240, Section 77) is amended to read:

"1-4-21. REFUSAL OF REGISTRATION.--Mandamus may be brought in the district court against the county clerk by any qualified elector whose registration has been refused, or by the county chairman of any major political party who alleges that certain persons are qualified electors but have been refused registration."

Section 4

Section 4. Section 1-4-22 NMSA 1978 (being Laws 1969, Chapter 240, Section 78, as amended) is amended to read:

"1-4-22. CANCELLATION OF REGISTRATION--PETITION TO DISTRICT COURT.--

A. At any time not less than forty-two days prior to any election held pursuant to the Election Code, the secretary of state, the county chairman of any major political party or any twenty petitioners who are voters of the county may file and present to the district court a verified petition alleging either on personal knowledge or on information and belief that certain persons registered, named in the petition, are not qualified electors in the precincts named in the petition. The petition shall contain a brief statement of the facts upon which such allegation is made.

B. Upon filing and presentation of such petition, the court shall by order fix a day for hearing thereon, which date shall be not less than five days nor more than ten days after such order. The court shall direct the county clerk to forthwith notify such persons named in the petition whose registration is sought to be canceled of the date and purpose of the hearing, and that each such person should be present at the hearing if he desires to oppose such cancellation.

C. Any county chairman or any group of twenty petitioners who, without reasonable cause, shall file a petition seeking to purge a voter are liable for the costs of such proceeding.

D. If, after hearing, the court finds that the registration of any of the persons named in the petition should be canceled, it shall by order direct the county clerk to cancel such registrations."

Section 5

Section 5. Section 1-4-34 NMSA 1978 (being Laws 1969, Chapter 240, Section 90, as amended) is amended to read:

"1-4-34. BOARD OF REGISTRATION--COUNTY COMMISSIONERS--
APPOINTMENT.--

A. The board of county commissioners shall at its first regular scheduled meeting in February of each odd-numbered year appoint three voters who shall constitute the board of registration for the county.

B. No more than two of the three persons appointed to the board of registration shall be members of the same major political party at the time of their appointment; provided that if a major party has no registered, qualified elector who is able to fill the position, a registered, qualified elector from another major party may be chosen by the county clerk.

C. In addition, the board of county commissioners shall appoint two alternates who shall not belong to the same political party at the time of their appointment.

D. In making all appointments to the board of registration or as alternates to the board of registration from the lists of the county chairmen, the board of county commissioners shall give preference to the names in the order indicated by the numbers on the list."

Section 6

Section 6. Section 1-4-40 NMSA 1978 (being Laws 1971, Chapter 195, Section 2, as amended by Laws 1993, Chapter 314, Section 30 and also by Laws 1993, Chapter 316, Section 30) is amended to read:

"1-4-40. DEPUTY REGISTRATION OFFICERS--PURPOSE-- SUBMISSION OF NAMES TO COUNTY CLERK--APPOINTMENT BY COUNTY CLERK--FILLING OF VACANCIES.--

A. It is the purpose of Sections 1-4-40 through 1-4-47 NMSA 1978 to encourage and facilitate the registration of qualified electors, facilitate the change of registered voter information of voters and facilitate the voluntary cancellation of voter registration. Sections 1-4-40 through 1-4-47 NMSA 1978 shall be liberally construed to accomplish that purpose.

B. Names of voters to be considered for appointment pursuant to the provisions of this section shall be submitted in writing to the county clerk. The number of deputy registration officers to which the various persons and organizations are entitled and the number of names to be submitted are as follows:

(1) the county chairman of any major political party may at any time submit lists of names of voters affiliated with the party, as shown on the voters' certificates of registration, on the following basis:

(a) one voter for each precinct in the county to be appointed as a precinct deputy registration officer;

(b) two voters for each state representative district or portion thereof within the county to be appointed as representative district deputy registration officers; and

(c) four voters for each state senatorial district or portion thereof within the county to be appointed as senatorial district deputy registration officers;

(2) the county chairman of each minor political party may at any time submit lists of names of not more than fifteen voters affiliated with that minor political party, as shown on their certificates of registration, to be appointed as minor political party deputy registration officers;

(3) a member of congress may submit the names of not more than two voters for each office maintained by a member of congress in a county to be appointed as special deputy registration officers;

(4) any candidate for state, congressional, presidential or vice presidential office may submit the names of not more than two voters for each office

maintained by the candidate in a county to be appointed as special deputy registration officers;

(5) the state chairman of any qualified political party may submit the names of not more than two voters for the state office maintained by that party to be appointed as special deputy registration officers;

(6) the county chairman of any qualified political party may submit the names of not more than two voters for the county office maintained by that political party to be appointed as special deputy registration officers;

(7) the state president of the league of women voters may submit the names of not more than fifteen voters in each county to be appointed as special deputy registration officers;

(8) an elected or appointed officer of a corporate employer may submit the names of not more than two voters of the county who are employees of that employer for one office maintained by the employer in a county to be appointed as special deputy registration officers;

(9) the president of a civic organization may submit the names of not more than two voters of a county who are members of that organization to be appointed as special deputy registration officers;

(10) the executive officer of a state central labor council may submit the names of not more than fifteen voters of a county who are members of a labor organization defined in Chapter 7 of Title 29 of the United States Code to be appointed as special deputy registration officers;

(11) the executive officer of a state management association or council may submit the names of not more than fifteen voters of a county who are members of that association or council to be appointed as special deputy registration officers;

(12) the local governing body of an Indian tribe or pueblo may submit the names of not more than five voters of the county in which the tribal lands or any portion thereof lie to be appointed as special deputy registration officers; and

(13) the secretary of taxation and revenue shall submit to the county clerk in each county where a motor vehicle division office, field office or contract field office is located the names of voters to be appointed as motor vehicle deputy registration officers.

C. A county clerk shall appoint the municipal clerk of each municipality in a county as a municipal clerk deputy registration officer. The appointment shall be valid

during the person's tenure as municipal clerk unless canceled as provided in the Election Code.

D. A county clerk shall appoint from the lists submitted in accordance with Paragraphs (1) and (2) of Subsection B of this section the authorized number of deputy registration officers. If the clerk fails to act to appoint within fourteen days after the submission of any such list, the persons on the list shall be deemed automatically appointed deputy registration officers.

E. Upon application of an organization therefor, a county clerk shall appoint from the lists submitted in accordance with Paragraphs (3) through (13) of Subsection B of this section the authorized number of special deputy registration officers.

F. If vacancies occur in the number of authorized and appointed deputy registration officers and special deputy registration officers, the county clerk shall notify the person or organization making the original submittal of the vacancy and shall request the person or organization to submit additional names to fill the vacancies. When the names are submitted, the county clerk shall appoint the authorized number to fill the vacancies from the submitted lists.

G. In addition to the special deputy registration officers already provided for in this section, a county clerk shall appoint any person qualified under the Election Code to serve as a special deputy registration officer upon a request in writing to the clerk from such person. A person applying for appointment under this subsection shall include in his written application sufficient information to enable the clerk to make a decision about the applicant's qualifications.

H. All registration officers appointed pursuant to provisions of this section shall serve without compensation for fulfilling their duties as registration officers.

I. All registration officers appointed pursuant to provisions of this section shall serve until December 31 of the first odd-numbered year following the date of their appointment or until their successors are appointed and qualified. A notice of expiration of term, signed by the county clerk, shall be immediately mailed to a deputy registration officer whose term has expired. The notice of expiration of term may contain a statement of the person's eligibility for reappointment and the necessary application forms for such reappointment.

J. Appointments of special deputy registration officers appointed for the offices of candidates for state, congressional, presidential and vice presidential offices shall be canceled on the day following the primary or general election when the person ceases to be a candidate. The county clerk shall notify each such special deputy registration officer of the fact of such cancellation."

Section 7

Section 7. Section 1-5-14 NMSA 1978 (being Laws 1969, Chapter 240, Section 118, as amended) is amended to read:

"1-5-14. FILE MAINTENANCE LISTS.--

A. At least once a month the county clerk shall have made from the voter file a machine-prepared file maintenance list of additions, deletions and changes, if any, to the county register.

B. The county clerk shall be furnished with two copies of the machine-prepared file maintenance lists.

C. One copy of the list shall be stored by the county clerk for at least twelve months.

D. The county clerk shall also be furnished with copies of the list to give to the county chairman of each of the major political parties in the county. The copy of the chairman's list shall contain only the name, address, party affiliation and precinct of the voter and shall indicate whether each item is an addition, deletion or change.

E. Beginning the first Monday of February of an election year and every month thereafter, the county clerks shall furnish the secretary of state with a copy of the magnetic voter file, except that during the months of April and September of an election year, the county clerks shall furnish a copy of the magnetic voter file to the secretary of state at least one time each week. The final copy shall be furnished to the secretary of state by the county clerks within seven days of the close of registration."

Section 8

Section 8. Section 1-7-2 NMSA 1978 (being Laws 1969, Chapter 240, Section 145, as amended) is amended to read:

"1-7-2. QUALIFICATION--REMOVAL--REQUALIFICATION.--

A. To qualify as a political party in New Mexico, each political party through its governing body shall adopt rules and regulations providing for the organization and government of that party and shall file the rules and regulations with the secretary of state. Uniform rules and regulations shall be adopted throughout the state by the county organizations of that party, where a county organization exists, and shall be filed with the county clerks. At the same time the rules and regulations are filed with the secretary of state, the governing body of the political party shall also file with the secretary of state a petition containing the hand-printed names, signatures, addresses of residence and counties of residence of at least one-half of one percent of the total votes cast for the office of governor or president at the preceding general election who declare by their signatures on such petition that they are voters of New Mexico and that they desire the party to be a qualified political party in New Mexico.

B. Each county political party organization may adopt such supplementary rules and regulations insofar as they do not conflict with the uniform state rules and regulations or do not abridge the lawful political rights of any person. Such supplementary rules shall be filed with the county clerk and the secretary of state in the same manner as other rules are filed.

C. All political parties that appeared on the 1988 New Mexico general election ballot shall continue to be qualified political parties unless disqualified in accordance with this subsection. Beginning with the general election in 1990, a qualified political party shall cease to be qualified for the purposes of the Election Code if two successive general elections are held without at least one of the party's candidates on the ballot or if the total votes cast for the party's candidates for governor or president of the United States, provided that the party has a candidate seeking election to either of these offices, in a general election do not equal at least one-half of one percent of the total votes cast for the office of governor or president of the United States, as applicable. After giving notice by registered mail to the state chairman of the party at his last known address, the secretary of state shall remove all material dealing with the political party from his file of parties qualified in New Mexico.

D. The secretary of state shall then notify all county clerks of the removal and nonqualification of the political party. The county clerk is then authorized to remove such rules and regulations from the county files. The county clerk shall immediately notify by mail all voters registered as members of such party of the removal and nonqualification of the party.

E. To requalify, the party must again comply with the provisions of the Election Code dealing with filing requirements for political parties."

Section 9

Section 9. Section 1-7-4 NMSA 1978 (being Laws 1969, Chapter 240, Section 147, as amended) is amended to read:

"1-7-4. RULES AND REGULATIONS--FILING--FEE.--

A. Each political party shall file its rules and regulations within thirty days after its organization and no later than the first Tuesday in April before any election in which it is authorized to participate.

B. Political parties filing rules and regulations with the county clerk shall pay the standard filing fee."

Section 10

Section 10. Section 1-8-2 NMSA 1978 (being Laws 1969, Chapter 240, Section 152, as amended by Laws 1993, Chapter 314, Section 44 and also by Laws 1993, Chapter 316, Section 44) is amended to read:

"1-8-2. NOMINATION BY MINOR POLITICAL PARTY--CONVENTION-
DESIGNATED NOMINEES.--

A. If the rules and regulations of a minor political party require nomination by political convention:

(1) the chairman and secretary of the state political convention shall certify to the secretary of state the names of their party's nominees for United States senator, United States representative, all elective state offices, legislative offices elected from multi-county districts, all elective judicial officers in the judicial department and all offices representing a district composed of more than one county; and

(2) the chairman and secretary of the county political convention shall certify to the county clerk the names of their party's nominees for elected county offices and for legislative offices elected from a district located wholly within one county or that is composed of only one county.

B. The names certified to the secretary of state shall be filed on the second Tuesday in July in the year of the general election and shall be accompanied by a petition containing a list of signatures and addresses of voters totaling not less than one percent of the total number of votes cast at the last preceding general election for the office of governor or president of the United States, as the case may be:

(1) in the state for statewide offices; and

(2) in the district for offices other than statewide offices.

The petition shall contain a statement that the voters signing the petition are residents of the state, district, county or area to be represented by the office for which the person being nominated is a candidate.

C. The names certified to the county clerk shall be filed on the second Tuesday in July in the year of the general election and shall be accompanied by a petition containing a list of signatures and addresses of voters totaling not less than one percent of the total number of votes cast at the last preceding general election for the office of governor or president of the United States, as the case may be:

(1) in the county for countywide offices; and

(2) in the district for offices other than countywide offices.

The petition shall contain a statement that the voters signing the petition are residents of the state, district, county or area to be represented by the office for which the person being nominated is a candidate.

D. Persons certified as nominees shall be members of that party before the day the governor issues the primary election proclamation.

E. No voter shall sign any petition prescribed by this section for more persons than the number of minor party candidates necessary to fill the office at the next ensuing general election."

Section 11

Section 11. Section 1-8-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 158, as amended) is amended to read:

"1-8-8. VACANCY ON GENERAL ELECTION BALLOT--OCCURRING AFTER PRIMARY.--

A. If after a primary election a vacancy occurs, for any cause, in the list of nominees of a qualified political party for any public office to be filled in the general election, or a vacancy occurs because of the resignation or death of a person holding a public office not included in the governor's proclamation and which office is required by law to be filled at the next succeeding general election, the vacancy on the general election ballot may be filled by:

(1) the central committee of the state political party filing the name of its nominee for the office with the proper filing officer when such office is a federal, state, district or multi-county legislative district office; and

(2) the central committee of the county political party filing the name of its nominee for the office with the proper filing officer when such office is a magistrate, county or a legislative district office where the district is entirely within the boundaries of a single county.

B. Appointments made pursuant to Subsection A of this section shall be of the same party affiliation as the original nominee and reside in the district from which he will be elected as shown by his certificate of registration on file in the county clerk's office before the day of the governor's primary election proclamation.

C. Appointments to fill vacancies in the list of a party's nominees shall be made and filed at least fifty-six days prior to the general election. If the vacancy is caused by the death of a nominee, the central committee may in like manner file the name of its nominee to fill the vacancy up until five days prior to the general election.

D. When the name of a nominee is filed as provided in this section, such name shall be placed on the general election ballot as the party's candidate for that office. In the case of a nominee appointed after the general election ballots are printed, such name shall be placed on the ballot by pasting the printed name of the nominee over the name of the candidate whose vacancy he fills on the general election ballot."

Section 12

Section 12. That version of Section 1-8-13 NMSA 1978 (being Laws 1969, Chapter 240, Section 162, as amended) that is to become effective January 1, 1996 is amended to read:

"1-8-13. PRIMARY ELECTION LAW--CONTENTS OF PROCLAMATION.--The proclamation calling a primary election shall contain:

A. the names of the major political parties participating in the primary election;

B. the offices for which each political party shall nominate candidates; provided that if any law is enacted by the legislature in the year in which the primary election is held and such law does not take effect until after the date of the proclamation but prior to the date of the primary election, the proclamation shall conform to the intent of such law with respect to the offices for which each political party shall nominate candidates;

C. the date on which declarations of candidacy and nominating petitions for United States representative, any office voted upon by all the voters of the state, a legislative office, the office of district judge, district attorney, state board of education or magistrate shall be filed and the places where they shall be filed in order to have the candidates' names printed on the official ballot of their party at the primary election;

D. the date on and place at which declarations of candidacy shall be filed for any other office and filing fees paid or, in lieu thereof, a pauper's statement of inability to pay;

E. the date on and place at which declarations of intent to be a write-in candidate for a statewide office or office of United States representative shall be filed;

F. the date on and place at which declarations of intent to be a write-in candidate for any other office shall be filed;

G. the final date on and place at which candidates for the office of United States representative and for any statewide office seeking preprimary convention designation by the major parties shall file petitions and declarations of candidacy;

H. the final date on which the major political parties shall hold state preprimary conventions for the designation of candidates; and

I. the final date on and place at which certificates of designation of primary election candidates shall be filed by political parties with the secretary of state.

As used in the Primary Election Law, "statewide office" means any office voted on by all the voters of the state."

Section 13

Section 13. That version of Section 1-8-21 NMSA 1978 (being Laws 1994, Chapter 92, Section 2) that is to become effective January 1, 1996 is amended to read:

"1-8-21. PRIMARY ELECTION--METHODS OF PLACING NAMES ON PRIMARY BALLOT.--

A. All candidates seeking primary election nomination to a statewide office or the office of United States representative shall file declarations of candidacy with the proper filing officer. Candidates shall file nominating petitions at the time of filing their declarations of candidacy. Candidates who seek, but do not obtain, preprimary convention designation by a major political party may file new declarations of candidacy and nominating petitions pursuant to Section 1-8-33 NMSA 1978.

B. Candidates for any other office shall have their names placed on the primary election ballot by filing declarations of candidacy and nominating petitions with the proper filing officer. Candidates for county office shall also pay filing fees or file the proper paupers' statements at the time of filing declarations of candidacy."

Section 14

Section 14. That version of Section 1-8-26 NMSA 1978 (being Laws 1975, Chapter 295, Section 12, as amended by Laws 1994, Chapter 2, Section 1 and also by Laws 1994, Chapter 92, Section 3) that is to become effective January 1, 1996 is amended to read:

"1-8-26. PRIMARY ELECTION LAW--DECLARATION OF CANDIDACY--TIME OF FILING.--

A. Declarations of candidacy by preprimary convention designation for any statewide office or for the office of United States representative and declarations of candidacy for retention of a justice of the supreme court or judge of the court of appeals shall be filed with the proper filing officer on the second Tuesday in February of each even-numbered year between the hours of 9:00 a.m. and 5:00 p.m.

B. Declarations of candidacy for any other office and declarations of candidacy for retention for all affected district judicial offices shall be filed with the proper

filing officer on the third Tuesday of March of each even-numbered year between the hours of 9:00 a.m. and 5:00 p.m.

C. Certificates of designation shall be submitted to the secretary of state on the first Tuesday following the preprimary convention at which the candidate's designation took place between the hours of 9:00 a.m. and 5:00 p.m.

D. No candidate's name shall be placed on the ballot until the candidate has been notified in writing by the proper filing officer that the declaration of candidacy, the petition and the certificate of registration of the candidate on file are in proper order and that the candidate, based on such documents, is qualified to have his name placed on the ballot. The proper filing officer shall mail such notice no later than 5:00 p.m. on the Tuesday following the filing date."

Section 15

Section 15. That version of Section 1-8-30 NMSA 1978 (being Laws 1973, Chapter 228, Section 4, as amended) that is to become effective January 1, 1996 is amended to read:

"1-8-30. PRIMARY ELECTION LAW--DECLARATION OF CANDIDACY--
NOMINATING PETITION--FILING AND FORM.--

A. As used in the Primary Election Law, "nominating petition" means the authorized form used for obtaining the required number of signatures of voters, which is signed on behalf of the person wishing to become a candidate for a political office in the primary election requiring a nominating petition.

B. In making a declaration of candidacy, the candidate at the same time shall file a nominating petition, which shall be on forms prescribed by law.

C. The nominating petition shall be on paper approximately eight and one-half inches wide and fourteen inches long with numbered lines for signatures spaced approximately three-eighths of an inch apart and shall be in the following form:

"NOMINATING PETITION

I, the undersigned, a registered voter of the county of _____, New Mexico, and a member of the party, hereby nominate _____, who resides at in the county of _____, New Mexico, for the party nomination for the office of _____, to be voted for at the primary election to be held on the first Tuesday of June, 19 _____, and I declare that I am a resident of the state, district, county or area to be represented by the office for which the person being nominated is a candidate. I also declare that I have not signed, and will not sign, any nominating petition for more persons than the number of candidates necessary to fill such office at the next ensuing general election.

1. _____

(usual (name printed (address as (city or
signature) as registered) registered) rt. no.)

2. _____

(usual (name printed (address as (city or
signature) as registered) registered) rt. no.)."

D. In October of odd-numbered years, the secretary of state shall furnish to each county clerk a sample of a nominating petition form, a copy of which shall be made available by the county clerk upon request of any candidate.

E. The signature of the voter shall not be counted unless the voter was a registered member of the candidate's party ten days prior to the filing of the nominating petition. The signature of the voter shall not be counted unless the entire line indicates the voter's usual signature, his name printed as registered and his address as registered and his city or route number and is upon the form furnished by the secretary of state to the county clerks or a duplicate thereof.

F. When more than one sheet is required for a petition, each of the sheets shall be in the form prescribed by this section and all sheets shall be firmly secured by a staple or other suitable fastening."

Section 16

Section 16. That version of Section 1-8-33 NMSA 1978 (being Laws 1973, Chapter 228, Section 7, as amended) that is to become effective January 1, 1996, is amended to read:

"1-8-33. PRIMARY ELECTION LAW--NOMINATING PETITION-- NUMBER OF SIGNATURES REQUIRED.--

A. As used in this section, "total vote" means the sum of all votes cast for all of the party's candidates for governor at the last preceding primary election at which the party's candidate for governor was nominated.

B. Candidates who seek preprimary convention designation shall file nominating petitions at the time of filing declarations of candidacy. Nominating petitions for those candidates shall be signed by a number of voters equal to at least two percent of the total vote of the candidate's party in the state or congressional district, or the following number of voters, whichever is greater: for statewide offices, two hundred thirty voters; and for congressional candidates, seventy-seven voters.

C. Nominating petitions for candidates for any other office to be voted on at the primary election for which nominating petitions are required shall be signed by a number of voters equal to at least three percent of the total vote of the candidate's party in the district or division, or the following number of voters, whichever is greater: for metropolitan court and magistrate courts, ten voters; for the state board of education, twenty-five voters; for state representative, ten voters; for state senator, seventeen voters; and for district attorney and district judge, fifteen voters.

D. A candidate who fails to receive the preprimary convention designation that he sought may collect additional signatures to total at least four percent of the total vote of the candidate's party in the state or congressional district, whichever applies to the office he seeks, and file a new declaration of candidacy and nominating petitions for the office for which he failed to receive a preprimary designation. The declaration of candidacy and nominating petitions shall be filed with the secretary of state either ten days following the date of the preprimary convention at which he failed to receive the designation or on the date all declarations of candidacy and nominating petitions are due pursuant to the provisions of the Primary Election Law, whichever is later."

Section 17

Section 17. Section 1-8-56 NMSA 1978 (being Laws 1977, Chapter 230, Section 4, as amended by Laws 1980, Chapter 13, Section 1 and also by Laws 1980, Chapter 43, Section 1) is amended to read:

"1-8-56. NOMINATION BY COMMITTEE.--There shall be convened in Santa Fe a committee consisting of the chief justice of the supreme court, as chairman, the speaker of the house of representatives and the minority floor leader of the house of representatives, the president pro tempore of the senate, the minority floor leader of the senate and the state chairmen of those major political parties participating in the presidential primary. The committee shall nominate as presidential primary candidates, and certify to the secretary of state, not later than February 15 before the presidential primary election, the names of all those generally advocated and nationally recognized or supported by any major political party in the state as candidates of the major political parties participating in the presidential primary for the office of president of the United States."

Section 18

Section 18. A new section of the Election Code is enacted to read:

"COUNTY CHAIRMAN.--In the event that a county chairman is designated a duty under the Election Code and a political party in a county does not have a county chairman to carry out the designated duty and where there are no other provisions delegating the duty assigned to the county chairman, the state chairman of the political party shall carry out the designated duty."

Section 19

Section 19. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 1996.

HOUSE VOTERS AND ELECTIONS COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 1079 & HB 1128

CHAPTER 125

RELATING TO HUMAN RIGHTS; CHANGING A CONDITION UNDER WHICH A PERSON CAN FILE AN UNLAWFUL DISCRIMINATION COMPLAINT; MODIFYING GRIEVANCE AND HEARING PROCEDURES; AMENDING SECTIONS OF THE HUMAN RIGHTS ACT.

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

Section 1

Section 1. Section 28-1-7 NMSA 1978 (being Laws 1969, Chapter 196, Section 7, as amended) is amended to read:

"28-1-7. UNLAWFUL DISCRIMINATORY PRACTICE.--It is an unlawful discriminatory practice for:

A. an employer, unless based on a bona fide occupational qualification, to refuse to hire, to discharge, to promote or demote or to discriminate in matters of compensation, terms, conditions or privileges of employment against any person otherwise qualified because of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or serious medical condition; provided, however, that 29 U.S.C. Section 631(c)(1) and (2) shall apply to discrimination based on age;

B. a labor organization to exclude an individual or to expel or otherwise discriminate against any of its members or against any employer or employee because of race, religion, color, national origin, ancestry, sex, physical or mental handicap or serious medical condition;

C. any employer, labor organization or joint apprenticeship committee to refuse to admit or employ any individual in any program established to provide an apprenticeship or other training or retraining because of race, religion, color, national origin, ancestry, sex, physical or mental handicap or serious medical condition;

D. any person, employer, employment agency or labor organization to print or circulate or cause to be printed or circulated any statement, advertisement or

publication, to use any form of application for employment or membership or to make any inquiry regarding prospective membership or employment which expresses, directly or indirectly, any limitation, specification or discrimination as to race, color, religion, national origin, ancestry, sex, physical or mental handicap, or serious medical condition unless based on a bona fide occupational qualification;

E. an employment agency to refuse to list and properly classify for employment or refer an individual for employment in a known available job, for which the individual is otherwise qualified, because of race, religion, color, national origin, ancestry, sex or physical or mental handicap, unless based on a bona fide occupational qualification, or to comply with a request from an employer for referral of applicants for employment if the request indicates either directly or indirectly that the employer discriminates in employment on the basis of race, religion, color, national origin, ancestry, sex, physical or mental handicap or serious medical condition unless based on a bona fide occupational qualification;

F. any person in any public accommodation to make a distinction, directly or indirectly, in offering or refusing to offer its services, facilities, accommodations or goods to any individual because of race, religion, color, national origin, ancestry, sex or physical or mental handicap, provided that the physical or mental handicap is unrelated to an individual's ability to acquire or rent and maintain particular real property or housing accommodation;

G. any person to:

(1) refuse to sell, rent, assign, lease or sublease or offer for sale, rental, lease, assignment or sublease any housing accommodation or real property to any individual or to refuse to negotiate for the sale, rental, lease, assignment or sublease of any housing accommodation or real property to any individual because of race, religion, color, national origin, ancestry, sex or physical or mental handicap, provided that the physical or mental handicap is unrelated to an individual's ability to acquire or rent and maintain particular real property or housing accommodation;

(2) discriminate against any individual in the terms, conditions or privileges of the sale, rental, assignment, lease or sublease of any housing accommodation or real property or in the provision of facilities or services in connection therewith because of the race, religion, color, national origin, ancestry, sex or physical or mental handicap, provided that the physical or mental handicap is unrelated to an individual's ability to acquire or rent and maintain particular real property or housing accommodation; or

(3) print, circulate, display or mail or cause to be printed, circulated, displayed or mailed any statement, advertisement, publication or sign or use any form of application for the purchase, rental, lease, assignment or sublease of any housing accommodation or real property or to make any record or inquiry regarding the prospective purchase, rental, lease, assignment or sublease of any housing

accommodation or real property which expresses any preference, limitation or discrimination as to race, religion, color, national origin, ancestry, sex or physical or mental handicap, provided that the physical or mental handicap is unrelated to an individual's ability to acquire or rent and maintain particular real property or housing accommodation;

H. any person to whom application is made either for financial assistance for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation or real property or for any type of consumer credit, including financial assistance for the acquisition of any consumer good as defined by Section 55-9-109 NMSA 1978, to:

(1) consider the race, religion, color, national origin, ancestry, sex or physical or mental handicap of any individual in the granting, withholding, extending, modifying or renewing or in the fixing of the rates, terms, conditions or provisions of any financial assistance or in the extension of services in connection with the request for financial assistance; or

(2) use any form of application for financial assistance or to make any record or inquiry in connection with applications for financial assistance which expresses, directly or indirectly, any limitation, specification or discrimination as to race, religion, color, national origin, ancestry, sex or physical or mental handicap;

I. any person or employer to:

(1) aid, abet, incite, compel or coerce the doing of any unlawful discriminatory practice or to attempt to do so;

(2) engage in any form of threats, reprisal or discrimination against any person who has opposed any unlawful discriminatory practice or has filed a complaint, testified or participated in any proceeding under the Human Rights Act; or

(3) willfully obstruct or prevent any person from complying with the provisions of the Human Rights Act or to resist, prevent, impede or interfere with the commission or any of its members, staff or representatives in the performance of their duties under the Human Rights Act; or

J. any employer to refuse or fail to accommodate to an individual's physical or mental handicap or serious medical condition, unless such accommodation is unreasonable or an undue hardship."

Section 2

Section 2. Section 28-1-10 NMSA 1978 (being Laws 1969, Chapter 196, Section 9, as amended by Laws 1993, Chapter 268, Section 2 and also by Laws 1993, Chapter 305, Section 1) is amended to read:

"28-1-10. GRIEVANCE PROCEDURE.--

A. Any person claiming to be aggrieved by an unlawful discriminatory practice and any member of the commission who has reason to believe that discrimination has occurred may file with the human rights division of the labor department a written complaint that shall state the name and address of the person alleged to have engaged in the discriminatory practice, all information relating to the discriminatory practice and any other information that may be required by the commission. All complaints shall be filed with the division within one hundred eighty days after the alleged act was committed.

B. The director shall advise the respondent that a complaint has been filed against him and shall furnish him with a copy of the complaint. The director shall promptly investigate the alleged act. If the director determines that the complaint lacks probable cause, he shall dismiss the complaint and notify the complainant and respondent of the dismissal. The complaint shall be dismissed subject to appeal as in the case of other orders of the commission.

C. If the director determines that probable cause exists for the complaint, he shall attempt to achieve a satisfactory adjustment of the complaint through persuasion and conciliation. The director and staff shall neither disclose what has transpired during the attempted conciliation nor divulge information obtained during any hearing before the commission or a commissioner prior to final action relating to the complaint. Any officer or employee of the labor department who makes public in any manner whatever any information in violation of this subsection is guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than one year.

D. Any person who has filed a complaint with the human rights division may request and shall receive an order of nondetermination from the director one hundred eighty days after the division's receipt of the complaint. The order of nondetermination may be appealed pursuant to the provisions of Section 28-1-13 NMSA 1978.

E. In the case of a complaint filed by or on behalf of a person who has an urgent medical condition and has notified the director in writing of the test results, the director shall make the determination whether probable cause exists for the complaint and shall attempt any conciliation efforts within ninety days of the filing of the written complaint or notification, whichever occurs last.

F. If conciliation fails or if, in the opinion of the director, informal conference cannot result in conciliation, and the complainant has not requested a waiver of right to hearing pursuant to the provisions of Subsection J of this section, the commission shall issue a written complaint in its own name against the respondent, except that in the case of a complaint filed by or on behalf of a person who has an urgent medical condition, who has notified the director in writing of the test results and

who so elects, the director shall issue an order of nondetermination, which may be appealed pursuant to the provisions of Section 28-1-13 NMSA 1978. The complaint shall set forth the alleged discriminatory practice, the secretary's regulation or the section of the Human Rights Act alleged to have been violated and the relief requested. The complaint shall require the respondent to answer the allegations of the complaint at a hearing before the commission or hearing officer and shall specify the date, time and place of the hearing. The hearing date shall not be more than fifteen or less than ten days after service of the complaint. The complaint shall be served on the respondent personally or by registered mail, return receipt requested. The hearing shall be held in the county where the respondent is doing business or the alleged discriminatory practice occurred.

G. Within one year of the filing of a complaint by a person aggrieved, the commission or its director shall:

- (1) dismiss the complaint for lack of probable cause;
- (2) achieve satisfactory adjustment of the complaint as evidenced by order of the commission; or
- (3) file a formal complaint on behalf of the commission.

H. Upon the commission's petition, the district court of the county where the respondent is doing business or the alleged discriminatory practice occurred may grant injunctive relief pending hearing by the commission or pending judicial review of an order of the commission so as to preserve the status quo or to ensure that the commission's order as issued will be effective. The commission shall not be required to post a bond.

I. For purposes of this section, "urgent medical condition" means any medical condition as defined by an appropriate medical authority through documentation or by direct witness of a clearly visible disablement and which poses a serious threat to the life of the person with the medical condition.

J. The complainant may seek a trial de novo in the district court in lieu of a hearing before the commission, provided the complainant requests from the director, in writing, a waiver of complainant's right to hearing within sixty days of service of written notice of a probable cause determination by the director. The director shall approve the waiver request and shall serve notice of the waiver upon the complainant and respondent. The complainant may request a trial de novo pursuant to Section 28-1-13 NMSA 1978 within thirty days from the date of service of the waiver. Issuance of the notice shall be deemed a final order of the commission for the purpose of appeal pursuant to Section 28-1-13 NMSA 1978."

Section 3

Section 3. Section 28-1-11 NMSA 1978 (being Laws 1969, Chapter 196, Section 10, as amended) is amended to read:

"28-1-11. HEARING PROCEDURES.--

A. The respondent to a complaint made pursuant to Section 28-1-10 NMSA 1978 may file a written answer to the complaint, appear at the hearing, give testimony and be represented by counsel and may obtain from the commission subpoenas for any person or for the production of any evidence pertinent to the proceeding. The complainant shall be present at the hearing and may be represented by counsel. Each party shall have the right to amend his complaint or answer.

B. A panel of three members of the commission designated by the chairman shall sit, and a decision agreed upon by two members of the panel shall be the decision of the commission. However, no commissioner who has filed a complaint may sit on the panel hearing his complaint. Hearings also may be conducted by a hearing officer employed by the human rights division of the labor department or, if the hearing officer is unavailable, one member of the commission may be designated by the chairman to act as a hearing officer. A hearing officer shall have the same powers and duties as a commissioner as set forth in Paragraph (2) of Subsection A of Section 28-1-4 NMSA 1978.

C. The complainant or his representative shall present to the commission or the hearing officer the case supporting the complaint. No evidence concerning prior attempts at conciliation shall be received. The director shall not participate in the hearing, except as a witness.

D. The commission and the hearing officer shall not be bound by the formal rules of evidence governing courts of law or equity but shall permit reasonable direct examination and cross-examination and the submission of briefs. Testimony at the hearing shall be taken under oath and recorded by tape or otherwise. Upon the request of any party, testimony shall be transcribed, provided that all costs of transcribing shall be paid by the party so requesting. Each commissioner and hearing officer may administer oaths.

E. Upon the conclusion of a hearing conducted by a hearing officer, the hearing officer shall prepare a written report setting forth proposed findings of fact and conclusions of law and recommending the action to be taken by the commission. The hearing officer shall submit the report to a review panel consisting of no more than three members of the commission designated by the chairman. No commissioner may sit on the panel reviewing the hearing officer's report issued in connection with a complaint filed by the commissioner. A decision by a majority of the members of the review panel shall be the decision of the commission. If the commission finds from the evidence presented at any hearing held pursuant to this section that the respondent has engaged in a discriminatory practice, it shall make written findings of fact, conclusions of law and its decision based upon the findings of fact and conclusions of law. The commission

may adopt, modify or reject the proposed findings of fact and conclusions of law and the action recommended by the hearing officer. Within five days after any order is rendered by the commission following a hearing, the commission shall serve upon each party of record and his attorney, if any, a written copy of the order by certified mail to the party's address of record. All parties shall be deemed to have been served on the tenth day following the mailing. As part of its order, the commission may require the respondent to pay actual damages to the complainant and to pay reasonable attorneys' fees, if the complainant was represented by private counsel, and to take such affirmative action as the commission considers necessary, including a requirement for reports of the manner of compliance.

F. If the commission finds from the evidence that the respondent has not engaged in a discriminatory practice, it shall make written findings of fact and serve the complainant and respondent with a copy of the findings of fact and with an order dismissing the complaint."

HOUSE BILL 724

CHAPTER 126

RELATING TO ELECTIONS; AMENDING CERTAIN SECTIONS OF THE NMSA 1978 PERTAINING TO PRECINCTS AND POLLING PLACES.

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

Section 1

Section 1. Section 1-3-1 NMSA 1978 (being Laws 1969, Chapter 240, Section 50, as amended) is amended to read:

"1-3-1. NATURE OF A PRECINCT--MAPS.--

A. Each precinct as nearly as practicable shall be composed of contiguous and compact areas having clearly definable boundaries. All precinct boundaries shall comply with the provisions of the Precinct Boundary Adjustment Act.

B. A precinct for general or primary election purposes shall not have had more than eight hundred votes cast in person in that precinct at the last preceding general election.

C. Each county clerk shall provide and maintain a suitable map showing the current geographical boundaries with designation of each precinct, representative district and senatorial district in the county. The size and form of such maps shall be prescribed by the secretary of state. A word description of the geographical boundaries shall be attached to each map. Such map, with attached description, is a public record.

D. Each county clerk shall send a copy of each map with attached description to the secretary of state. These copies are also public records."

Section 2

Section 2. Section 1-3-2 NMSA 1978 (being Laws 1969, Chapter 240, Section 51, as amended) is amended to read:

"1-3-2. PRECINCTS--DUTIES OF COUNTY COMMISSIONERS.--

A. Not later than the first Monday in November of each odd-numbered year, the board of county commissioners shall by resolution:

(1) designate the polling place of each precinct that shall provide individuals with physical mobility limitations an unobstructed access to at least one voting machine;

(2) create additional precincts to meet the requirements of Section 1-3-1 NMSA 1978 or upon petition pursuant to Section 4-38-21 NMSA 1978;

(3) create additional polling places in existing precincts as necessary pursuant to Section 1-3-7.1 NMSA 1978; and

(4) divide any precincts as necessary to meet legal and constitutional requirements for redistricting.

B. The county clerk shall notify the secretary of state in writing of any proposed changes in precincts or the designation of polling places made by the board of county commissioners and shall furnish a copy of the map showing the current geographical boundaries, designation and word description of each new polling place and each new or changed precinct.

C. The secretary of state shall review all new or changed precinct maps submitted pursuant to this section for compliance under the Precinct Boundary Adjustment Act. Any necessary precinct boundary adjustments shall be made and submitted to the secretary of state no later than the first Monday in December of that year. Upon approval of the new or changed precincts by the secretary of state, the precincts and polling places as changed by the resolution of the boards of county commissioners and approved by the secretary of state shall be the official precincts and polling places for the next succeeding primary and general elections."

Section 3

Section 3. Section 1-3-6 NMSA 1978 (being Laws 1969, Chapter 240, Section 56) is amended to read:

"1-3-6. PRECINCTS--BOUNDARIES--PROTEST.--

A. Any twenty-five or more voters of a precinct dissatisfied with the boundaries fixed for a precinct or location of the polling place designated by the board of county commissioners for that precinct may, at any time not less than fifty-five days prior to any general election, petition the district court of that county, setting forth the facts and reasons for their dissatisfaction and requesting that the board of county commissioners be required by mandamus to change the boundaries or polling place as set forth in the petition.

B. Upon filing of the petition, the court shall fix a time and place for hearing, which time shall not be more than twenty days from the date the petition was filed. Each member of the board of county commissioners and the person whose name appears first on the petition as a signer thereof shall immediately be given notice by the court of the filing of the petition and the date set for hearing.

C. On the date set for the hearing on the petition, the court shall hear the evidence, decide the issues involved and issue its order as the law and facts require."

Section 4

Section 4. Section 1-3-11 NMSA 1978 (being Laws 1983, Chapter 223, Section 2) is amended to read:

"1-3-11. PURPOSE.--The purpose of the Precinct Boundary Adjustment Act is to comply with the criteria established pursuant to the provisions of Subsection (c) of Section 141 of Title 13 of the United States Code in order to obtain an enumeration of the populations of election precincts by the bureau of the census in the federal decennial census and in order to provide such enumeration data to the New Mexico legislature for purposes of legislative reapportionment."

Section 5

Section 5. Section 1-3-12 NMSA 1978 (being Laws 1984 (1st S.S.), Chapter 3, Section 4, as amended) is amended to read:

"1-3-12. ADJUSTING PRECINCT BOUNDARIES.--

A. Every precinct boundary shall coincide with a numbered or named street or road or with a visible terrain feature that is:

(1) shown on the standard base maps developed pursuant to Subsection B of this section;

(2) a block boundary on the PL 94-171 census block maps; or

(3) approved by the secretary of state and the bureau of the census.

B. Prior to commencement of the federal decennial census:

(1) the secretary of state shall have prepared and furnish to each county clerk standard base maps of the county. The standard base map for nonurban areas of the county shall, as nearly as practical, show:

(a) all state and federal highways;

(b) all numbered and named county roads that have been certified to the state highway and transportation department;

(c) all military installation boundaries and federal and state prison boundaries;

(d) all major railroad lines; and

(e) other major terrain features such as flowing rivers and streams, arroyos, powerlines, pipelines and ridgelines and other acceptable census block boundaries; and

(2) the board of county commissioners and the county clerks, upon receipt of the standard base maps from the secretary of state, shall:

(a) adjust all urban precinct boundaries to coincide with numbered or named street boundaries;

(b) adjust all nonurban precinct boundaries to coincide with suitable visible terrain features shown on the standard base map; provided that in order to make such adjustment, two or more existing precincts may be consolidated without consolidating existing polling places; and provided further that such precincts shall be composed of contiguous and compact areas, and state, county and municipal boundary lines may serve as precinct boundaries; and

(c) upon the completion of the precinct boundary adjustments as required in this section, indicate on the standard base maps the boundaries for both urban and nonurban precincts and, together with a written description of the precincts, shall send four copies of the precinct maps to the secretary of state for approval.

C. The precincts shown upon the standard base maps submitted pursuant to the provisions of Subsection B of this section and as revised and approved by the secretary of state pursuant to the Precinct Boundary Adjustment Act shall become the

official precincts of each county. Changes in precincts shall be made in accordance with the provisions of Chapter 1, Article 3 NMSA 1978."

Section 6

Section 6. Section 1-3-14 NMSA 1978 (being Laws 1983, Chapter 223, Section 5) is amended to read:

"1-3-14. STANDARD BASE MAP REQUIRED.--All precinct maps prepared by the county clerk as required in the Precinct Boundary Adjustment Act shall be on a standard base map as prescribed by the secretary of state in order to achieve as nearly as practicable uniformity of size and scale."

HOUSE BILL 752

CHAPTER 127

RELATING TO MOTOR VEHICLES; AMENDING SECTIONS OF THE MOTOR VEHICLE CODE TO REQUIRE REGISTRATION OF VEHICLES IN RESIDENT COUNTY WITH EMISSIONS TEST REQUIREMENTS.

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

Section 1

Section 1. Section 66-3-7 NMSA 1978 (being Laws 1978, Chapter 35, Section 27, as amended) is amended to read:

"66-3-7. GROUNDS FOR REFUSING REGISTRATION OR CERTIFICATE OF TITLE.--The division may refuse registration or issuance of a certificate of title or any transfer of registration upon the ground that:

A. the application contains any false or fraudulent statement or that the applicant has failed to furnish the required information or reasonable additional information requested by the division or that the applicant is not entitled to the issuance of a certificate of title or registration of the vehicle under the Motor Vehicle Code;

B. the vehicle is mechanically unfit or unsafe to be operated or moved upon the highways;

C. the division has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle or that the granting of registration or the issuance of a certificate of title would constitute a fraud against the rightful owner or other person having valid lien upon the vehicle;

D. the registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this state;

E. the required fee has not been paid;

F. the motor vehicle excise tax has not been paid;

G. if the vehicle is a mobile home, the property tax has not been paid;

H. the owner's address, as shown in the records of the division, is within a class A county or within any municipality that has a vehicle emission inspection and maintenance program and the applicant has applied at an office outside the designated county or municipality; or

I. the owner is required to but has failed to provide proof of compliance with a vehicle emission inspection and maintenance program, if required in the county or municipality in which the owner resides."

Section 2

Section 2. Section 66-3-7.1 NMSA 1978 (being Laws 1988, Chapter 103, Section 1) is amended to read:

"66-3-7.1. REGISTRATION IF VEHICLE EMISSION INSPECTION TEST REQUIRED--REQUIRING A CERTIFICATE--REGISTRATION IN CLASS A COUNTIES.--

A. No vehicle required by county or municipal ordinance to pass a vehicle emission inspection test shall be registered with the division until such time as a valid vehicle emission inspection certificate is presented, unless the ordinance of the municipality or county specifically excludes enforcement by the division. The provisions of this section shall apply to a class A county or municipality within a class A county that has a vehicle emission inspection program, and the provisions of this section may apply to a municipality in an adjoining or contiguous county to a class A county that adopts a vehicle emission inspection program. Any municipality may adopt a voluntary or mandatory vehicle emission inspection program by ordinance. The ordinance may exempt or exclude certain categories or classifications of vehicles and may exempt or exclude a vehicle because of age or type of vehicle.

B. It shall be a misdemeanor for any person to register a vehicle in a county or municipality which does not conduct a vehicle emission testing program if the registered owner of that vehicle resides in a county or municipality conducting a vehicle emissions inspection program and the person registering the vehicle does so for the purpose of evading a vehicle emissions inspection program."

HOUSE BILL 773

CHAPTER 128

RELATING TO AIR QUALITY; AMENDING THE AIR QUALITY CONTROL ACT;
DELETING THE REQUIREMENT THAT JOINT POWERS AGREEMENTS FOR
ENFORCEMENT OF VEHICLE EMISSION INSPECTIONS BE WITH A CONTIGUOUS
MUNICIPALITY OR COUNTY.

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

Section 1

Section 1. Section 74-2-4 NMSA 1978 (being Laws 1967, Chapter 277, Section 4, as amended) is amended to read:

"74-2-4. LOCAL AUTHORITY.--

A. A county or municipality meeting the qualifications set forth in Paragraph (1) or (2) of Subsection J of Section 74-2-2 NMSA 1978 may assume jurisdiction as a local authority by adopting an ordinance providing for the local administration and enforcement of the Air Quality Control Act. The ordinance shall:

(1) create a local board to perform, within the boundaries of the local authority, those functions delegated to the environmental improvement board under the Air Quality Control Act, except any functions reserved exclusively for the environmental improvement board;

(2) create a local agency to administer and enforce the provisions of the Air Quality Control Act within the boundaries of the local authority that shall, within the boundaries of the local authority, perform all of the duties required of the department and exert all of the powers granted to the department, except for those duties and powers reserved exclusively for the department; and

(3) provide for the appointment of a director who shall perform for the local authority the same duties as required of the secretary under the Air Quality Control Act, except the duties and powers reserved exclusively for the secretary.

B. At least a majority of the members of a local board shall be individuals who represent the public interest and do not derive any significant portion of their income from persons subject to or who appear before the local board on issues related to the federal act or the Air Quality Control Act.

C. Prior to adopting any ordinance regulating air pollution, public hearings and consultations shall be held as directed by the local authority adopting the ordinance. The provisions of any ordinance shall be consistent with the substantive provisions of the Air Quality Control Act and shall

provide for standards and regulations not lower than those required by regulations adopted by the environmental improvement board.

D. Notwithstanding the provisions of Subsection A of this section, the environmental improvement board and the secretary shall retain jurisdiction and control for the administration and enforcement of the Air Quality Control Act as determined in that act with respect to any act or failure to act, governmental or proprietary, of any local authority that causes or contributes to air pollution, including proceeding against a local authority as provided in Section 74-2-12 NMSA 1978. "Failure to act", as used in this section, includes failure to act against any person violating the applicable ordinance or regulation adopted pursuant thereto.

E. Any local authority that is located within a transportation-related pollutant nonattainment area or maintenance area may provide for a vehicle emission inspection and maintenance program for vehicles under twenty-six thousand pounds gross vehicle weight powered by a spark-ignited internal combustion engine, which program shall be no more stringent than that required under the federal act or under federal air quality standards. Any two or more local authorities may adopt identical rules and regulations necessary to implement the vehicle emission inspection and maintenance program, including examining the alternatives of public or private operation of the program.

F. Any local authority that has implemented a vehicle emission inspection and maintenance program may extend the enforcement of that program by entering into joint powers agreements with any municipality or county within the designated airshed or with the department.

G. No tax shall be imposed to fund any vehicle emission inspection and maintenance program until the local authority has submitted the question of imposition of a tax to the registered voters of the local authority and those registered voters have approved the imposition of the tax.

H. A local authority having a vehicle emission inspection and maintenance program shall conduct the vehicle emission inspection and maintenance program through a decentralized privately owned and operated system unless air quality emissions result in automatic implementation of another type of program under the terms of a contingency plan required and approved by the United States environmental protection agency. The local authority shall set the emission inspection fee by ordinance.

I. A local authority having a vehicle emission inspection and maintenance program is authorized to adopt rules, regulations and guidelines governing the establishment of private vehicle emission inspection and maintenance stations. No private vehicle emission inspection and maintenance station shall test vehicles unless the station possesses a valid permit issued by the local agency. Permit fees shall be determined by ordinance of the local authority and shall not exceed two hundred dollars

(\$200) per year per station. Additionally, a local authority may charge a permit fee of up to thirty-five dollars (\$35.00) per year for each vehicle emissions mechanic and for each vehicle emissions inspector. The imposition of permit fees does not require a vote of the registered voters of the local authority."

HOUSE BILL 774

CHAPTER 129

RELATING TO MOTOR VEHICLES; AMENDING AND ENACTING SECTIONS OF THE MOTOR VEHICLE CODE REGARDING ELIGIBILITY CRITERIA FOR SPECIAL PLATES AND PLACARDS FOR DISABLED PERSONS; MAKING AN APPROPRIATION.

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

Section 1

Section 1. Section 66-3-16 NMSA 1978 (being Laws 1978, Chapter 35, Section 36, as amended) is amended to read:

"66-3-16. SPECIAL REGISTRATION PLATES--DISABLED PERSONS--DISPLAY DEVICE.--

A. The division shall issue distinctive registration plates to any disabled person who so requests and who proves satisfactorily to the division that he has suffered the loss, or the complete and total loss of use of, one or both legs at or above the ankle or of one or both arms at or above the wrist for use on motor vehicles owned by the person. No fee in addition to the regular registration fee, if any, applicable to the motor vehicle shall be collected for issuance of special registration plates pursuant to this section.

B. No person shall falsely represent himself to be disabled as to be eligible to be issued special registration plates or display devices pursuant to this section when he is in fact not disabled.

Upon notice and opportunity to be heard, the division may revoke and demand return of any placard when:

- (1) it was issued in error or with false information;
- (2) the person receiving the placard is no longer eligible; or
- (3) the placard is being used by ineligible persons.

C. Upon written application to the division accompanied by a medical statement by a licensed physician attesting to the disability, a resident of the state who

has a disability that limits or impairs the ability to walk, as provide in Subsection G of this section, may apply for and be granted the issuance of a placard for display upon a motor vehicle registered to him or motor vehicle owned by another person who is transporting him. The director may charge a reasonable fee to cover the cost of the placard and of its issuance. The fee shall be retained by the division and shall be appropriated to the division for expenditures incurred in the implementation of the placard replacement program.

D. A placard issued pursuant to this section shall expire in no more than two years.

E. The division shall issue two-sided hanger-style placards with the following characteristics:

(1) the international symbol of access shall be displayed on both sides of the placard and shall be at least three inches in height, centered on the placard and white on a blue shield;

(2) an identification number enabling the division to identify the holder of each placard. The division shall maintain this information in a readily retrievable format and make it available on demand to any law enforcement agency;

(3) the date of expiration; and

(4) the division seal or other identification of the issuing authority.

F. Upon written application to the division accompanied by a medical statement from a licensed physician attesting to a temporary disability, a person who has a temporary disability that limits or impairs the ability to walk may be issued a temporary placard, which shall be distinguishable in appearance from placards valid for two years. The medical statement shall include the period of time that the physician determines the applicant will have the disability. A temporary placard issued pursuant to this section shall be valid no more than six months.

G. For the purpose of obtaining a placard, a person with a "disability that limits or impairs the ability to walk" means the person:

(1) cannot walk one hundred feet without stopping to rest;

(2) cannot walk without the use of a brace, a cane, a crutch, another person, a prosthetic device, a wheelchair or another assistive device;

(3) is restricted by lung disease to such an extent that the person's forced respiratory volume, when exhaling for one second, when measured by spirometry, is less than one liter or the arterial oxygen tension is less than sixty millimeters on room air at rest;

(4) uses portable oxygen;

(5) has a severe cardiac condition; or

(6) is so severely limited in his ability to walk due to an arthritic, neurologic or orthopedic condition that the person cannot ascend or descend more than ten stair steps.

H. Special registration plates or placards issued to the disabled person by another state or foreign jurisdiction shall be granted reciprocity while the vehicle and disabled operator are in this state for a period not to exceed thirty days.

I. All placards shall be issued in accordance with this section beginning on July 1, 1995. All placards issued prior to July 1, 1995 shall expire on July 1, 1996."

Section 2

Section 2. A new section 66-3-16.1 NMSA 1978 is enacted to read:

"66-3-16.1. PROVIDING FALSE INFORMATION--PENALTY.-- Any person who provides false information in order to acquire, or who assists an unqualified person in acquiring, a special registration plate or special placard as provided in Section 66-3-16 NMSA 1978, is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978."

Section 3

Section 3. A new section of the Motor Vehicle Code is enacted to read:

"ADMINISTRATIVE HEARING--PROCEDURE--APPEALS FROM SECRETARY'S DECISION AND ORDER--EXHAUSTION OF ADMINISTRATIVE REMEDIES.--

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 taken 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 any hearing conducted on the protest under Subsection D of this section. The secretary may, in appropriate cases, provide for an informal conference before setting a hearing of the protest.

B. 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 or inaction proposed by the department.

C. Upon timely receipt of a protest, the department or hearing officer shall promptly set a date for hearing and on that date hear the protest.

D. A hearing officer shall be designated by the secretary to conduct the hearing. A person may appear at a hearing for himself or be represented by a bona fide employee or an attorney. Hearings shall not be open to the public except upon request of the person and may be postponed or continued at the discretion of the hearing officer.

E. In hearings before the hearing officer, the technical rules of evidence shall not apply, but in ruling on the admissibility of evidence, the hearing officer may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt.

F. In hearings before the hearing officer, the Rules of Civil Procedure for the District Courts shall not apply, but the hearing shall be conducted so that both complaints and defenses are amply and fairly presented. To this end, 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.

G. In the case of the hearing of any protest, the hearing officer shall make and preserve a complete record of the proceedings. At the beginning of the hearing, the hearing officer shall inform the person of the person's right to representation. The hearing officer, within thirty days of the hearing, shall inform the protestant in writing of the decision, informing the protestant at the same time of the 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 thereof as seems appropriate.

H. If the protestant or secretary is dissatisfied with the decision and order of the hearing officer, the party may appeal pursuant to the provisions of the Administrative Procedures Act.

I. No court of this state has jurisdiction to entertain any 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 secretary or hearing officer as provided for in this section.

J. Nothing in this section shall be construed to authorize any criminal proceedings hereunder or to authorize an administrative protest of the issuance of a subpoena or summons."

Section 4

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE BILL 784

CHAPTER 130

RELATING TO PUBLIC PURCHASES; EXCLUDING REGIONAL EDUCATION COOPERATIVES FROM THE REQUIREMENT OF PROCUREMENT THROUGH THE STATE PURCHASING AGENT.

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

Section 1

Section 1. Section 13-1-99 NMSA 1978 (being Laws 1984, Chapter 65, Section 72, as amended) is amended to read:

"13-1-99. EXCLUDED FROM CENTRAL PURCHASING THROUGH THE STATE PURCHASING AGENT.--Excluded from the requirement of procurement through the state purchasing agent but not from the requirements of the Procurement Code are the following:

- A. procurement of professional services;
- B. small purchases having a value not exceeding two hundred fifty dollars (\$250);
- C. emergency procurement;
- D. procurement of highway construction or reconstruction by the state highway and transportation department;
- E. procurement by the judicial branch of state government;
- F. procurement by the legislative branch of state government;
- G. procurement by the boards of regents of state educational institutions named in Article 12, Section 11 of the constitution of New Mexico;

H. procurement of information processing resources procured through the commission on information and communication management;

I. procurement by the state fair commission of tangible personal property, services and construction under five thousand dollars (\$5,000);

J. procurement by the intertribal Indian ceremonial association;

K. purchases from the instructional material fund;

L. procurement by all local public bodies;

M. procurement by regional education cooperatives; and

N. procurement by each state health care institution that provides direct patient care and that is, or a part of which is, medicaid certified and participating in the New Mexico medicaid program."

HOUSE BILL 823

CHAPTER 131

RELATING TO CRIMINAL LAW; CLARIFYING THAT EACH SEPARATE INCIDENT OF EMBEZZLEMENT IS A SEPARATE AND DISTINCT OFFENSE; AMENDING A SECTION OF THE CRIMINAL CODE.

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

Section 1

Section 1. Section 30-16-8 NMSA 1978 (being Laws 1963, Chapter 303, Section 16-7, as amended) is amended to read:

"30-16-8. EMBEZZLEMENT.--Embezzlement consists of the embezzling or converting to his own use of anything of value, with which he has been entrusted, with fraudulent intent to deprive the owner thereof. Each separate incident of embezzlement or conversion constitutes a separate and distinct offense.

Whoever commits embezzlement when the value of the thing embezzled or converted is one hundred dollars (\$100) or less is guilty of a petty misdemeanor.

Whoever commits embezzlement when the value of the thing embezzled or converted is over one hundred dollars (\$100) but not more than two hundred fifty dollars (\$250) is guilty of a misdemeanor.

Whoever commits embezzlement when the value of the thing embezzled or converted is over two hundred fifty dollars (\$250) but not more than two thousand five hundred dollars (\$2,500) is guilty of a fourth degree felony.

Whoever commits embezzlement when the value of the thing embezzled or converted is over two thousand five hundred dollars (\$2,500) but not more than twenty thousand dollars (\$20,000) is guilty of a third degree felony.

Whoever commits embezzlement when the value of the thing embezzled or converted exceeds twenty thousand dollars (\$20,000) is guilty of a second degree felony."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE BILL 843

CHAPTER 132

RELATING TO THE ENVIRONMENT; AMENDING THE SOLID WASTE ACT;
INCREASING CERTAIN PENALTIES; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 74-9-31 NMSA 1978 (being Laws 1990, Chapter 99, Section 31) is amended to read:

"74-9-31. PROHIBITED ACTS.--

A. Except as provided in Section 73 of the Solid Waste Act and Subsection B of this section, no person shall:

(1) dispose of any solid waste in a place other than a solid waste facility:

(a) having a permit issued under the Solid Waste Act;

(b) having a permit for solid waste disposal issued under the Environmental Improvement Act; or

(c) otherwise authorized to accept solid waste for disposal or transformation under regulations adopted by the board under the Environmental Improvement Act;

(2) dispose of any solid waste in a solid waste facility when a regulation of the board prohibits the disposal of that particular type of solid waste in that facility;

(3) construct, operate or close a solid waste facility unless the facility has a permit from the division for the described action;

(4) modify a solid waste facility unless the facility has applied for and received permission from the director for the modification pursuant to regulations adopted under Section 74-9-25 NMSA 1978; or

(5) dispose of any solid waste in this state in a manner that harms the environment or endangers the public health or safety.

B. The provisions of Subsection A of this section do not prohibit:

(1) a person who is a homeowner, residential lessee or tenant or agricultural enterprise from disposing on the property he owns, rents or leases solid waste generated on that property;

(2) a person occupying property from disposing of domestic solid waste generated on the property if the property is located in a place that makes it not feasible to dispose of the solid waste in a permitted solid waste facility and the disposal of the solid waste does not harm the environment or endanger the public health or safety and does not violate any provision of the Solid Waste Act or any regulation adopted under that act; or

(3) a person in possession of property from disposing on that property construction and demolition debris or yard refuse generated on the property if the disposition of the solid waste does not violate any provision of the Solid Waste Act or any regulation adopted under that act."

Section 2

Section 2. Section 74-9-37 NMSA 1978 (being Laws 1990, Chapter 99, Section 37) is amended to read:

"74-9-37. PENALTY--CRIMINAL.--

A. Any person who knowingly violates any paragraph of Subsection A of Section 74-9-31 MSA 1978:

(1) if the violation involves a quantity of solid waste that is less than five thousand pounds, is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978; or

(2) if the violation involves a quantity of solid waste that is five thousand pounds or greater, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

B. Any person who knowingly violates any paragraph of Subsection A of Section 74-9-31 NMSA 1978 and the violation involves any quantity of infectious waste is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Any person who is convicted of a second or subsequent violation of Section 74-9-31 NMSA 1978 pursuant to the provisions of Paragraph (2) of Subsection A or Subsection B or D of this section is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

D. Any person who knowingly omits any material information or knowingly makes a false material statement or representation required pursuant to the provisions of Section 74-9-20 or 74-9-21 NMSA 1978 is guilty of a fourth degree felony and shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978."

Section 3

Section 3. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 844 WITH EMERGENCY CLAUSE
SIGNED APRIL 5, 1995

CHAPTER 133

RELATING TO WATER; AMENDING A SECTION OF THE WATER QUALITY ACT TO EXEMPT CONTAMINANTS FROM NATURAL CAUSES, IRRIGATION OR FLOOD CONTROL FACILITIES.

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

Section 1

Section 1. Section 74-6-12 NMSA 1978 (being Laws 1967, Chapter 190, Section 11, as amended) is amended to read:

"74-6-12. LIMITATIONS.--

A. The Water Quality Act does not grant to the commission or to any other entity the power to take away or modify the property rights in water, nor is it the intention of the Water Quality Act to take away or modify such rights.

B. The Water Quality Act does not apply to any activity or condition subject to the authority of the environmental improvement board pursuant to the Hazardous Waste Act, the Ground Water Protection Act or the Solid Waste Act except to abate water pollution or to control the disposal or use of septage and sludge.

C. The Water Quality Act does not authorize the commission to adopt any regulation with respect to any condition or quality of water if the water pollution and its effects are confined entirely within the boundaries of property within which the water pollution occurs when the water does not combine with other waters.

D. The Water Quality Act does not grant to the commission any jurisdiction or authority affecting the relation between employers and employees with respect to or arising out of any condition of water quality.

E. The Water Quality Act does not supersede or limit the applicability of any law relating to industrial health, safety or sanitation.

F. Except as required by federal law, in the adoption of regulations and water quality standards and in an action for enforcement of the Water Quality Act and regulations adopted pursuant to that act, reasonable degradation of water quality resulting from beneficial use shall be allowed. Such degradation shall not result in impairment of water quality to the extent that water quality standards are exceeded.

G. The Water Quality Act does not apply to any activity or condition subject to the authority of the oil conservation commission pursuant to provisions of the Oil and Gas Act, Section 70-2-12 NMSA 1978 and other laws conferring power on the oil conservation commission to prevent or abate water pollution.

H. When dissolved oxygen, sediment or turbidity in a water of the state is attributable to natural causes or to the reasonable operation of irrigation and flood control facilities, numerical standards for dissolved oxygen, sediment or turbidity adopted under the Water Quality Act do not apply. "Reasonable operation", as used in this subsection, shall be defined by regulation of the commission."

HOUSE BILL 846

CHAPTER 134

RELATING TO FINANCIAL INSTITUTIONS; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 59A-12-10 NMSA 1978 (being Laws 1984, Chapter 127, Section 211, as amended) is amended to read:

"59A-12-10. LICENSING PROHIBITED AS TO LENDING INSTITUTION, PUBLIC UTILITY OR CREDIT UNION--DEFINITIONS AND EXCEPTIONS.--

A. No lending institution, public utility, credit union or holding company subsidiary or affiliate of any of the foregoing may directly or indirectly be licensed to sell insurance or act as a broker for insurance in this state, except that a lending institution or a holding company, subsidiary or affiliate of a lending institution may be licensed:

(1) to sell credit life, health and accident insurance, lienholders collateral protection insurance and mortgage guaranty insurance in accordance with regulations promulgated by the superintendent;

(2) to sell any insurance, where the lending institution is a state or national bank, in communities the population of which does not exceed five thousand inhabitants as shown by the last preceding decennial census, in accordance with regulations promulgated by the superintendent; and

(3) to sell annuities to the extent authorized by federal and state bank regulators. Nothing in this paragraph shall affect the rights and obligations of nationally chartered financial institutions.

B. The superintendent may promulgate regulations to effectuate the purposes of this section, which are to help maintain the separation between lending institutions, public utilities, credit unions or holding companies and the insurance business and to minimize the possibilities of unfair competitive practices by lending institutions, public utilities, credit unions and holding companies in the sale of insurance.

C. For the purpose of this section, the following definitions shall apply:

(1) "lending institution" means any institution whose primary business is accepting deposits and lending money from a place of business in the state, including banks, savings and loan associations and credit unions, but does not include insurance companies;

(2) the terms "holding company", "subsidiary", "affiliate" and related terms shall be defined according to regulations promulgated by the superintendent,

except that "bank holding company" shall mean and include the definition of such term in Section 2 of the federal Bank Holding Act of 1956, as amended;

(3) "public utility" means a private employer subject to the jurisdiction of the New Mexico public utility commission and engaged in the business of rendering electric, gas, water and steam heat services to the public;

(4) "credit life, health and accident insurance" means insurance on the life and health of a borrower from a lending institution to secure the repayment of the amount borrowed in accordance with regulations promulgated by the superintendent; and

(5) "lienholders collateral protection insurance" means insurance on the personal property of a borrower from a lending institution to secure the repayment of the amount borrowed in accordance with regulations promulgated by the superintendent.

D. Nothing contained in this section shall apply to any lending institution, public utility, credit union or holding company subsidiary or affiliate of the foregoing or any director, officer or employee thereof if, on May 1, 1979, such lending institution, public utility, credit union or holding company subsidiary or affiliate of the foregoing or any director, officer or employee thereof was licensed to operate and was conducting an insurance agency business in conformity with all federal and state laws applicable thereto. Except as otherwise provided in applicable federal bankruptcy law, 11 USC Section 101 et seq., this authority to operate and conduct an insurance agency business continues only so long as there is continuous and ongoing operation of the insurance agency business. No entity subject to the provisions of this subsection shall be licensed to operate an insurance agency business if the insurance agency business is not operated continuously or if either the insurance agency business or other business of the entity is sold, goes into receivership or conservatorship or is taken over by a state or federal regulatory entity, agency or department by reason of insolvency or any other reason necessitating federal or state intervention.

E. No person licensed to sell insurance in this state shall be prohibited from serving as a director, officer or employee of a lending institution, public utility, credit union or holding company subsidiary or affiliate of the foregoing if he conducts his insurance activities free of ownership or control of the lending institution, public utility, credit union or holding company subsidiary or affiliate of the foregoing and the lending institution, public utility, credit union or holding company subsidiary or affiliate of the foregoing does not participate directly in the earnings from his insurance activities.

F. A lending institution may take a security interest in the expirations of an insurance agent and upon default may acquire such assets. During the period the lending institution holds the expirations of an insurance agent by default, the lending institution may have an officer or employee licensed to continue operations, but must dispose of any insurance agency operations within one year of acquisition unless this

period is extended by the superintendent upon a showing of hardship."

HOUSE BILL 863

CHAPTER 135

RELATING TO MOTOR VEHICLES; AMENDING CERTAIN PROVISIONS OF THE MOTOR VEHICLE CODE; AMENDING, REPEALING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

Section 1

Section 1. Section 66-1-4.14 NMSA 1978 (being Laws 1990, Chapter 120, Section 15) is amended to read:

"66-1-4.14. DEFINITIONS.--As used in the Motor Vehicle Code:

A. "park" or "parking" means the standing of a vehicle, whether occupied or not, other than temporarily for the purpose of and while actually engaged in loading and unloading;

B. "parking lot" means a parking area containing fifteen or more parking spaces provided for the free use of patrons of any office of state or local government or of any public accommodation, retail or commercial establishment;

C. "parts car" means a motor vehicle generally in nonoperable condition that is owned by a collector to furnish parts that are usually nonobtainable from normal sources, thus enabling a collector to preserve, restore and maintain a motor vehicle of historic or special interest;

D. "pedestrian" means any natural person on foot;

E. "person" means every natural person, firm, copartnership, association, corporation or other legal entity;

F. "personal information" means information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address other than zip code, telephone number and medical or disability information, but "personal information" does not include information on vehicles, vehicle ownership, vehicular accidents, driving violations or driver status;

G. "pneumatic tire" means every tire in which compressed air is designed to support the load;

H. "pole trailer" means any vehicle without motive power, designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, structures, pipes and structural members capable, generally, of sustaining themselves as beams between the supporting connections;

I. "police or peace officer" means every officer authorized to direct or regulate traffic or to make arrests for violations of the Motor Vehicle Code;

J. "private road or driveway" means every way or place in private ownership used for vehicular travel by the owner and those having express or implied permission from the owner, but not other persons; and

K. "property owner" means the owner of a piece of land or the agent of that property owner."

Section 2

Section 2. A new section of the Motor Vehicle Code, Section 66-1-5 NMSA 1978, is enacted to read:

"66-1-5. MEASUREMENTS.--Whenever any provision of the Motor Vehicle Code or regulations promulgated thereunder refers to weight, height, length, width or speed in English units of measurement, it also refers to the metric equivalent of those units."

Section 3

Section 3. Section 66-2-7 NMSA 1978 (being Laws 1978, Chapter 35, Section 11, as amended) is amended to read:

"66-2-7. RECORDS OF THE DEPARTMENT.--

A. All records of the department relating to the administration and enforcement of the Motor Vehicle Code and any other law relating to motor vehicles, the administration and enforcement of which is charged to the department, other than those declared by law to be confidential for the use of the department, shall be open to public inspection during office hours.

B. Disposition of obsolete records of the department relating to the administration and enforcement of the Motor Vehicle Code and any other law relating to motor vehicles, the administration and enforcement of which is charged to the department, shall be made in accordance with the provisions of the Public Records Act.

C. The department may copy or abstract records of the department relating to the administration and enforcement of the Motor Vehicle Code and any other law relating to motor vehicles, the administration and enforcement of which is charged to the department to the extent permitted by law. The copies or abstracts may be made in paper, electronic, microfilm, optical or other formats. Duly certified copies of official records shall be deemed valid and given the same weight and consideration as original records.

D. Any person may purchase copies, printouts or abstracts of records of the department described in Subsection A of this section. The copies, printouts or abstracts may be made in paper, electronic, microfilm, optical or other formats. The department may make a reasonable charge for the furnishing of all copies, printouts or abstracts. All fees so collected shall be paid to the state treasurer and distributed in accordance with Section 66-6-23 NMSA 1978."

Section 4

Section 4. A new section of the Motor Vehicle Code, Section 66-2-7.1 NMSA 1978, is enacted to read:

"66-2-7.1. MOTOR VEHICLE-RELATED RECORDS--CONFIDENTIAL.--

A. It is unlawful for any department employee or contractor or for any former department employee or contractor to disclose to any person other than another employee of the department any personal information about an individual obtained by the department in connection with a driver's license or permit, the titling or registration of a vehicle or an identification card issued by the department pursuant to the Motor Vehicle Code except:

(1) to the individual or the individual's authorized representative;

(2) for use by any governmental agency, including any court, in carrying out its functions or by any private person acting on behalf of the government;

(3) for use in connection with matters of motor vehicle and driver safety or theft; motor vehicle emissions; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities, including survey research; motor vehicle production alterations, recalls or advisories and removal of non-owner records from original owner records of motor vehicle manufacturers;

(4) for use in research activities, and for use in producing statistical reports so long as the personal information is not published, redisclosed or used to contact individuals;

(5) for use by any insurer or insurance support organization or by a self-insured entity or its agents, employees or contractors, in connection with claims investigation activities, antifraud activities, rating or underwriting;

(6) for providing notice to owners of towed or impounded vehicles;

(7) for use by an employer or its agent or insurer in obtaining or verifying information relating to a holder of a commercial driver's license;

(8) for use by any requester, if the requester demonstrates that it has obtained the written consent of the individual to whom the information pertains; or

(9) for any use in response to requests for individual motor vehicle records, if the department has provided in a clear and conspicuous manner on forms for issuance or renewal of operator's permits, titles, registrations or identification cards, notice that personal information collected by the department may be disclosed to any person, and the department has provided in a clear and conspicuous manner on such forms an opportunity to prohibit such disclosures.

B. Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished in accordance with the provisions of Section 31-19-1 NMSA 1978."

Section 5

Section 5. Section 66-2-11 NMSA 1978 (being Laws 1978, Chapter 35, Section 15) is amended to read:

"66-2-11. GIVING OF NOTICE.--Whenever the department 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 his 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 6

Section 6. Section 66-2-14 NMSA 1978 (being Laws 1978, Chapter 35, Section 18, as amended) is amended to read:

"66-2-14. APPOINTMENT OF AGENTS--TERMINATION.--

A. Whenever the secretary deems it necessary for the purpose of effecting economy in carrying out the functions of the department and for the purpose of providing necessary service to the people of this state, the secretary may appoint agents to receive applications for registration, to collect fees and revenues, to issue all licenses or permits and to act for the department in carrying out the duties imposed by law.

B. The department may specify the functions or services to be performed by agents pursuant to Subsection A of this section and may limit the amount to be paid to such agent by contract. The department may terminate the designation of any agent for failure of the agent to perform to the secretary's satisfaction the agent's duties by notifying the agent of the termination. Agency agreements may provide for the form of notice and the length of the period, if any, between the notice and the effective date of the termination."

Section 7

Section 7. Section 66-2-14.1 NMSA 1978 (being Laws 1985, Chapter 95, Section 2, as amended) is amended to read:

"66-2-14.1. FEE AGENT DESIGNATION--TERMINATION.--

A. Any class A county or municipality within a class A county which has adopted an ordinance for a vehicle emission inspection and maintenance program pursuant to Subsection C of Section 74-2-4 NMSA 1978 may be designated by the department as an agent for the registration and re-registration of motor vehicles whose registered owner's address, as shown in the records of the department, is within the class A county or municipality within the class A county.

B. When designated as an agent pursuant to this section, the county or municipality shall provide for effective enforcement to ensure compliance with the state motor vehicle registration laws and the vehicle emission inspection and maintenance program. Enforcement shall include but not be limited to denial of motor vehicle registration to any vehicle which fails to pass the vehicle emission inspection.

C. When designated as an agent pursuant to this section, the county or municipality shall reimburse the department for any additional costs incurred by the department as a result of the designation of the county or municipality as an agent. Money reimbursed to the department is appropriated to the department for administration and enforcement of the Motor Vehicle Code.

D. The department may terminate the designation of any agent for failure of the agent to perform to the secretary's satisfaction the agent's duties by notifying the agent of the termination. Agency agreements may provide for the form of notice and the length of the period, if any, between the notice and the effective date of the termination."

Section 8

Section 8. Section 66-3-3 NMSA 1978 (being Laws 1978, Chapter 35, Section 23) is amended to read:

"66-3-3. REGISTRATION CARD--SPECIAL PLATE OR STICKER--DECLARED GROSS WEIGHT.--

A. Each registration card issued for a truck, truck tractor, road tractor or bus shall show the declared gross weight of the vehicle.

B. A special plate or sticker may be issued displaying the declared gross weight. When issued, the special plate or sticker shall be attached to the motive power unit and shall remain attached in such place and manner as is specified by the department."

Section 9

Section 9. Section 66-3-8 NMSA 1978 (being Laws 1978, Chapter 35, Section 28) is amended to read:

"66-3-8. EXAMINATION OF REGISTRATION RECORDS AND INDEX OF STOLEN AND RECOVERED VEHICLES.--The department, upon receiving application for original registration of a vehicle or any certificate of title, shall first check the engine or other standard identification number provided by the manufacturer of the vehicle shown in the application against its own records, the records of the national crime information center and other records as appropriate."

Section 10

Section 10. Section 66-3-9 NMSA 1978 (being Laws 1978, Chapter 35, Section 29) is amended to read:

"66-3-9. REGISTRATION INDEXES.--The department shall file each application received for registration of a vehicle. When satisfied as to the genuineness and regularity of the application and that the applicant is entitled to register the vehicle and to the issuance of a certificate of title, the department shall register the vehicle described and keep a suitable record thereof."

Section 11

Section 11. Section 66-3-14 NMSA 1978 (being Laws 1978, Chapter 35, Section 34, as amended) is amended to read:

"66-3-14. REGISTRATION PLATES OR VALIDATING STICKERS TO BE FURNISHED BY DEPARTMENT--REFLECTIVE MATERIAL.--

A. The department upon registering a vehicle shall issue a registration plate or a validating sticker to the owner of the vehicle. The validating sticker may be designed and required to be placed on the registration plate or elsewhere on the vehicle as prescribed by the department.

B. Each registration plate shall have a background of reflective material such that the registration number assigned to the vehicle is plainly legible from a distance of one hundred feet at night. The colors shall include those of the state flag, except prestige and special plates.

C. Each registration plate shall have displayed upon it:

(1) the registration number assigned to the person to whom it was issued; and

(2) the name of this state.

D. The department shall issue no registration plates for privately owned vehicles that contain the words "staff officer" or any other title except as otherwise provided by law.

E. All registration plates for private vehicles shall be alike in form except for the owner's registration number. The department shall adopt registration number systems for registration plates.

F. In lieu of or in addition to a registration plate or sticker for commercial motor vehicles, the department may issue an electronic identifying device."

Section 12

Section 12. Section 66-3-19 NMSA 1978 (being Laws 1978, Chapter 35, Section 39, as amended) is amended to read:

"66-3-19. RENEWAL OF REGISTRATION--STAGGERED PERIOD FOR VEHICLES--EXCEPTION FOR MANUFACTURED HOMES AND FREIGHT TRAILERS--LATE REGISTRATION.--

A. The department, in order to operate a more uniform system of vehicle registration, is authorized for certain or all vehicles to:

(1) prorate registration fees by monthly increments, but after the initial registration adjustment period, renewals of registration shall be for a full twelve-month period;

(2) determine the specific registered vehicle owners and the numbers of these to be assigned to each registration period in order to maintain the system;

(3) notify each registered vehicle owner by mail at the last known address within an appropriate period prior to the beginning of the registration period to which the owner has been assigned. The notice shall include a renewal-of-registration application form specifying the amount of registration fees due and the specific dates of the registration period covered by the renewal application;

(4) provide for the retention of registration plates;

(5) provide for the issuance of validating stickers to be affixed either to retained registration plates or elsewhere on the vehicles as prescribed by the department to signify the registration of the vehicles for the current registration period; and

(6) provide for identification purposes clearly recognizable distinctions between current and expired registration plates. To this end, the department, by whatever system or device the secretary may direct and which is approved by the chief of the New Mexico state police division of the department of public safety, shall ensure a practicable display of the proper and current registration of vehicles.

B. Certificates of title need not be renewed annually but shall remain valid until canceled by the department for cause or upon transfer of any interest shown in the certificate of title.

C. The vehicle registration of vehicles registered under the provisions of Subsection A of this section expires on the last day of the twelve-month period for which the vehicle has been registered. Every vehicle registration other than vehicles registered in accordance with Subsection A of this section, manufactured homes and freight trailers expires December 31. The department may receive applications for renewal of registration and may issue new registration evidence and registration plates or validating stickers at any time prior to expiration of registration.

D. The registration of a manufactured home or freight trailer need not be renewed annually, and the initial registration shall be effective and considered a current registration for the purpose of the Motor Vehicle Code as long as the ownership of the vehicle is not transferred. The transfer of title provisions of the Motor Vehicle Code do apply to manufactured homes and freight trailers, and the transferee is required to register the vehicle in accordance with Section 66-3-103 NMSA 1978. The department is authorized and directed to issue distinctive registration plates for manufactured homes and freight trailers that identify the plates as permanent registration plates.

E. It is unlawful to operate or transport or cause to be transported upon any highways in this state any vehicle, except a commercial motor vehicle registered in another state or a manufactured home, subject to registration under the provisions of the Motor Vehicle Code without having paid the registration fee or without having secured and constantly displayed the registration plate required by the Motor Vehicle Code. If a vehicle, other than a manufactured home, is operated or transported after the expiration of the vehicle registration, the owner of the vehicle is subject to a penalty of the greater of ten dollars (\$10.00) or, if the vehicle is operated or transported thirty-one or more days after the expiration of the registration, an amount equal to seventy-five percent of the registration fee. Any duly appointed deputy or agent of the department has the authority to seize the vehicle and hold it until the fee, penalty and any fine that may be imposed for violation of law are paid and may sell the vehicle in the manner provided by law for the distraint and sale of personal property.

F. It is unlawful to operate, transport or cause to be transported upon any highways in this state or to maintain in any place in this state a manufactured home subject to registration under the provisions of the Motor Vehicle Code without having paid the registration fee or without having secured and constantly displayed the registration plate required by the Motor Vehicle Code. Violation of this subsection subjects the owner to a penalty of five dollars (\$5.00), and no other administrative penalty for failure to register under the Motor Vehicle Code shall be imposed upon manufactured homes that are subject to the provisions of Section 66-6-10 NMSA 1978. Any duly appointed deputy or agent of the department has authority to seize the manufactured home and hold it until the fee, penalties and any fine that may be imposed for violation of law are paid and may sell the manufactured home in the manner provided by law for the distraint and sale of personal property.

G. This section authorizes a staggered system of registration of vehicles."

Section 13

Section 13. Section 66-3-201 NMSA 1978 (being Laws 1978, Chapter 35, Section 73) is amended to read:

"66-3-201. FILING SECURITY INTERESTS.--

A. A security interest in a vehicle of a type required to be titled and registered in New Mexico is not valid against attaching creditors, subsequent transferees or lienholders unless perfected as provided by this section. This provision does not apply to liens dependent upon possession nor to property tax liens on manufactured homes perfected under Section 66-3-204 NMSA 1978.

B. Title applications may be submitted electronically to the department but all title applications shall be accompanied by the certificate of title last issued for the vehicle and shall contain the name and address of any lienholder, the date the security agreement was executed and the maturity date of the agreement.

C. Upon receipt of a title application, the department shall record the date it was received. When satisfied as to the genuineness of the application, the department shall file it and issue a new certificate of title showing the owner's name and all liens existing against the vehicle.

D. No security interest filed in any state which does not show all liens on the certificate of title shall be valid against any person in this state other than the parties to the security agreement or those persons who take with actual notice of the agreement."

Section 14

Section 14. Section 66-3-302 NMSA 1978 (being Laws 1978, Chapter 35, Section 78) is amended to read:

"66-3-302. CARAVAN TAX.--

A. No person or any employee, agent or representative of the person shall use the highways of New Mexico for the transportation of any vehicle regardless of whether the vehicle is registered in another state or whether the vehicle is transported on its own wheels or on another vehicle or by being drawn or towed behind another, if the vehicle is transported by any person, or the agents or employees of that person engaged in the business of transporting vehicles or if the vehicles are being transported for the purpose of delivery to any purchaser of the vehicles on a sale or contract of sale previously made, unless the vehicle carries:

(1) a valid New Mexico registration plate;

(2) a valid dealer's plate issued by the department;

(3) a special permit for the use of the highways of this state for the transportation of the vehicle in the manner in which the vehicle is being

transported, which has first been obtained and the fee paid as specified in this section; or

(4) a valid temporary transportation permit issued under Subsection B of Section 66-3-6 NMSA 1978.

B. Special permits for the use of the highways of this state for the transportation of such vehicles shall be issued by the department upon application on the form prescribed by the department and upon payment of a fee of seven dollars fifty cents (\$7.50) for each vehicle transported by use of its own power and a fee of five dollars (\$5.00) for each vehicle carried in or on another vehicle or towed or drawn by another vehicle and not transported in whole or in part by the use of its own power. Every permit shall show upon its face the registration number assigned to each vehicle, the name and address of the owner, the manner of transportation authorized and a description of the vehicle registered, including the engine number. The permit shall be carried at all times by the person in charge of the vehicle. A suitable tag or placard for each vehicle may be issued by the department and, if issued, shall be at all times displayed on each vehicle being transported. No such permit, tag or placard shall be used upon or in connection with the transportation of any vehicle other than the one for which the permit, tag or placard is issued.

C. This tax shall not apply to the transportation of vehicles carried on another vehicle for the operation of which a weight distance tax is paid, nor shall the vehicle transported be required to carry a registration plate or temporary transportation permits. The motor transportation division of the department and the New Mexico state police are authorized to impound any vehicle transported in violation of the Motor Transportation Act until a proper permit has been secured and any fine levied has been paid."

Section 15

Section 15. Section 66-3-501 NMSA 1978 (being Laws 1978, Chapter 35, Section 88) is amended to read:

"66-3-501. REPORT OF STOLEN AND RECOVERED MOTOR VEHICLES.--

A. Every sheriff, chief of police or peace officer upon receiving reliable information that any vehicle registered under the Motor Vehicle Code has been stolen shall immediately, but in no case later than one week after receiving the information, report the theft to the New Mexico state police unless prior thereto, information has been received of the recovery of the vehicle. Any officer, upon receiving information that any vehicle which he has previously reported as stolen has been recovered, shall immediately report the fact of recovery to the local sheriff's office or police department and to the New Mexico state police.

B. The requirement that the theft or recovery of a vehicle be reported to the New Mexico state police is satisfied if the report is made to the national crime information center."

Section 16

Section 16. Section 66-5-6 NMSA 1978 (being Laws 1978, Chapter 35, Section 228, as amended) is amended to read:

"66-5-6. HEALTH STANDARDS ADVISORY BOARD.--

A. There shall be an advisory board consisting of at least three members of the healing arts professions appointed by the secretary after consultation with the secretary of health. For members appointed after June 30, 1995, terms shall be limited to four years but members may be appointed to serve consecutive terms.

B. The board shall advise the department on physical and mental criteria and vision standards relating to the licensing of drivers under the provisions of the Motor Vehicle Code, including identifying sources of information regarding the criteria and standards. The department shall adopt regulations establishing those criteria and standards.

C. The department, having cause to believe that a licensed driver or applicant may not be physically, visually or mentally qualified to be licensed, may obtain the advice of the board. The board may formulate its advice from records and reports or may cause an examination and report to be made by one or more members of the board or any other qualified person it may designate. The licensed driver or applicant may cause a written report to be forwarded to the board by a healing arts practitioner of his choice, and it shall be given due consideration by the board.

D. Members of the board and other persons making examinations shall not be held liable for their opinions and recommendations presented pursuant to this section.

E. The department shall pay members of the board per diem and mileage as provided in the Per Diem and Mileage Act and, in addition, may determine and pay an hourly rate for work performed not to exceed fifty dollars (\$50.00) per hour and not to exceed five hours per month.

F. Reports received or made by the board or its members for the purpose of assisting the department in determining whether a person is qualified to be licensed are for the confidential use of the board or the department and may not be divulged to any person or used as evidence in any trial."

Section 17

Section 17. Section 66-5-10 NMSA 1978 (being Laws 1978, Chapter 35, Section 232, as amended) is amended to read:

"66-5-10. APPLICATION FOR LICENSE--INFORMATION--TRANSFER TO LICENSE.--

A. Within the forms prescribed by the department for applications and licenses of drivers of motor vehicles, a space shall be provided to show whether the applicant is a donor as provided in the Uniform Anatomical Gift Act. Anyone applying for a license may, if he desires, indicate his donor status on the space provided on the application, and this information, if given by an applicant, shall be shown upon the license issued. The form and driver's license shall be signed by the donor in the presence of a witness who shall also sign the form in the donor's presence.

B. The department shall mark the donor status on each person's driver's license record and shall retain each application form or its image of a person who wishes to be a donor. The department shall create and maintain a statewide donor registry and shall provide on-line computer terminal access to the donor registry to organ procurement agencies and procurement organizations, as defined in the Uniform Anatomical Gift Act. Authorized hospital or organ and tissue donor program personnel, immediately prior to or after a donor's death, may request verification of the donor's status from the department and may obtain a copy of the application from the department."

Section 18

Section 18. Section 66-5-14 NMSA 1978 (being Laws 1978, Chapter 35, Section 236) is amended to read:

"66-5-14. EXAMINATION OF APPLICANTS.--

A. The department shall examine every first-time applicant for a driver's license or a motorcycle endorsement and may examine other applicants for a driver's license or motorcycle endorsement. The examination shall include a test of the applicant's ability to read and understand highway signs regulating, warning and directing traffic, the applicant's knowledge of the traffic laws of this state and an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle except as provided in Section 66-5-7 NMSA 1978 and any further physical and mental examination as the department finds necessary to determine the applicant's fitness to operate a motor vehicle or motorcycle safely upon the highways.

B. Regardless of whether an applicant is examined under Subsection A of this section, the department shall test the eyesight of every applicant for a driver's license or motorcycle endorsement.

C. The department is authorized to contract with other persons for conduct of tests of the applicant's ability to exercise ordinary and reasonable control of a motor vehicle. Any such contract may be terminated by the secretary upon written notice for failure of the contractor to perform his duties to the secretary's satisfaction. Contracts under this subsection may provide for the form of notice and the length of the period, if any, between the notice and the effective date of the termination.

D. For purposes of this section, a "first-time applicant" means an applicant other than a person who:

(1) holds a currently valid driver's license issued by New Mexico or any other jurisdiction at the time of application; or

(2) does not hold a currently valid driver's license issued by New Mexico or any other jurisdiction at the time of application but who held a valid driver's license issued by New Mexico or any other jurisdiction within one year prior to the date of application if that driver's license was not revoked under any provision of the Motor Vehicle Code or suspended, canceled or revoked under the laws of any other jurisdiction for reasons similar to those for which revocation is authorized under the Motor Vehicle Code."

Section 19

Section 19. Section 66-5-65 NMSA 1978 (being Laws 1989, Chapter 14, Section 14, as amended) is amended to read:

"66-5-65. CLASSIFICATIONS--ENDORSEMENTS--RESTRICTIONS.--

A. Commercial driver's licenses may be issued with the classifications, endorsements and restrictions enumerated in Subsections B, C and D of this section. The holder of a valid commercial driver's license may drive all vehicles in the class for which that license is issued, and all lesser classes of vehicles except motorcycles and vehicles that require an endorsement unless the proper endorsement appears on the license.

B. The following classifications shall apply to commercial driver's licenses:

(1) class A - any combination of vehicles with a gross vehicle weight or a declared gross vehicle weight of more than twenty-six thousand pounds, if the gross vehicle weight of the vehicle being towed is in excess of ten thousand pounds;

(2) class B - any single vehicle with a gross vehicle weight or a declared gross vehicle weight of more than twenty-six thousand pounds and any such vehicle towing a vehicle with a gross vehicle weight of ten thousand pounds or less; and

(3) class C - any single vehicle with a gross vehicle weight or a declared gross vehicle weight of twenty-six thousand pounds or less or any vehicle towing a vehicle with a gross vehicle weight of ten thousand pounds or less:

(a) designed to transport sixteen or more passengers, including the driver; or

(b) used in the transportation of hazardous materials, which requires the vehicle to be placarded under applicable law.

C. The secretary, by regulation, may provide for classifications in addition to those set forth in Subsection B of this section.

D. The following endorsements and restrictions shall apply to commercial driver's licenses:

(1) "H" - authorizes driving a vehicle transporting hazardous material;

(2) "L" - restricts the driver to vehicles not equipped with airbrakes;

(3) "T" - authorizes driving a vehicle towing more than one trailer;

(4) "P" - authorizes driving vehicles, other than school buses, carrying passengers;

(5) "N" - authorizes driving tank vehicles;

(6) "X" - represents a combination of the hazardous materials ("H") and tank vehicle ("N") endorsements; and

(7) "S" - authorizes driving a school bus."

Section 20

Section 20. Section 66-6-22 NMSA 1978 (being Laws 1978, Chapter 35, Section 357) is amended to read:

"66-6-22. WHEN FEES RETURNABLE--REFUNDS.--

A. Whenever any application to the department is accompanied by any fee as required by the Motor Vehicle Code or the Motor Transportation Act and the application is refused or rejected, the fee shall be returned to the applicant.

B. Any person who believes that any amount paid by that person to the department under any provision of the Motor Vehicle Code or the Motor

Transportation Act exceeded the amount due may claim a refund by directing to the secretary a written claim for refund in accordance with the procedures set out in Subsection A of Section 7-1-26 NMSA 1978. To be timely, any claim for refund pursuant to this subsection must be made within one year of the date the payment was made.

C. When the department has discovered that a class of people has overpaid by at least one dollar (\$1.00) any tax, fee or penalty due under the Motor Vehicle Code or the Motor Transportation Act for the same or similar reasons and the members of the class are identifiable from the department's records, the department may refund the overpayment to all members of the class without the requirement that each person in the class submit a claim for refund.

D. Any refund made pursuant to this section may be made, at the discretion of the department, in the form of credit against future payments due under the Motor Vehicle Code or the Motor Transportation Act if future liabilities in an amount at least equal to the credit amount reasonably may be expected to become due."

Section 21

Section 21. A new section of the Motor Vehicle Code, Section 66-6-36 NMSA 1978, is enacted to read:

"66-6-36. PAYMENT IN FOREIGN CURRENCY.--To the extent permitted by the laws of the United States and by treaties entered into by the United States, the secretary may require all amounts due under the Motor Vehicle Code or the Motor Transportation Act to be paid in currency of the United States. To the extent the secretary permits or is required to permit payment of amounts due under the Motor Vehicle Code or the Motor Transportation Act to be made in foreign currency, the secretary after consultation with the secretary of finance and administration shall establish a procedure for selecting an appropriate exchange rate to be used in determining the amount due expressed in the foreign currency. The secretary may require, as a condition for accepting payment in a foreign currency, that any cost incurred or to be incurred by the department in converting the currency be added to the amount due. Amounts received by the department to defray the cost of converting currency are appropriated to the department for that purpose."

Section 22

Section 22. Section 66-7-413 NMSA 1978 (being Laws 1978, Chapter 35, Section 484, as amended) is amended to read:

"66-7-413. PERMITS FOR EXCESSIVE SIZE AND WEIGHT--SPECIAL NOTIFICATION REQUIRED ON MOVEMENT OF MANUFACTURED HOMES.--

A. The department and local highway authorities may, in their discretion, upon application in writing and good cause being shown, issue a special permit in writing authorizing the applicant to operate or move a vehicle or load of a size or weight exceeding the maximum specified in Sections 66-7-401 through 66-7-416 NMSA 1978 on any highway under the jurisdiction of the state highway commission or local authorities. Except for the movement of manufactured homes, a permit may be granted, in cases of emergency, for the transportation of loads on a certain unit or combination of equipment for a specified period of time not to exceed one year, and the permit shall contain the route to be traversed, the type of load to be transported and any other restrictions or conditions deemed necessary by the body granting the permit. In every other case, the permit shall be issued for a single trip and may designate the route to be traversed and contain any other restrictions or conditions deemed necessary by the body granting the permit. Every permit shall be carried in the vehicle to which it refers and shall be opened for inspection to any peace officer. It is a misdemeanor for any person to violate any of the conditions or terms of the special permit.

B. The department shall charge and collect, when the movement consists of any load of a width of twenty feet or greater for a distance of five miles or more, the sum of three hundred dollars (\$300) a day or fraction thereof to defray the cost of state or local police escort. The permit issued and the fee charged shall be based upon the entire movement at one time requiring police escort and not upon the number of vehicles involved.

C. The department shall promulgate regulations in accordance with the State Rules Act pertaining to safety practices, liability insurance and equipment for escort vehicles provided by the motor carrier himself and for escort vehicles provided by a private business in this state.

(1) If a motor carrier provides his own escort vehicles and personnel, the department shall not charge an escort fee but shall provide the motor carrier escort personnel with a copy of applicable regulations and shall inspect the escort vehicles for the safety equipment required by the regulations. If the escort vehicles and personnel meet the requirements set forth in the regulations and if the motor carrier holds a valid certificate of public convenience and necessity or permit, as applicable, issued pursuant to Chapter 65, Article 2 NMSA 1978, the department shall issue the special permit.

(2) If the escort service is a private business, the business shall have applied to the state corporation commission for and been issued a permit or certificate to operate as a contract or common motor carrier pursuant to Chapter 65, Article 2 NMSA 1978. The state corporation commission shall supply copies of applicable regulations to the business by mail and shall supply additional copies upon request. If the escort vehicles and personnel meet the requirements

set forth in the regulations and if the escort service holds a certificate, the special permit shall be issued and the department shall not charge an escort fee.

(3) The movement of vehicles upon the highways of this state requiring a special permit and required to use an escort of the type noted in Paragraphs (1) and (2) of this subsection is subject to department authority and inspection at all times.

(4) The state highway and transportation department shall conduct engineering investigations and engineering inspections to determine which four-lane highways are safe for the operation or movement of manufactured homes without an escort. After making that determination, the state highway and transportation department shall hold public hearings in the area of the state affected by the determination, after which it may adopt regulations designating those four-lane highways as being safe for the operation or movement of manufactured homes without an escort. If any portion of such a four-lane highway lies within the boundaries of a municipality, the state highway and transportation department, after obtaining the approval of the municipal governing body, shall include such portions in its regulations.

D. Except for the movement of manufactured homes, special permits may be issued for a single vehicle or combination of vehicles by the department for a period not to exceed one year for a fee of sixty dollars (\$60.00). The permits may allow excessive height, length and width for a vehicle or combination of vehicles or load thereon and may include a provision for excessive weight if the operation is to be within the vicinity of a municipality.

E. Special permits for a single trip for a vehicle or combination of vehicles or load thereon of excessive weight, width, length and height may be issued for a single vehicle for a fee of fifteen dollars (\$15.00).

F. If the vehicle for which a permit is issued under this section is a manufactured home, the department or local highway authority issuing the permit shall furnish the following information to the property tax division, which shall then forward the information:

(1) to the county assessor of any county from which a manufactured home is being moved, the date the permit was issued, the location being moved from, the location being moved to if within the same county, the name of the owner of the manufactured home and the identification and registration numbers of the manufactured home;

(2) to the county assessor of any county in this state to which a manufactured home is being moved, the date the permit was issued, the location being moved from, the location being moved to, the name of the owner of the

manufactured home and the registration and identification numbers of the manufactured home; and

(3) to the owner of a manufactured home having a destination in this state, notification that the information required in Paragraphs (1) and (2) of this subsection is being given to the respective county assessors and that manufactured homes are subject to property taxation.

G. Except as provided in Subsection H of this section, if the movement of a manufactured home originates in this state, no permit shall be issued under Subsection F of this section until the owner of the manufactured home or his authorized agent obtains and presents to the department proof that a certificate has been issued by the county assessor or treasurer of the county in which the manufactured home movement originates showing that either:

(1) all property taxes due or to become due on the manufactured home for the current tax year or any past tax years have been paid, except for manufactured homes located on an Indian reservation; or

(2) no liability for property taxes on the manufactured home exists for the current tax year or any past tax years, except for manufactured homes located on an Indian reservation.

H. The movement of a manufactured home from the lot or business location of a manufactured home dealer to its destination designated by an owner-purchaser is not subject to the requirements of Subsection G of this section if the manufactured home movement originates from the lot or business location of the dealer and the manufactured home was part of his inventory prior to the sale to the owner-purchaser; however, the movement of a manufactured home by a dealer or his authorized agent as a result of a sale or trade-in from a nondealer-owner is subject to the requirements of Subsection G of this section whether the destination is the business location of a dealer or some other destination.

I. No permit shall be issued under this section for movement of a manufactured home whose width exceeds eighteen feet with no more than a six-inch roof overhang on the left side or twelve inches on the right side in addition to the eighteen-foot width of the manufactured home. Manufactured homes exceeding the limitations of this section shall only be moved on dollies placed on the front and the rear of the structure.

J. The secretary may by regulation provide for movers of manufactured homes to self-issue permits for certain sizes of manufactured homes over specific routes; however, in no case may the cost of each permit be less than fifteen dollars (\$15.00).

K. The secretary may provide by regulation for dealers of implements of husbandry to self-issue permits for the movement of certain sizes of implements of husbandry from the lot or business location of the dealer over specific routes with specific escort requirements, if necessary, to a destination designated by an owner-purchaser or for purposes of a working demonstration on the property of a proposed owner-purchaser. The department shall charge a fee for each self-issued permit not to exceed fifteen dollars (\$15.00).

L. Any private motor carrier requesting an oversize or overweight permit shall provide proof of insurance in at least the following amounts:

(1) bodily injury liability, providing:

(a) fifty thousand dollars (\$50,000) for each person; and

(b) one hundred thousand dollars (\$100,000) for each accident;

and

(2) property damage liability, providing twenty-five thousand dollars (\$25,000) for each accident.

M. Any common motor carrier requesting an oversize permit shall produce a copy of a form "e" or other acceptable evidence that the common motor carrier maintains the insurance minimums prescribed by the state corporation commission."

Section 23

Section 23. Section 66-7-413.1 NMSA 1978 (being Laws 1985, Chapter 4, Section 1, as amended) is amended to read:

"66-7-413.1. FARM CARRIERS--EXCESSIVE SIZE--LIMITATION.--Farm carriers, as defined in Sections 65-2-82 and 65-2-116 NMSA 1978, may transport loads up to twelve feet in width on highways that are not national network highways without securing permits or escorts only if the load consists of hay tied in bales over five feet in either length or width and the load is not transported for any distance greater than fifty miles; provided that the farm carriers display a sign across the front and rear stating "WIDE LOAD" in large visible letters."

Section 24

Section 24. Section 66-8-116 NMSA 1978 (being Laws 1978, Chapter 35, Section 524, as amended) is amended to read:

"66-8-116.PENALTY ASSESSMENT MISDEMEANORS--
DEFINITION--SCHEDULE OF ASSESSMENTS.--

A. As used in the Motor Vehicle Code, "penalty assessment misdemeanor" means violation of any of the following listed sections of the NMSA 1978 for which the listed penalty assessment is established:

COMMON NAME OF OFFENSE SECTION VIOLATED PENALTY ASSESSMENT

Permitting unlicensed minor to drive	66-5-40	\$ 10.00
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Failure to obey sign	66-7-104	10.00
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Failure to obey signal	66-7-105	10.00
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Speeding	66-7-301	
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(1) up to and including ten miles an hour over speed limit		15.00
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(2) from eleven up to and including fifteen miles an hour over speed limit		30.00
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(3) from sixteen up to and including twenty miles an hour over speed limit		65.00
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(4) from twenty-one up to and including twenty-five miles an hour over speed limit		100.00
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(5) from twenty-six up to and including thirty miles an hour over the speed limit		125.00
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(6) from thirty-one up to and including thirty-five miles an hour over the speed limit		150.00
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(7) more than thirty-five miles an hour over the speed limit		200.00
Unfastened safety belt	66-7-372	25.00
Child not in restraint device		
or seat belt	66-7-369	25.00
Minimum speed	66-7-305	10.00
Speeding	66-7-306	15.00
Improper starting	66-7-324	10.00
Improper backing	66-7-354	10.00
Improper lane	66-7-308	10.00
Improper lane	66-7-313	10.00
Improper lane	66-7-316	10.00
Improper lane	66-7-317	10.00
Improper lane	66-7-319	10.00
Improper passing	66-7-309 through 66-7-312	10.00
Improper passing	66-7-315	10.00
Controlled access violation	66-7-320	10.00
Controlled access violation	66-7-321	10.00
Improper turning	66-7-322	10.00
Improper turning	66-7-323	10.00
Improper turning	66-7-325	10.00
Following too closely	66-7-318	10.00

Failure to yield	66-7-328 through 66-7-332	10.00
Failure to yield	66-7-332.1	25.00
Pedestrian violation	66-7-333	10.00
Pedestrian violation	66-7-340	10.00
Failure to stop	66-7-341 through 66-7-346	10.00
Passing school bus	66-7-347	100.00
Failure to signal	66-7-325 through 66-7-327	10.00
Failure to secure load	66-7-407	100.00
Operation without oversize-overweight permit	66-7-413	50.00
Improper equipment	66-3-801	10.00
Improper equipment	66-3-901	20.00
Improper emergency signal	66-3-853 through 66-3-857	10.00
Operation interference	66-7-357	5.00
Litterbugging	30-8-4	50.00
Litterbugging	30-8-10	100.00
Litterbugging	66-7-364	100.00
Improper parking	66-7-349 through 66-7-352 and 66-7-353	5.00
Improper parking	66-7-352.5	50.00
Improper parking	66-3-852	5.00
Failure to dim lights	66-3-831	10.00
Riding in or towing occupied house trailer	66-7-366	5.00

Improper opening of doors	66-7-367	5.00
No slow-moving vehicle emblem or flashing amber light	66-3-887	5.00
Open container - first violation	66-8-138	25.00.

B. The term "penalty assessment misdemeanor" does not include any violation that has caused or contributed to the cause of an accident resulting in injury or death to any person.

C. When an alleged violator of a penalty assessment misdemeanor elects to accept a notice to appear in lieu of a notice of penalty assessment no fine imposed upon later conviction shall exceed the penalty assessment established for the particular penalty assessment misdemeanor and no probation imposed upon a suspended or deferred sentence shall exceed ninety days."

Section 25

Section 25. Section 66-8-116.2 NMSA 1978 (being Laws 1989, Chapter 319, Section 13, as amended) is amended to read:

"66-8-116.2. PENALTY ASSESSMENT MISDEMEANORS--MOTOR CARRIER ACT.--As used in the Motor Vehicle Code and the Motor Carrier Act, "penalty assessment misdemeanor" means, in addition to the definitions of that term in Sections 66-8-116 and 66-8-116.1 NMSA 1978, violation of the following listed sections of the NMSA 1978 for which the listed penalty is established:

A. GENERAL		
COMMON NAME OF OFFENSE SECTION VIOLATED PENALTY ASSESSMENT		
Failure to register motor carrier	65-1-12	\$100.00
Failure to carry identification card	65-1-26	50.00
Failure to comply with state corporation commission rules and regulations	65-2-83	50.00
Failure to register interstate motor carrier with state corporation commission	65-2-115	50.00
Failure to stop at		

designated registration place	65-5-1	100.00
Failure to obtain proper clearance certificates	65-5-3	100.00.

B. VEHICLE OUT-OF-SERVICE VIOLATIONS

COMMON NAME OF OFFENSE SECTION VIOLATED PENALTY ASSESSMENT

Absence of braking action	65-3-9	\$100.00
Damaged brake lining or pads	65-3-9	50.00
Loose or missing brake components	65-3-12	100.00
Inoperable breakaway braking system	65-3-12	50.00
Defective or damaged brake tubing	65-3-12	50.00
Inoperative low pressure warning device	65-3-9	50.00
Reservoir pressure not maintained	65-3-12	100.00
Inoperative tractor protection valve	65-3-9	100.00
Damaged or loose air compressor	65-3-12	100.00
Audible air leak at brake chamber	65-3-12	50.00
Defective safety devices-- chains or hooks	65-3-9	100.00
Defective towing or coupling devices	65-3-9	100.00
Defective exhaust systems	65-3-9	30.00
Frame defects--trailers	65-3-12	100.00
Frame defects--other	65-3-9	100.00
Defective fuel systems	65-3-9	50.00
Missing or inoperative lamps	65-3-9	25.00
Missing lamps on projecting loads	65-3-9	50.00
Missing or inoperative turn signal	65-3-9	25.00
Unsafe loading	65-3-8	100.00
Excessive steering wheel play	65-3-9	100.00
Steering column defects	65-3-9	100.00
Steering box or steering		

system defects	65-3-9	100.00
Suspension system defects	65-3-9	50.00
Defective springs or spring assembly	65-3-9	50.00
Defective tires--steering axle	65-3-9	100.00
Defective tires--other axles	65-3-9	30.00
Defective wheels and rims	65-3-9	50.00
Defective or missing windshield wipers	65-3-9	30.00
Defective or inoperative emergency exit--bus	65-3-9	100.00.

C. DRIVER OUT-OF-SERVICE VIOLATIONS

COMMON NAME OF OFFENSE SECTION VIOLATED PENALTY ASSESSMENT

Driver's age	65-3-7	30.00
Driver not licensed for type of vehicle being operated	65-3-7	30.00
Failure to have valid commercial driver's license in possession	66-5-59	30.00
No waiver of physical disqualification in possession	65-3-7	30.00
Sickness or fatigue	65-3-8	100.00
Driver disqualification	65-3-7	500.00
Exceeding the 10-hour driving rule	65-3-11	100.00
Exceeding the 15-hour on duty rule	65-3-11	100.00
Exceeding the 60 hours in 7 days on duty rule	65-3-11	100.00
Exceeding 70 hours in 8 days on duty rule	65-3-11	100.00
False log book	65-3-11	100.00.

D. HAZARDOUS MATERIALS OUT-OF-SERVICE VIOLATIONS

COMMON NAME OF OFFENSE SECTION VIOLATED PENALTY ASSESSMENT

Placarding violations	65-3-13	250.00
Cargo tank not meeting specifications	65-3-13	250.00
Internal valve operation violations	65-3-13	250.00
Hazardous materials packaging violations	65-3-13	250.00

Insecure load--hazardous materials	65-3-13	250.00
Shipping papers violations	65-3-13	30.00
Shipment of forbidden combination of hazardous materials	65-3-13	250.00
No hazardous waste manifest	65-3-13	30.00
Bulk packaging marking violations	65-3-13	30.00
Cargo tank marking violations	65-3-13	30.00."

Section 26

Section 26. Section 66-8-128 NMSA 1978 (being Laws 1978, Chapter 35, Section 536, as amended) is amended to read:

"66-8-128. UNIFORM TRAFFIC CITATION.--

A. The department shall prepare a uniform traffic citation containing at least the following information:

(1) an information section, serially numbered and containing spaces for the name, address, city and state of the individual charged; the individual's physical description, age and sex; the registration number, year and state of the vehicle involved and its make and type; the state and number of the individual's driver's license; the specific section number and common name of the offense charged under the NMSA 1978 or of local law; the date and time of arrest; the arresting officer's signature and identification number; and the conditions existing at the time of the violation;

(2) a notice to appear; and

(3) a penalty assessment notice with a place for the signature of the violator agreeing to pay the penalty assessment prescribed.

B. The department shall prescribe how the uniform traffic citation form may be used as a warning notice.

C. The department shall prescribe the size and number of copies of the paper version of the uniform traffic citation and the disposition of each copy. The department may also prescribe one or more electronic versions of the uniform traffic citation, and these electronic versions may be used in the issuance of citations.

D. Any entity that wishes to submit uniform traffic citations required to be submitted to the department by electronic means must secure the prior permission of the department."

Section 27

Section 27. Section 66-8-135 NMSA 1978 (being Laws 1978, Chapter 35, Section 543, as amended) is amended to read:

"66-8-135. RECORD OF TRAFFIC CASES.--

A. Every trial court judge shall keep a record of every traffic complaint, uniform traffic citation and other form of traffic charge filed in the judge's court or its traffic violations bureau and every official action and disposition of the charge by that court.

B. Within ten days of the later of entry of judgment and sentence or failure to appear on a charge of violating the Motor Vehicle Code or other law or ordinance relating to motor vehicles or the final decision of any higher court that reviews the matter and from which no appeal or review is successfully taken, every trial court judge, including children's court judges, or the clerk of the court in which the entry of judgment and sentence or failure to appear occurred shall prepare and forward to the department an abstract of the record containing:

- (1) the name and address of the defendant;
- (2) the specific section number and common name of the provision of the NMSA 1978 or local law, ordinance or regulation under which the defendant was tried;
- (3) the plea, finding of the court and disposition of the charge, including fine or jail sentence or both, forfeiture of bail or dismissal of the charge;
- (4) an itemization of costs assessed to the defendant;
- (5) the date of the hearing;
- (6) the court's name and address;
- (7) whether the defendant was a first or subsequent offender; and
- (8) whether the defendant was represented by counsel or waived his right to counsel and, if represented, the name and address of counsel.

C. The abstract of record prepared and forwarded under Subsection B of this section shall be certified as correct by the person required to prepare it. With the prior approval of the department, the information required by Subsection B of this section may be transmitted electronically to the department. Report need not be made of any disposition of a charge of illegal parking or standing of a vehicle except when the uniform traffic citation is used.

D. When the uniform traffic citation is used, the court shall provide the information required by Subsection B of this section in the manner prescribed by the department.

E. Every court of record shall also forward a like report to the department upon conviction of any person of any felony if a motor vehicle was used in the commission. With the prior approval of the department, the information required by this subsection may be submitted electronically to the department. The report shall be forwarded to the department within ten days of the final decision of the court or of any higher court that reviews the matter and from which the decision of no appeal or review is successfully taken.

F. The failure or refusal of any judicial officer to comply with this section is misconduct in office and grounds for removal.

G. The department shall keep records received on motorists licensed in this state at its main office. Records showing a record of conviction by a court of law shall be open to public inspection during business hours for three years from the date of their receipt, after which they shall be destroyed by the department except for records of convictions under Sections 66-8-101 through 66-8-112 NMSA 1978, which may not be destroyed until twenty-five years from the date of their receipt. Any record received on a motorist licensed in another state or country shall be forwarded to the licensing authority of that state or country."

Section 28

Section 28. TEMPORARY PROVISION--RECOMPILATION.--Section 66-6-34 NMSA 1978 (being Laws 1978, Chapter 35, Section 369, as amended) is recompiled as Section 66-8-141 NMSA 1978.

Section 29

Section 29. REPEAL.--Sections 66-3-503, 66-3-601 through 66-3-603, 66-3-876 through 66-3-886 and 66-8-136 NMSA 1978 (being Laws 1978, Chapter 35, Sections 90 and 96 through 98, Laws 1963, Chapter 296, Section 1, Laws 1978, Chapter 35, Sections 183 and 184, Laws 1963, Chapter 296, Section 4, Laws 1978, Chapter 35, Section 186, Laws 1963, Chapter 296, Sections 6 through 11 and Laws 1978, Chapter 35, Section 544) are repealed.

Section 30

Section 30. EFFECTIVE DATE.--The effective date of the provisions of Section 4 of this act is July 1, 1996. The effective date of the provisions of Section 12 of this act is January 1, 1996.

SENATE BILL 259

CHAPTER 136

RELATING TO MOTOR VEHICLE LICENSURE; REQUIRING ADDITIONAL EXAMINATIONS AND TESTS FOR CERTAIN LICENSED DRIVERS OR APPLICANTS; AMENDING THE MOTOR VEHICLE CODE.

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

Section 1

Section 1. Section 66-5-6 NMSA 1978 (being Laws 1978, Chapter 35, Section 228, as amended) is amended to read:

"66-5-6. HEALTH STANDARDS ADVISORY BOARD.--

A. There shall be a "health standards advisory board" consisting of three members of the healing arts professions appointed by the director with the assistance of the secretary of health.

B. The board shall advise the director on physical and mental criteria and vision standards relating to the licensing of drivers under the provisions of this chapter.

C. The division, having cause to believe that a licensed driver or applicant may not be physically, visually or mentally qualified to be licensed, may obtain the advice of the board. The board may formulate its advice from records and reports or may cause an examination and report to be made by one or more members of the board or any other qualified person it may designate. The licensed driver or applicant may cause a written report to be forwarded to the board by a healing arts practitioner of his choice, and it shall be given due consideration by the board only after the licensed driver or applicant has again undergone an on-the-road examination and any physical, visual or mental tests as recommended by the board. These examinations and tests may not be waived by the division.

D. Members of the board and other persons making examinations shall not be held liable for their opinions and recommendations presented pursuant to Subsection C of this section.

E. The director shall pay members of the board per diem and mileage as provided in the Per Diem and Mileage Act and, in addition, may determine and pay an hourly rate for work performed not to exceed fifty dollars (\$50.00) per hour and not to exceed five hours per month.

F. Reports received or made by the board or its members for the purpose of assisting the division in determining whether a person is qualified to be licensed are for the confidential use of the board or the division and may not be divulged to any person or used as evidence in any trial."

Section 2

Section 2. Section 66-5-7 NMSA 1978 (being Laws 1978, Chapter 35, Section 229) is amended to read:

"66-5-7. DRIVER'S LICENSE--CLASSIFICATION--EXAMINATIONS.--

A. The division, upon issuing a driver's license, shall indicate on the license the type or general class of vehicles the licensee may drive. The division shall establish such qualifications, after public hearings, as it deems reasonably necessary for the safe operation of various types, sizes or combinations of vehicles and shall appropriately examine each applicant to determine his qualifications according to the type or general class of license for which he has applied.

B. The division, in issuing the driver's license for certain types or general classes of vehicles, may waive any on-the-road examination for applicants except as provided in Section 66-5-6 NMSA 1978. The division may certify certain employers, governmental agencies or other appropriate organizations to train and test all applicants for the type or general class of licenses if the training and testing meet the standards established by the director."

HOUSE BILL 872

CHAPTER 137

RELATING TO CULTURAL PROPERTIES; ENACTING THE CULTURAL PROPERTIES PRESERVATION EASEMENT ACT; PROVIDING FOR DONATION, HOLDING AND ASSIGNMENT OF CULTURAL PROPERTIES PRESERVATION EASEMENTS.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Cultural Properties Preservation Easement Act".

Section 2

Section 2. DEFINITIONS.--As used in the Cultural Properties Preservation Easement Act:

A. "cultural property" means a structure, place, site or object having historical, archaeological, scientific, architectural or other cultural significance deemed potentially eligible for inclusion in the national register of historic places;

B. "holder" means any nonprofit corporation, nonprofit association or nonprofit trust, the purposes or powers of which include retaining or protecting structures or sites significant for their history, architecture, archaeology, paleontology or other prehistorical or other values;

C. "cultural properties preservation easement" means a holder's nonpossessory interest in real property imposing any limitation or affirmative obligation, the purpose of which includes preserving the historical, architectural, archaeological or cultural significance of real property; and

D. "third-party enforcement right" means a right empowering a nonprofit corporation, nonprofit association or nonprofit trust to enforce any term of the easement.

Section 3

Section 3. CULTURAL PROPERTIES PRESERVATION EASEMENT CREATED--DISPOSITIONS.--

A. Except as otherwise provided in the Cultural Properties Preservation Easement Act, a cultural properties preservation easement may be created, conveyed, recorded, assigned, released, modified, terminated or otherwise altered or affected in the same manner as any other easement.

B. A cultural properties preservation easement is not effective and creates no rights or obligations until it is recorded in the office of the county clerk of the county or counties in which any part of the real property subject to the cultural properties preservation easement is located.

C. No right or duty in favor of or against a holder and no right in favor of a person having a third-party enforcement right arises under a cultural properties preservation easement prior to its acceptance by that holder and recordation of that acceptance in the office of the county clerk of the county where the real property subject to a cultural properties preservation easement is located, in whole or in part.

D. Except as provided in Subsection B of Section 4 of the Cultural Properties Preservation Easement Act, the term of a cultural properties preservation easement shall be the term stated in the easement.

Section 4

Section 4. ACTIONS.--An action affecting a cultural properties preservation easement may be brought by any of the following:

A. an owner of an interest in the real property subject to the cultural properties preservation easement;

- B. a holder of a cultural properties preservation easement; or
- C. a person having a third-party enforcement right.

Section 5

Section 5. VALIDITY OF EASEMENT.--A cultural properties preservation easement is valid even though the cultural properties preservation easement:

- A. is not appurtenant to an interest in real properties;
- B. imposes a negative covenant that is a restriction on the use of the land that is subject to the terms of the easement;
- C. imposes affirmative obligations upon the owner of any interest in the property subject to the easement or upon the holder;
- D. does not touch or concern real property; or
- E. does not establish any privity of estate or of contract.

Section 6

Section 6. ENFORCEABLE INTERESTS.--

A. Nothing in the Cultural Properties Preservation Easement Act invalidates any interest, whether designated as a cultural properties preservation easement, covenant, equitable servitude, restriction or easement that is enforceable under the laws of this state.

B. No interest benefiting or encumbering real property cognizable under the statutes or common law in effect in this state prior to the enactment of the Cultural Properties Preservation Easement Act, nor any application or permit for a change of a point of diversion place or purpose of use of a water right at any time shall be impaired, invalidated or in any way adversely affected by reason of any provision of that act.

C. Nothing in the Cultural Properties Preservation Easement Act shall be construed to diminish or impair the rights of any person authorized by the laws of this state to acquire rights of way, easements or other property rights through the exercise of eminent domain. Nothing in that act shall be construed to authorize any charitable corporation, association or trust to acquire a preservation restriction through the exercise of eminent domain.

HOUSE BILL 874

CHAPTER 138

RELATING TO HOISTING OPERATORS; REVISING THE HOISTING OPERATORS SAFETY ACT; PROVIDING PENALTIES; AMENDING AND REPEALING CERTAIN SECTIONS OF THE HOISTING OPERATORS SAFETY ACT.

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

Section 1

Section 1. Section 60-15-1 NMSA 1978 (being Laws 1993, Chapter 183, Section 1) is amended to read:

"60-15-1. SHORT TITLE.--Chapter 60, Article 15 NMSA 1978 may be cited as the "Hoisting Operators Safety Act".

Section 2

Section 2. Section 60-15-3 NMSA 1978 (being Laws 1993, Chapter 183, Section 3) is amended to read:

"60-15-3. DEFINITIONS.--As used in the Hoisting Operators Safety Act:

A. "class I hoisting operator" means any person who is authorized to operate a conventional crane, tower crane or hydraulic crane of any size or weight;

B. "class II hoisting operator" means any person who is authorized to operate:

(1) a hydraulic crane of up to one hundred tons lifting capacity with a maximum boom length of one hundred fifty feet, regardless of mounting or means of mobility; and

(2) any other type or size of crane or hoisting equipment under the direct supervision of a class I hoisting operator;

C. "class III hoisting operator" means any person who is authorized to work as an apprentice, trainee or crane oiler or driver under the direct supervision of a class I or class II hoisting operator;

D. "council" means the hoisting operators licensure examining council;

E. "crane" means a tower crane used in construction, demolition or excavation work; a hydraulic crane; a power-operated derrick; or a mobile, carrier-mounted, track or crawler type power-operated hoisting machine that utilizes a power-

operated boom capable of lateral movement by the rotation of the machine on the carrier. "Crane" does not include a crane, except as provided in Subsection M of this section;

F. "department" means the regulation and licensing department;

G. "endorsement" means the authorization stamped on a class I hoisting operator's license indicating authorization to operate a conventional crane, a tower crane or a hydraulic crane of any size or weight;

H. "hoisting equipment" means, except as provided in Subsection M of this section:

(1) a tower crane;

(2) a hydraulic crane with over two tons lifting capacity;

(3) a derrick crane; or

(4) a mobile cable crane;

I. "licensee" means any person licensed under the Hoisting Operators Safety Act;

J. "person" means an individual, firm, partnership, corporation, association or other organization or any combination thereof;

K. "seat time" means the actual hands-on operation of a crane by a class II hoisting operator while under the direct supervision of a licensed class I hoisting operator or by a class III hoisting operator while under the direct supervision of a licensed class I or II hoisting operator;

L. "superintendent" means the superintendent of the regulation and licensing department; and

M. "crane" or "hoisting equipment" does not include any crane or hoisting equipment used in construction, demolition or excavation associated with:

(1) natural gas gather lines;

(2) interstate transmission facilities and interstate natural gas facilities subject to the federal Natural Gas Pipeline Safety Act of 1968 and its amendments;

(3) interstate pipeline facilities and carbon dioxide pipeline facilities subject to the federal Hazardous Liquid Pipeline Safety Act of 1979;

- (4) gas and oil pipeline facilities subject to the Pipeline Safety Act;
- (5) mining, milling or smelting operations subject to mine safety and health administration regulations or occupational safety and health administration regulations;
- (6) prefabricated control rooms of natural gas, oil or carbon dioxide pipeline transmission facilities;
- (7) oil and gas exploration, production or drilling;
- (8) rural electric cooperative and electric, gas and water utility operations;
- (9) commercial sign operations;
- (10) the construction or operation of railroads; or
- (11) the installation and maintenance of telephone or television cable."

Section 3

Section 3. Section 60-15-4 NMSA 1978 (being Laws 1993, Chapter 183, Section 4) is amended to read:

"60-15-4. LICENSE REQUIRED.--No person shall operate hoisting equipment in construction, demolition or excavation work when the hoisting equipment is used to hoist or lower individuals or material unless he is licensed under the Hoisting Operators Safety Act; provided, however, that no license shall be required for a person who has successfully completed an industry recognized in-house training course based on American national standards institute standards for hoisting operators and who is employed by the entity that taught the training course or contracted to have the training course taught. The operator's employer is subject to applicable regulations controlling the use and operation of cranes as promulgated by the occupational safety and health administration, the mine safety and health administration or the American national standards institute."

Section 4

Section 4. Section 60-15-5 NMSA 1978 (being Laws 1993, Chapter 183, Section 5) is amended to read:

"60-15-5. LICENSE AND EXAMINATION.--A person who had experience operating hoisting equipment on or before July 1, 1995 may apply for and be issued a license without taking and passing a written general examination about the operation of

being a hoisting operator, provided the applicant meets all the other requirements of Section 60-15-7 NMSA 1978, and provided further that the applicant passes a written examination about the provisions of the Hoisting Operators Safety Act. Licensure pursuant to this section shall be subject to the discretion of the council following review of the applicant's experience and qualifications."

Section 5

Section 5. Section 60-15-7 NMSA 1978 (being Laws 1993, Chapter 183, Section 7) is amended to read:

"60-15-7. REQUIREMENTS FOR LICENSURE.--

A. The department shall issue a license for a class I hoisting operator to a person who files a completed application, accompanied by the required fees, and who submits satisfactory evidence that he:

(1) is at least twenty-one years of age;

(2) has passed a written examination as prescribed by the department;

(3) has had a physical examination, including substance abuse testing, within the twelve-month period preceding the date of his application, showing that the applicant is in satisfactory physical condition for performing the functions of a class I hoisting operator; and

(4) has had at least three years' experience in operating hoisting equipment with a manufacturer's rating capacity equal to or greater than fifty tons and a boom length of one hundred feet for a conventional crane endorsement, equipment with a manufacturer's rating capacity equal to or greater than one hundred tons and a boom length of one hundred feet for a hydraulic crane endorsement or a tower crane of any size or type for a tower crane endorsement or otherwise demonstrates his operating experience and competency by completing an examination.

B. The department shall issue a license for a class II hoisting operator to a person who files a completed application, accompanied by the required fees, and who submits satisfactory evidence that he:

(1) is at least eighteen years of age;

(2) has passed a written examination prescribed by the department;

(3) has had a physical examination, including substance abuse testing, within the twelve-month period preceding the date of his application, showing

that the applicant is in satisfactory physical condition for performing the functions of a class II hoisting operator; and

(4) has had at least two years' experience in the actual operation of hydraulic cranes with over ten tons and up to one hundred tons lifting capacity with a maximum boom length of one hundred fifty feet, regardless of mounting or means of mobility or otherwise demonstrates his operating experience and competency by examination prescribed by the department.

C. A class II hoisting operator who seeks to become licensed as a class I hoisting operator shall keep a log book of his seat time and must accumulate five hundred hours of seat time under the direct supervision of a class I hoisting operator.

D. The department shall issue a license for a class III hoisting operator to a person who files a completed application, accompanied by the required fees, and who submits satisfactory evidence that he:

(1) is at least eighteen years of age;

(2) has passed an examination prescribed by the department; and

(3) has had a physical examination, including substance abuse testing, within the twelve-month period preceding the date of his application, showing that the applicant is in satisfactory physical condition for performing the functions of a class III hoisting operator.

E. A class III hoisting operator who seeks to become licensed as a class I or class II hoisting operator shall keep a log book of his seat time and must accumulate five hundred hours of seat time or six thousand hours of experience under the direct supervision of a class I or class II hoisting operator."

Section 6

Section 6. Section 60-15-8 NMSA 1978 (being Laws 1993, Chapter 183, Section 8) is amended to read:

"60-15-8. LICENSE RENEWAL.--

A. A license issued pursuant to Section 60-15-7 NMSA 1978 shall be valid for two years from the date of issuance.

B. License renewal procedures shall be prescribed by the department by regulation.

C. A person who is employed as a class I hoisting operator, a class II hoisting operator or a class III hoisting operator after his license has expired is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than three hundred dollars (\$300) or by imprisonment for not more than six months or both."

Section 7

Section 7. Section 60-15-11 NMSA 1978 (being Laws 1993, Chapter 183, Section 11) is amended to read:

"60-15-11. REPRIMAND--FINES--SUSPENSION OR REVOCATION OF LICENSE.--The department may reprimand or fine a licensee or suspend or revoke the license of a licensee, pursuant to the findings of a hearing of the council, for negligent or reckless operation of hoisting equipment, violation of the rules and regulations adopted by the department or for any violation of the provisions of the Hoisting Operators Safety Act."

Section 8

Section 8. Section 60-15-13 NMSA 1978 (being Laws 1993, Chapter 183, Section 13) is amended to read:

"60-15-13. VIOLATIONS--CRIMINAL, CIVIL AND ADMINISTRATIVE PENALTIES.--

A. A person who operates a crane without a hoisting operator's license is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than three hundred dollars (\$300) or by imprisonment of not more than six months or both.

B. An employer or his representative who knowingly, willingly or intentionally allows a person not licensed under the Hoisting Operators Safety Act to operate hoisting equipment is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500) or imprisonment of not more than six months or both.

C. Any licensed hoisting operator who violates any provision of the Hoisting Operators Safety Act may be assessed a civil penalty not to exceed one thousand dollars (\$1,000) for each day during any portion of which a violation occurs.

D. The department may bring an action in a court of competent jurisdiction to enjoin any person from violating any provisions of the Hoisting Operators Safety Act. If the court finds that a violation has occurred, the person who committed the violation shall be liable for the expenses incurred by the department in investigating and

enforcing the provisions of that act plus reasonable attorneys' fees and costs associated with court action.

E. Notwithstanding any other provision of the Uniform Licensing Act or the Hoisting Operators Safety Act, the department may assess an administrative penalty not to exceed one thousand dollars (\$1,000) for any violation specified in the Hoisting Operators Safety Act in addition to or instead of revocation or suspension of a license."

Section 9

Section 9. Section 60-15-14 NMSA 1978 (being Laws 1993, Chapter 183, Section 14) is amended to read:

"60-15-14. HOISTING OPERATORS LICENSURE EXAMINING COUNCIL--APPOINTED.--The "hoisting operators licensure examining council" is created. The superintendent shall appoint no fewer than three members to the council. One member of the council shall be a class I hoisting operator and another member of the council shall be a contractor, as defined by Section 60-13-3 NMSA 1978, who employs one or more hoisting operators. The members of the council shall serve at the pleasure of the superintendent and their duties shall include:

A. reviewing and approving the applications, qualifications and examinations of applicants for licensure as hoisting operators and recommending to the superintendent whether licensure should be granted based on their evaluation of the operating experience and competence of the applicants;

B. reporting findings and recommendations from the hearings to the superintendent; and

C. proceeding according to regulations adopted by the department."

Section 10

Section 10. REPEAL.--Section 60-15-10 NMSA 1978 (being Laws 1993, Chapter 183, Section 10) is repealed.

Section 11

Section 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE BILL 918

CHAPTER 139

RELATING TO PUBLIC PURCHASES; INCREASING THE AMOUNTS OF SMALL PURCHASES THAT A CENTRAL PURCHASING OFFICE FOR A STATE TWO-YEAR POST-SECONDARY INSTITUTION OR FOR A PUBLIC SCHOOL DISTRICT IS AUTHORIZED TO MAKE; AMENDING THE PROCUREMENT CODE.

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

Section 1

Section 1. Section 13-1-125 NMSA 1978 (being Laws 1984, Chapter 65, Section 98, as amended) is amended to read:

"13-1-125. SMALL PURCHASES.--

A. The state purchasing agent or central purchasing office shall procure services, construction or items of tangible personal property having a value not exceeding five thousand dollars (\$5,000) in accordance with the applicable small purchase regulations adopted by the secretary, a local public body or a central purchasing office that has the authority to issue regulations.

B. Notwithstanding the requirements of Subsection A of this section, a central purchasing office may procure professional services having a value not exceeding twenty thousand dollars (\$20,000), excluding applicable state and local gross receipts taxes, except for the services of architects, landscape architects, engineers or surveyors for state public works projects or local public works projects, in accordance with professional services procurement regulations promulgated by the department of finance and administration, the general services department or a central purchasing office with the authority to issue regulations.

C. Notwithstanding the requirements of Subsection A of this section, a central purchasing office for a state educational institution named in Article 12, Section 11 of the constitution of New Mexico, for a state two-year post-secondary institution or for a school district as defined in the Public School Code, may procure services, construction or items of tangible personal property having a value not exceeding ten thousand dollars (\$10,000) in accordance with regulations promulgated by a central purchasing office with the authority to issue regulations.

D. Notwithstanding the requirements of Subsection A of this section, a state agency or a local public body may procure services, construction or items of tangible personal property having a value not exceeding five hundred dollars (\$500) by issuing a direct purchase order to a contractor based upon the best obtainable price.

E. Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section."

HOUSE BILL 923

CHAPTER 140

RELATING TO GUARDIANSHIP; ESTABLISHING AN OFFICE OF GUARDIANSHIP SERVICES; TRANSFERRING FUNDS AND PROPERTY TO THE ATTORNEY GENERAL; MAKING AN APPROPRIATION.

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

Section 1

Section 1. OFFICE OF GUARDIANSHIP SERVICES.--An "office of guardianship services" shall be established within the attorney general's office. The office shall consolidate guardianship services currently existing in various state agencies and shall negotiate and administer contracts for guardianship services with community service providers.

Section 2

Section 2. TEMPORARY PROVISION.--On July 1, 1995:

A. all appropriations, money, records and property pertaining to guardianship services within the state agency on aging and the department of health shall be transferred to the attorney general; and

B. all contracts and agreements pertaining to guardianship services within the state agency on aging and within the department of health shall be binding and effective on the attorney general.

Section 3

Section 3. APPROPRIATION--ATTORNEY GENERAL.--Six hundred thirty-five thousand dollars (\$635,000) is appropriated from the general fund to the attorney general's office for expenditure in fiscal year 1996 for contractual services. Any unexpended or unencumbered balance remaining at the end of fiscal year 1996 shall revert to the general fund.

Section 4

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE BILL 942

CHAPTER 141

RELATING TO PUBLIC FINANCE; AUTHORIZING THE NEW MEXICO FINANCE AUTHORITY AND CERTAIN GOVERNMENTAL UNITS TO UNDERTAKE SPECIFIC ACTIVITIES RELATED TO PROJECT FINANCING; PROVIDING POWERS AND DUTIES; AMENDING CERTAIN SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 3-31-1 NMSA 1978 (being Laws 1973, Chapter 395, Section 3, as amended) is amended to read:

"3-31-1. REVENUE BONDS--AUTHORITY TO ISSUE--PLEDGE OF REVENUES--LIMITATION ON TIME OF ISSUANCE.--In addition to any other law and constitutional home-rule powers authorizing a municipality to issue revenue bonds, a municipality may issue revenue bonds pursuant to Chapter 3, Article 31 NMSA 1978 for the purposes specified in this section. The term "pledged revenues", as used in Chapter 3, Article 31 NMSA 1978, means the revenues, net income or net revenues authorized to be pledged to the payment of particular revenue bonds as specifically provided in Subsections A through I of this section.

A. Utility revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing or otherwise improving a municipal utility or for any combination of the foregoing purposes. The municipality may pledge irrevocably any or all of the net revenues from the operation of the municipal utility or of any one or more of any other such municipal utilities for payment of the interest on and principal of the revenue bonds. These bonds are sometimes referred to in Chapter 3, Article 31 NMSA 1978 as "utility revenue bonds" or "utility bonds".

B. Joint utility revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing or otherwise improving joint water facilities, sewer facilities, gas facilities or electric facilities or for any combination of the foregoing purposes. The municipality may pledge irrevocably any or all of the net revenues from the operation of these municipal utilities for the payment of the interest on and principal of the bonds. These bonds are sometimes referred to in Chapter 3, Article 31 NMSA 1978 as "joint utility revenue bonds" or "joint utility bonds".

C. For the purposes of this subsection, "gross receipts tax revenue bonds" means gross receipts tax revenue bonds or sales tax revenue bonds. Gross receipts tax revenue bonds may be issued for any one or more of the following purposes:

(1) constructing, purchasing, furnishing, equipping, rehabilitating, making additions to or making improvements to one or more public buildings or purchasing or improving any ground relating thereto, including but not necessarily limited to acquiring and improving parking lots, or any combination of the foregoing;

(2) acquiring or improving municipal or public parking lots, structures or facilities or any combination of the foregoing;

(3) purchasing, acquiring or rehabilitating fire-fighting equipment or any combination of the foregoing;

(4) acquiring, extending, enlarging, bettering, repairing, otherwise improving or maintaining storm sewers and other drainage improvements, sanitary sewers, sewage treatment plants or water utilities, including but not necessarily limited to the acquisition of rights of way and water and water rights, or any combination of the foregoing;

(5) reconstructing, resurfacing, maintaining, repairing or otherwise improving existing alleys, streets, roads or bridges or any combination of the foregoing or laying off, opening, constructing or otherwise acquiring new alleys, streets, roads or bridges or any combination of the foregoing, provided that any of the foregoing improvements may include but are not limited to the acquisition of rights of way;

(6) purchasing, acquiring, constructing, making additions to, enlarging, bettering, extending or equipping any airport facilities or any combination of the foregoing, including without limitation the acquisition of land, easements or rights of way therefor;

(7) purchasing or otherwise acquiring or clearing land or for purchasing, otherwise acquiring and beautifying land for open space;

(8) acquiring, constructing, purchasing, equipping, furnishing, making additions to, renovating, rehabilitating, beautifying or otherwise improving public parks, public recreational buildings or other public recreational facilities or any combination of the foregoing; and

(9) acquiring, constructing, extending, enlarging, bettering, repairing, otherwise improving or maintaining solid waste disposal equipment, equipment for operation and maintenance of sanitary landfills, sanitary landfills, solid waste facilities or any combination of the foregoing.

The municipality may pledge irrevocably any or all of the gross receipts tax revenue received by the municipality pursuant to Section 7-1-6.4, 7-1-6.12 or 7-19A-6 NMSA 1978 or pursuant to the Municipal Infrastructure Gross Receipts Tax Act to the payment of the interest on and principal of the gross receipts tax revenue bonds for any of the purposes authorized in this section or for specific purposes or for any area of municipal government services, including but not limited to those specified in Subsection B of Section 7-19D-9 NMSA 1978, or for public purposes authorized by municipalities having constitutional home-rule charters. Any law that imposes or authorizes the imposition of a municipal gross receipts tax or that affects the municipal gross receipts tax, or any law supplemental thereto or otherwise appertaining thereto,

shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any outstanding revenue bonds that may be secured by a pledge of such municipal gross receipts tax unless such outstanding revenue bonds have been discharged in full or provision has been fully made therefor.

D. As used in this section, the term "public building" includes but is not limited to fire stations, police buildings, jails, libraries, museums, auditoriums, convention halls, hospitals, buildings for administrative offices, city halls and garages for housing, repairing and maintaining city vehicles and equipment. As used in Chapter 3, Article 31 NMSA 1978, the term "gross receipts tax revenue bonds" means the bonds authorized in Subsection C of this section, and the term "gross receipts tax revenue" means the amount of money distributed to the municipality as authorized by Section 7-1-6.4 NMSA 1978 or the amount of money transferred to the municipality as authorized by Section 7-1-6.12 NMSA 1978 for any municipal gross receipts tax imposed pursuant to Section 7-19-4 NMSA 1978. As used in Chapter 3, Article 31 NMSA 1978, the term "bond" means any obligation of a municipality issued under Chapter 3, Article 31 NMSA 1978, whether designated as a bond, note, loan, warrant, debenture, lease-purchase agreement or other instrument evidencing an obligation of a municipality to make payments.

E. Gasoline tax revenue bonds may be issued for laying off, opening, constructing, reconstructing, resurfacing, maintaining, acquiring rights of way, repairing and otherwise improving municipal buildings, alleys, streets, public roads and bridges or any combination of the foregoing purposes. The municipality may pledge irrevocably any or all of the gasoline tax revenue received by the municipality to the payment of the interest on and principal of the gasoline tax revenue bonds. As used in Chapter 3, Article 31 NMSA 1978, "gasoline tax revenue bonds" means the bonds authorized in this subsection, and "gasoline tax revenue" means all or portions of the amounts of tax revenues distributed to municipalities pursuant to Sections 7-1-6.9, 7-1-6.14 and 7-1-6.27 NMSA 1978, as from time to time amended and supplemented.

F. Project revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping and rehabilitating any revenue producing project, including, where applicable, purchasing, otherwise acquiring or improving the ground therefor, including but not necessarily limited to acquiring and improving parking lots, or for any combination of the foregoing purposes. The municipality may pledge irrevocably any or all of the net revenues from the operation of the revenue producing project for which the particular project revenue bonds are issued to the payment of the interest on and principal of such project revenue bonds. The net revenues of any revenue producing project may not be pledged to the project revenue bonds issued for any revenue producing project that clearly is unrelated in nature; but nothing in this subsection shall prevent the pledge to any of such project revenue bonds of any such revenues received from any existing, future or disconnected facilities and equipment that are related to and that may constitute a part of the particular revenue producing project. Any general determination by the governing body that any facilities or equipment is reasonably related to and shall

constitute a part of a specified revenue producing project shall be conclusive if set forth in the proceedings authorizing such project revenue bonds. As used in Chapter 3, Article 31 NMSA 1978:

(1) "project revenue bonds" means the bonds authorized in this subsection; and

(2) "project revenues" means the net revenues of revenue producing projects that may be pledged to project revenue bonds pursuant to this subsection.

G. Fire district revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping and rehabilitating any fire district project, including, where applicable, purchasing, otherwise acquiring or improving the ground therefor, or for any combination of the foregoing purposes. The municipality may pledge irrevocably any or all of the revenues received by the fire district from the fire protection fund as provided in Sections 59A-53-1 through 59A-53-17 NMSA 1978 and any or all of the revenues provided for the operation of the fire district project for which the particular bonds are issued to the payment of the interest on and principal of such bonds. The revenues of any fire district project shall not be pledged to the bonds issued for any fire district project that clearly is unrelated in its purpose; but nothing in this section shall prevent the pledge to any such bonds of any such revenues received from any existing, future or disconnected facilities and equipment that are related to and that may constitute a part of the particular fire district project. Any general determination by the governing body of the municipality that any facilities or equipment are reasonably related to and shall constitute a part of a specified fire district project shall be conclusive if set forth in the proceedings authorizing such fire district bonds.

H. Law enforcement protection revenue bonds may be issued for the repair and purchase of law enforcement apparatus and equipment that meet nationally recognized standards. The municipality may pledge irrevocably any or all of the revenues received by the municipality from the law enforcement protection fund distributions pursuant to Sections 29-13-1 through 29-13-9 NMSA 1978 to the payment of the interest on and principal of the law enforcement protection revenue bonds.

I. Except for the purpose of refunding previous revenue bond issues, no municipality may sell revenue bonds payable from pledged revenues after the expiration of two years from the date of the ordinance authorizing the issuance of the bonds or, for bonds to be issued and sold to the New Mexico finance authority as authorized in Subsection C of Section 3-31-4 NMSA 1978, after the expiration of two years from the date of the resolution authorizing the issuance of the bonds. However, any period of time during which a particular revenue bond issue is in litigation shall not be counted in determining the expiration date of that issue."

Section 2

Section 2. Section 3-31-3 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-30-3, as amended) is amended to read:

"3-31-3. REVENUE BONDS--TERMS.--Municipal revenue bonds:

A. may have interest, appreciated principal value or any part thereof payable at intervals or at maturity as may be determined by the governing body;

B. may be subject to a prior redemption at the municipality's option at such time or times and upon such terms and conditions with or without the payment of such premium or premiums as may be determined by the governing body;

C. may mature at any time or times not exceeding fifty years after the date of issuance, except municipal revenue bonds issued for reconstructing, resurfacing or repairing existing streets, which may mature at any time or times not exceeding twenty years after the date of issuance;

D. may be serial in form and maturity or may consist of one bond payable at one time or in installments or may be in such other form as may be determined by the governing body;

E. shall be sold for cash at above or below par and at a price that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act; and

F. may be sold at public or negotiated sale."

Section 3

Section 3. Section 3-31-4 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-30-4, as amended) is amended to read:

"3-31-4. ORDINANCE AUTHORIZING REVENUE BONDS--THREE-FOURTHS MAJORITY REQUIRED--RESOLUTION AUTHORIZING REVENUE BONDS TO BE ISSUED AND SOLD TO THE NEW MEXICO FINANCE AUTHORITY.--

A. At a regular or special meeting called for the purpose of issuing revenue bonds as authorized in Section 3-31-1 NMSA 1978, the governing body may adopt an ordinance that:

(1) declares the necessity for issuing revenue bonds;

(2) authorizes the issuance of revenue bonds by an affirmative vote of three-fourths of all the members of the governing body; and

(3) designates the source of the pledged revenues.

B. If a majority of the governing body, but less than three-fourths of all the members, votes in favor of adopting the ordinance authorizing the issuance of revenue bonds, the ordinance is adopted but shall not become effective until the question of issuing the revenue bonds is submitted to a vote of the qualified electors for their approval at a special or regular municipal election. If an election is necessary, the election shall be conducted in the manner provided in Sections 3-8-1 through 3-8-19 NMSA 1978. Notice of the election shall be given as provided in Section 3-8-2 NMSA 1978.

C. In addition and as an alternative to adopting an ordinance as required by the provisions of Subsections A and B of this section, at a regular or special meeting called for the purpose of issuing revenue bonds as authorized in Section 3-31-1 NMSA 1978, the governing body may authorize the issuance and sale, from time to time, of revenue bonds in amounts not to exceed one million dollars (\$1,000,000) at any one time to the New Mexico finance authority by adoption of a resolution that:

(1) declares the necessity for issuing and selling revenue bonds to the New Mexico finance authority;

(2) authorizes the issuance and sale of revenue bonds to the New Mexico finance authority by an affirmative vote of a majority of all the members of the governing body; and

(3) designates the source of the pledged revenues.

At the option of the governing body, revenue bonds in an amount in excess of one million dollars (\$1,000,000) may be authorized by an ordinance adopted in accordance with Subsections A and B of this section and issued and sold to the New Mexico finance authority.

D. No ordinance or resolution may be adopted under the provisions of this section that uses as pledged revenues the municipal gross receipts tax authorized by Section 7-19D-9 NMSA 1978 for a purpose that would be inconsistent with the purpose for which that municipal gross receipts tax revenue was dedicated. Any revenue in excess of the amount necessary to meet all principal and interest payments and other requirements incident to repayment of the bonds must be used for the purposes to which the revenue was dedicated."

Section 4

Section 4. Section 3-31-8 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-30-8, as amended) is amended to read:

"3-31-8. REVENUE BONDS--REFUNDING AUTHORIZATION--AUTHORITY TO MORTGAGE MUNICIPAL UTILITY.--

A. Any municipality having issued revenue bonds as authorized in Sections 3-31-1 through 3-31-7 NMSA 1978 or pursuant to any other laws enabling the governing body of any municipality having issued such revenue bonds payable only out of the pledged revenue may issue refunding revenue bonds for the purpose of refinancing, paying and discharging all or any part of such outstanding bonds of any one or more or all outstanding issues:

(1) for the acceleration, deceleration or other modification of the payment of such obligations, including without limitation any capitalization of any interest thereon in arrears or about to become due for any period not exceeding one year from the date of the refunding bonds;

(2) for the purpose of reducing interest costs or effecting other economies;

(3) for the purpose of modifying or eliminating restrictive contractual limitations pertaining to the issuance of additional bonds, otherwise concerning the outstanding bonds or to any facilities relating thereto; or

(4) for any combination of such purposes.

B. The municipality may pledge irrevocably for the payment of interest and principal on refunding bonds the appropriate pledged revenues, which may be pledged to an original issue of bonds as provided in Section 3-31-1 NMSA 1978. Nothing in this section shall permit the pledge of the gross receipts tax revenue to the payment of bonds that refund utility bonds, joint utility bonds or gasoline tax revenue bonds or the pledge of gasoline tax revenue to the payment of bonds that refund utility bonds, joint utility bonds or gross receipts tax revenue bonds or the pledge of any revenues of any utility or joint utility to the payment of bonds that refund gross receipts tax revenue bonds or gasoline tax revenue bonds.

C. Bonds for refunding and bonds for any purpose permitted by Section 3-31-1 NMSA 1978 may be issued separately or issued in combination in one series or more.

D. In addition to pledging of utility revenues to the payment of the refunding revenue bonds that refund utility bonds or joint utility bonds as provided in Section 3-23-4 NMSA 1978, the municipality may grant by ordinance, or by resolution if the refunding revenue bonds are issued and sold to the New Mexico finance authority pursuant to Subsection C of Section 3-31-4 NMSA 1978, a mortgage of the municipal utility that has been solely financed by revenue bonds to the bondholder or a trustee for the benefit and security of the holders of the refunding revenue bonds."

Section 5

Section 5. Section 3-31-9 NMSA 1978 (being Laws 1973, Chapter 399, Section 1, as amended) is amended to read:

"3-31-9. REFUNDING BONDS--ESCROW--DETAIL.--

A. Refunding bonds issued pursuant to Sections 3-31-1 through 3-31-12 NMSA 1978 shall be authorized by ordinance or by resolution if the refunding bonds are to be issued and sold to the New Mexico finance authority pursuant to Subsection C of Section 3-31-4 NMSA 1978. Any bonds that are refunded under the provisions of this section shall be paid at maturity or on any permitted prior redemption date in the amounts, at the time and places and, if called prior to maturity, in accordance with any applicable notice provisions, all as provided in the proceedings authorizing the issuance of the refunded bonds or otherwise appertaining thereto, except for any such bond that is voluntarily surrendered for exchange or payment by the holder or owner.

B. Provision shall be made for paying the bonds refunded at the time or times provided in Subsection A of this section. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds and may also be less than or the same as the principal amount of the bonds being refunded so long as provision is duly and sufficiently made for the payment of the refunded bonds.

C. The proceeds of refunding bonds, including any accrued interest and premium appertaining to the sale of refunding bonds, shall either be immediately applied to the retirement of the bonds being refunded or be placed in escrow in a commercial bank or trust company, which possesses and is exercising trust powers and which is a member of the federal deposit insurance corporation, to be applied to the payment of the principal of, interest on and any prior redemption premium due in connection with the bonds being refunded; provided that such refunding bond proceeds, including any accrued interest and any premium appertaining to a sale of refunding bonds, may be applied to the establishment and maintenance of a reserve fund and to the payment of expenses incidental to the refunding and the issuance of the refunding bonds, the interest thereon and the principal thereof or both interest and principal as the municipality may determine. Nothing in this section requires the establishment of an escrow if the refunded bonds become due and payable within one year from the date of the refunding bonds and if the amounts necessary to retire the refunded bonds within that time are deposited with the paying agent for the refunded bonds. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other money available for its purpose. Any proceeds in escrow pending such use may be invested or reinvested in bills, certificates of indebtedness, notes or bonds that are direct obligations of or the principal and interest of which obligations are unconditionally guaranteed by the United States of America or in certificates of deposit of banks that are members of the federal deposit insurance corporation, the par value of which certificates of deposit is collateralized by a pledge of obligations of or the payment of which is unconditionally guaranteed by the United States of America, the par value of

which obligations is at least seventy-five percent of the par value of the certificates of deposit. Such proceeds and investments in escrow together with any interest or other income to be derived from any such investment shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable therefrom to pay the bonds being refunded as they become due at their respective maturities or due at any designated prior redemption date or dates in connection with which the municipality shall exercise a prior redemption option. Any purchaser of any refunding bond issued under Sections 3-31-1 through 3-31-12 NMSA 1978 is in no manner responsible for the application of the proceeds thereof by the municipality or any of its officers, agents or employees.

D. Refunding bonds may bear such additional terms and provisions as may be determined by the municipality subject to the limitations in this section and Section 3-31-10 NMSA 1978 and, to the extent applicable, Sections 3-31-1 through 3-31-12 NMSA 1978 relating to original bond issues, and the refunding bonds are not subject to the provisions of any other statute except as may be incorporated by reference in Sections 3-31-1 through 3-31-12 NMSA 1978.

E. The municipality shall receive from the department of finance and administration written approval of any gross receipts tax refunding revenue bonds, gasoline tax refunding revenue bonds or project refunding revenue bonds issued pursuant to the provisions of Sections 3-31-8 through 3-31-12 NMSA 1978."

Section 6

Section 6. Section 3-31-10 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-30-9, as amended) is amended to read:

"3-31-10. REFUNDING REVENUE BONDS--TERMS.--Municipal refunding revenue bonds:

A. may have interest, appreciated principal value or any part thereof payable at intervals or at maturity as may be determined by the governing body;

B. may be subject to prior redemption at the municipality's option at such time or times and upon such terms and conditions with or without the payment of premium or premiums as may be determined by the governing body;

C. may be serial in form and maturity or may consist of a single bond payable in one or more installments or may be in such other form as may be determined by the governing body; and

D. shall be exchanged for the bonds and any matured unpaid interest being refunded at not less than par or sold at public or negotiated sale at, above or below par and at a price that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act."

Section 7

Section 7. Section 3-31-11 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-30-10) is amended to read:

"3-31-11. REFUNDING REVENUE BONDS--ORDINANCE--RESOLUTION.--

A. At any regular or special meeting called for the purpose of issuing refunding revenue bonds, the governing body by a majority vote of all the members of the governing body may adopt an ordinance authorizing the issuance of the refunding revenue bonds.

B. At any regular or special meeting called for the purpose of issuing and selling refunding revenue bonds to the New Mexico finance authority, the governing body by an affirmative vote of a majority of all members of the governing body may adopt a resolution authorizing issuance and sale of the refunding revenue bonds to the New Mexico finance authority pursuant to Subsection C of Section 3-31-4 NMSA 1978."

Section 8

Section 8. Section 4-62-1 NMSA 1978 (being Laws 1992, Chapter 95, Section 1, as amended by Laws 1993, Chapter 282, Section 14 and also by Laws 1993, Chapter 308, Section 2) is amended to read:

"4-62-1. REVENUE BONDS--AUTHORITY TO ISSUE--PLEDGE OF REVENUES--LIMITATION ON TIME OF ISSUANCE.--

A. In addition to any other law authorizing a county to issue revenue bonds, a county may issue revenue bonds pursuant to Chapter 4, Article 62 NMSA 1978 for the purposes specified in this section. The term "pledged revenues", as used in Chapter 4, Article 62 NMSA 1978, means the revenues, net income or net revenues authorized to be pledged to the payment of particular revenue bonds as specifically provided in Subsections B through I of this section.

B. Gross receipts tax revenue bonds may be issued for any one or more of the following purposes:

(1) constructing, purchasing, furnishing, equipping, rehabilitating, making additions to or making improvements to one or more public buildings or purchasing or improving any ground relating thereto, including but not necessarily limited to acquiring and improving parking lots, or any combination of the foregoing;

(2) acquiring or improving county or public parking lots, structures or facilities or any combination of the foregoing;

(3) purchasing, acquiring or rehabilitating firefighting equipment or any combination of the foregoing;

(4) acquiring, extending, enlarging, bettering, repairing, otherwise improving or maintaining storm sewers and other drainage improvements, sanitary sewers, sewage treatment plants or water utilities, including but not limited to the acquisition of rights of way and water and water rights, or any combination of the foregoing;

(5) reconstructing, resurfacing, maintaining, repairing or otherwise improving existing alleys, streets, roads or bridges or any combination of the foregoing or laying off, opening, constructing or otherwise acquiring new alleys, streets, roads or bridges or any combination of the foregoing; provided that any of the foregoing improvements may include but are not limited to the acquisition of rights of way;

(6) purchasing, acquiring, constructing, making additions to, enlarging, bettering, extending or equipping any airport facilities or any combination of the foregoing, including without limitation the acquisition of land, easements or rights of way;

(7) purchasing or otherwise acquiring or clearing land or purchasing, otherwise acquiring and beautifying land for open space;

(8) acquiring, constructing, purchasing, equipping, furnishing, making additions to, renovating, rehabilitating, beautifying or otherwise improving public parks, public recreational buildings or other public recreational facilities or any combination of the foregoing; or

(9) acquiring, constructing, extending, enlarging, bettering, repairing or otherwise improving or maintaining solid waste disposal equipment, equipment for operation and maintenance of sanitary landfills, sanitary landfills, solid waste facilities or any combination of the foregoing.

A county may pledge irrevocably any or all of the revenue from the first one-eighth of one percent increment of the county gross receipts tax for payment of principal and interest due in connection with, and other expenses related to, gross receipts tax revenue bonds for any of the purposes authorized in this section or specific purposes or for any area of county government services. If the county gross receipts tax revenue from the first one-eighth of one percent increment of the county gross receipts tax is pledged for payment of principal and interest as authorized by this subsection, the pledge shall require the revenues received from that increment of the county gross receipts tax to be deposited into a special bond fund for payment of the principal, interest and expenses. At the end of each fiscal year, any money remaining in the special bond fund after the annual obligations for the bonds are fully met may be transferred to any other fund of the county.

C. Fire protection revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping or rehabilitating any independent fire district project or facilities, including, where applicable, purchasing, otherwise acquiring or improving the ground for the project or any combination of such purposes. A county may pledge irrevocably any or all of the county fire protection excise tax revenue for payment of principal and interest due in connection with, and other expenses related to, fire protection revenue bonds. These bonds may be referred to in Chapter 4, Article 62 NMSA 1978 as "fire protection revenue bonds".

D. Environmental revenue bonds may be issued for the acquisition and construction of solid waste facilities, water facilities, wastewater facilities, sewer systems and related facilities. A county may pledge irrevocably any or all of the county environmental services gross receipts tax revenue for payment of principal and interest due in connection with, and other expenses related to, environmental revenue bonds. These bonds may be referred to in Chapter 4, Article 62 NMSA 1978 as "environmental revenue bonds".

E. Gasoline tax revenue bonds may be issued for the acquisition of rights of way for and the construction, reconstruction, resurfacing, maintenance, repair or other improvement of county roads and bridges. A county may pledge irrevocably any or all of the county gasoline tax revenue for payment of principal and interest due in connection with, and other expenses related to, county gasoline tax revenue bonds. These bonds may be referred to in Chapter 4, Article 62 NMSA 1978 as "gasoline tax revenue bonds".

F. Utility revenue bonds or joint utility revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing or otherwise improving water facilities, sewer facilities, gas facilities or electric facilities or for any combination of the foregoing purposes. A county may pledge irrevocably any or all of the net revenues from the operation of the utility or joint utility for which the particular utility or joint utility bonds are issued to the payment of principal and interest due in connection with, and other expenses related to, utility or joint utility revenue bonds. These bonds may be referred to in Chapter 4, Article 62 NMSA 1978 as "utility revenue bonds" or "joint utility revenue bonds".

G. Project revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping or rehabilitating any revenue-producing project, including, as applicable, purchasing, otherwise acquiring or improving the ground therefor and including but not limited to acquiring and improving parking lots, or may be issued for any combination of the foregoing purposes. The county may pledge irrevocably any or all of the net revenues from the operation of the revenue-producing project for which the particular project revenue bonds are issued to the payment of the interest on and principal of the project revenue bonds. The net revenues of any revenue-producing project may not be pledged to the project revenue bonds issued for any other revenue-producing project

that is clearly unrelated in nature; but nothing in this subsection prevents the pledge to any of the project revenue bonds of any revenues received from any existing, future or disconnected facilities and equipment that are related to and that may constitute a part of the particular revenue-producing project. Any general determination by the governing body that any facilities or equipment are reasonably related to and shall constitute a part of a specified revenue-producing project shall be conclusive if set forth in the proceedings authorizing the project revenue bonds. As used in Chapter 4, Article 62 NMSA 1978:

(1) "project revenue bonds" means the bonds authorized in this subsection; and

(2) "project revenues" means the net revenues of revenue-producing projects that may be pledged to project revenue bonds pursuant to this subsection.

H. Fire district revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping and rehabilitating any fire district project, including, where applicable, purchasing, otherwise acquiring or improving the ground therefor, or for any combination of the foregoing purposes. The county may pledge irrevocably any or all of the revenues received by the fire district from the fire protection fund as provided in Sections 59A-53-1 through 59A-53-17 NMSA 1978 and any or all of the revenues provided for the operation of the fire district project for which the particular bonds are issued to the payment of the interest on and principal of such bonds. The revenues of any fire district project shall not be pledged to the bonds issued for any fire district project that clearly is unrelated in its purpose; but nothing in this section shall prevent the pledge to any of such bonds of any such revenues received from any existing, future or of disconnected facilities and equipment that are related to and that may constitute a part of the particular fire district project. Any general determination by the governing body of the county that any facilities or equipment are reasonably related to and shall constitute a part of a specified fire district project shall be conclusive if set forth in the proceedings authorizing such fire district bonds.

I. Law enforcement protection revenue bonds may be issued for the repair and purchase of law enforcement apparatus and equipment that meet nationally recognized standards. The county may pledge irrevocably any or all of the revenues received by the county from the law enforcement protection fund distributions pursuant to Sections 29-13-1 through 29-13-9 NMSA 1978, to the payment of the interest on and principal of the law enforcement protection revenue bonds.

J. Except for the purpose of refunding previous revenue bond issues, no county may sell revenue bonds payable from pledged revenue after the expiration of two years from the date of the ordinance authorizing the issuance of the bonds or, for bonds to be issued and sold to the New Mexico finance authority as authorized in Subsection C of Section 4-62-4 NMSA 1978, after the expiration of two years from the

date of the resolution authorizing the issuance of the bonds. However, any period of time during which a particular revenue bond issue is in litigation shall not be counted in determining the expiration date of that issue.

K. No bonds may be issued by a county, other than an H class county or a class B county as defined in Section 4-36-8 NMSA 1978, to acquire, equip, extend, enlarge, better, repair or construct any utility unless the utility is regulated by the New Mexico public utility commission pursuant to the Public Utility Act and the issuance of the bonds is approved by the commission. For purposes of Chapter 4, Article 62 NMSA 1978, a "utility" includes but is not limited to any water, wastewater, sewer, gas or electric utility or joint utility serving the public. H class counties shall obtain New Mexico public utility commission approvals required by Section 3-23-3 NMSA 1978.

L. Any law that imposes or authorizes the imposition of a county gross receipts tax, a county environmental services gross receipts tax, a county fire protection excise tax or the gasoline tax or that affects any of those taxes, shall not be repealed or amended in such a manner as to impair any outstanding revenue bonds that are issued pursuant to Chapter 4, Article 62 NMSA 1978 and that may be secured by a pledge of those taxes unless the outstanding revenue bonds have been discharged in full or provision has been fully made therefor.

M. As used in this section:

(1) "county environmental services gross receipts tax revenue" means the revenue from the county environmental services gross receipts tax transferred to the county pursuant to Section 7-1-6.13 NMSA 1978;

(2) "county fire protection excise tax revenue" means the revenue from the county fire protection excise tax transferred to the county pursuant to Section 7-1-6.13 NMSA 1978;

(3) "county gross receipts tax revenue" means the revenue attributable to the first one-eighth of one percent increment of the county gross receipts tax transferred to the county pursuant to Section 7-1-6.13 NMSA 1978 and any distribution related to the first one-eighth of one percent made pursuant to Section 7-1-6.16 NMSA 1978;

(4) "gasoline tax revenue" means the revenue from that portion of the gasoline tax distributed to the county pursuant to Sections 7-1-6.9 and 7-1-6.26 NMSA 1978; and

(5) "public building" includes but is not limited to fire stations, police buildings, jails, libraries, museums, auditoriums, convention halls, hospitals, buildings for administrative offices, courthouses and garages for housing, repairing and maintaining county vehicles and equipment.

N. As used in Chapter 4, Article 62 NMSA 1978, the term "bond" means any obligation of a county issued under Chapter 4, Article 62 NMSA 1978, whether designated as a bond, note, loan, warrant, debenture, lease-purchase agreement or other instrument evidencing an obligation of a county to make payments."

Section 9

Section 9. Section 4-62-3 NMSA 1978 (being Laws 1992, Chapter 95, Section 3) is amended to read:

"4-62-3. REVENUE BONDS--TERMS.--County revenue bonds:

A. may have interest, appreciated principal value or any part thereof payable at intervals or at maturity as may be determined by the governing body;

B. may be subject to prior redemption at the county's option at such time and upon such terms and conditions with or without the payment of a premium as may be determined by the governing body;

C. may mature at any time not exceeding fifty years after the date of issuance, except county revenue bonds issued for reconstructing, resurfacing or repairing existing streets, which may mature at any time not exceeding twenty years after the date of issuance;

D. may be serial in form and maturity or may consist of one bond payable at one time or in installments or may be in such other form as may be determined by the governing body;

E. shall be sold for cash at, above or below par and at a price that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act; and

F. may be sold at public or negotiated sale."

Section 10

Section 10. Section 4-62-4 NMSA 1978 (being Laws 1992, Chapter 95, Section 4) is amended to read:

"4-62-4. ORDINANCE AUTHORIZING REVENUE BONDS--TWO-THIRDS MAJORITY REQUIRED--RESOLUTION AUTHORIZING REVENUE BONDS TO BE ISSUED AND SOLD TO THE NEW MEXICO FINANCE AUTHORITY.--

A. At a regular or special meeting called for the purpose of issuing revenue bonds as authorized in Section 4-62-1 NMSA 1978, the governing body may adopt an ordinance that:

(1) declares the necessity for issuing revenue bonds;

(2) authorizes the issuance of revenue bonds by an affirmative vote of two-thirds of all the members of the governing body; and

(3) designates the source of the pledged revenues.

B. If a majority of a five-member governing body, but fewer than four members, votes in favor of adopting the ordinance authorizing the issuance of revenue bonds, the ordinance is adopted but shall not become effective until the question of issuing the revenue bonds is submitted to a vote of the qualified electors for their approval at a special or regular county election. If an election is necessary, the election shall be conducted in the manner provided in Section 4-49-8 NMSA 1978. Notice of the election shall be given as provided in Section 4-49-8 NMSA 1978.

C. In addition and as alternative to adopting an ordinance as required by the provisions of Subsections A and B of this section, at a regular or special meeting called for the purpose of issuing revenue bonds as authorized in Section 4-62-1 NMSA 1978, the governing body may authorize the issuance and sale, from time to time, of revenue bonds in amounts not to exceed one million dollars (\$1,000,000) at any one time to the New Mexico finance authority by adoption of a resolution that:

(1) declares the necessity for issuing and selling revenue bonds to the New Mexico finance authority;

(2) authorizes the issuance and sale of revenue bonds to the New Mexico finance authority by an affirmative vote of a majority of all the members of the governing body; and

(3) designates the source of the pledged revenues.

At the option of the governing body, revenue bonds in an amount in excess of one million dollars (\$1,000,000) may be authorized by an ordinance adopted in accordance with Subsections A and B of this section and issued and sold to the New Mexico finance authority.

D. No ordinance or resolution may be adopted under the provisions of this section that uses as pledged revenues the county gross receipts tax for a purpose that would be inconsistent with the purpose for which that county gross receipts tax revenue was dedicated. Any revenue in excess of the amount necessary to meet all annual principal and interest payments and other requirements incident to repayment of the bonds may be transferred to any other fund of the county."

Section 11

Section 11. Section 4-62-8 NMSA 1978 (being Laws 1992, Chapter 95, Section 8) is amended to read:

"4-62-8. REFUNDING BONDS--ESCROW--DETAIL.--

A. Refunding bonds issued pursuant to Chapter 4, Article 62 NMSA 1978 shall be authorized by ordinance or by resolution if the refunding bonds are to be issued and sold to the New Mexico finance authority pursuant to Subsection C of Section 4-62-4 NMSA 1978. Any bonds that are refunded under the provisions of this section shall be paid at maturity or on any permitted prior redemption date in the amounts, at the time and places and, if called prior to maturity, in accordance with any applicable notice provisions, all as provided in the proceedings authorizing the issuance of the refunded bonds or otherwise appertaining thereto, except for any bond that is voluntarily surrendered for exchange or payment by the holder or owner.

B. Provisions shall be made for paying the bonds refunded at the time provided in Subsection A of this section. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds and may also be less than or the same as the principal amount of the bonds being refunded so long as provision is duly and sufficiently made for the payment of the refunded bonds.

C. The proceeds of refunding bonds, including any accrued interest and premium appertaining to the sale of refunding bonds, shall either be immediately applied to the retirement of the bonds being refunded or be placed in escrow in a commercial bank or trust company that possesses and is exercising trust powers and that is a member of the federal deposit insurance corporation to be applied to the payment of the principal of, interest on and any prior redemption premium due in connection with the bonds being refunded; provided that such refunding bond proceeds, including any accrued interest and any premium appertaining to a sale of refunding bonds, may be applied to the establishment and maintenance of a reserve fund and to the payment of expenses incidental to the refunding and the issuance of the refunding bonds, the interest thereon and the principal thereof or both interest and principal as the county may determine. Nothing in this section requires the establishment of an escrow if the refunded bonds become due and payable within one year from the date of the refunding bonds and if the amounts necessary to retire the refunded bonds within that time are deposited with the paying agent for the refunded bonds. Any escrow shall not be limited to proceeds of refunding bonds but may include the other money available for its purpose. Any proceeds in escrow pending such use may be invested or reinvested in bills, certificates of indebtedness, notes or bonds that are direct obligations of, or the principal and interest of which obligations are unconditionally guaranteed by, the United States or in certificates of deposit of banks that are members of the federal deposit insurance corporation, the par value of which certificates of deposit is collateralized by a pledge of obligations of, or the payment of which is unconditionally guaranteed by, the United States, the par value of which obligations is at least seventy-five percent of the par value of the certificates of deposit. Such proceeds and investments in escrow together with any interest or other income to be derived from any such investment shall

be in an amount at all times sufficient as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable therefrom to pay the bonds being refunded as they become due at their respective maturities or due at any designated prior redemption date in connection with which the county shall exercise a prior redemption option. Any purchaser of any refunding bond issued under Chapter 4, Article 62 NMSA 1978 is in no manner responsible for the application of the proceeds thereof by the county or of its officers, agents or employees.

D. Refunding bonds may bear such additional terms and provisions as may be determined by the county subject to the limitations in this section and Section 4-62-9 NMSA 1978 and, to the extent applicable, Sections 4-62-1 through 4-62-6 NMSA 1978 relating to original bond issues, and the refunding bonds are not subject to the provisions of any other statute except as may be incorporated by reference in Chapter 4, Article 62 NMSA 1978.

E. The county shall receive from the department of finance and administration written approval of any non-utility gross receipts tax refunding revenue bonds, gasoline tax refunding revenue bonds, fire protection refunding revenue bonds, environmental refunding revenue bonds or non-utility project refunding revenue bonds issued pursuant to the provisions of Sections 4-62-7 through 4-62-10 NMSA 1978."

Section 12

Section 12. Section 4-62-9 NMSA 1978 (being Laws 1992, Chapter 95, Section 9) is amended to read:

"4-62-9. REFUNDING REVENUE BONDS--TERMS.--County refunding revenue bonds:

A. may have interest, appreciated principal value or any part thereof payable at intervals or at maturity as may be determined by the governing body;

B. may be subject to prior redemption at the county's option at such time and upon such terms and conditions with or without the payment of a premium as may be determined by the governing body;

C. may be serial in form and maturity or may consist of a single bond payable in one or more installments or may be in such other form as may be determined by the governing body; and

D. shall be exchanged for the bonds and any matured unpaid interest being refunded at not less than par or sold at public or negotiated sale at, above or below par and at a price that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act."

Section 13

Section 13. Section 4-62-10 NMSA 1978 (being Laws 1992, Chapter 95, Section 10) is amended to read:

"4-62-10. REFUNDING REVENUE BONDS--ORDINANCE--RESOLUTION.--

A. At any regular or special meeting called for the purpose of issuing refunding revenue bonds, the governing body by a majority vote of all the members of the governing body may adopt an ordinance authorizing the issuance of the refunding revenue bonds.

B. At any regular or special meeting called for the purpose of issuing and selling refunding revenue bonds to the New Mexico finance authority, the governing body by an affirmative vote of a majority of all the members of the governing body may adopt a resolution authorizing issuance and sale of the refunding revenue bonds to the New Mexico finance authority pursuant to Subsection C of Section 4-62-4 NMSA 1978."

Section 14

Section 14. Section 6-18-4 NMSA 1978 (being Laws 1983, Chapter 161, Section 4, as amended) is amended to read:

"6-18-4. DEFINITIONS.--As used in the Public Securities Short-Term Interest Rate Act, unless the context otherwise requires:

A. "bond" means any bond, debenture, note, refunding or renewal bond or note, warrant or other security evidencing an obligation authorized to be issued by a public body pursuant to any provision of law of this state, including the Public Securities Short-Term Interest Rate Act;

B. "governing body" means the city council or other body or officer of a public body in which the legislative powers are vested;

C. "indebtedness" means any debt evidenced by a bond issued by a public body pursuant to any law of this state that constitutes a debt for the purposes of Section 12 or 13 of Article 9 of the constitution of New Mexico and the issuance of which must be submitted to a vote of the qualified electors of the public body pursuant to those sections and any bond issued for the purpose of paying or refunding any such bond;

D. "bond legislation" means an ordinance or a resolution or other appropriate enactment adopted by a governing body of a public body providing for the authorization or sale of bonds and any trust agreement, credit agreement, letter of credit, reimbursement agreement or other credit facility, dealer agreement, issuing or paying agent agreement, purchase commitment agreement, escrow agreement, remarketing agreement, index agent agreement or other agreement with respect to the bonds to which the public body or trustee for the bonds is a party; and

E. "public body" means any municipality, any county, any school district, any special district, any H class county located in New Mexico, the New Mexico hospital equipment loan council, state institutions enumerated in Section 6-13-2 NMSA 1978, the water quality control commission, the state board of finance, the New Mexico finance authority or the state."

Section 15

Section 15. Section 6-21-3 NMSA 1978 (being Laws 1992, Chapter 61, Section 3) is amended to read:

"6-21-3. DEFINITIONS.--As used in the New Mexico Finance Authority Act:

A. "authority" means the New Mexico finance authority;

B. "bond" means any bonds, notes, certificates of participation or other evidence of indebtedness;

C. "bondholder" or "holder" means a person who is the owner of a bond, whether registered or not;

D. "public project" means the acquisition, construction, improvement, alteration or reconstruction of assets of a long-term capital nature by a qualified entity, including but not limited to land; buildings; water rights; water, sewerage and waste disposal systems; streets; airports; municipal utilities; parking facilities; and machinery, furniture and equipment. "Public project" includes all proposed expenditures related to the entire undertaking;

E. "qualified entity" means the state or any agency or institution of the state or any county, municipality, school district, special district or community water association; and

F. "security" or "securities", unless the context indicates otherwise, means bonds, notes or other evidence of indebtedness issued by a qualified entity or leases or certificates or other evidence of participation in the lessor's interest in and rights under a lease with a qualified entity and that are payable from taxes, revenues, rates, charges, assessments or user fees, or from the proceeds of funding or refunding bonds, notes or other evidences of indebtedness of a qualified entity or from certificates or evidence of participation in a lease with a qualified entity."

Section 16

Section 16. Section 6-21-6 NMSA 1978 (being Laws 1992, Chapter 61, Section 6, as amended) is amended to read:

"6-21-6. PUBLIC PROJECT REVOLVING FUND--PURPOSE--
ADMINISTRATION.--

A. The "public project revolving fund" is created within the authority. The fund shall be administered by the authority as a separate account, but may consist of such subaccounts as the authority deems necessary to carry out the purposes of the fund. The authority is authorized to establish procedures and adopt regulations as required to administer the fund in accordance with the New Mexico Finance Authority Act.

B. Except as otherwise provided in the New Mexico Finance Authority Act, money from payments of principal of and interest on loans and payments of principal of and interest on securities held by the authority for public projects authorized specifically by law shall be deposited in the public project revolving fund. The fund shall also consist of any other money appropriated, distributed or otherwise allocated to the fund for the purpose of financing public projects authorized specifically by law.

C. Money appropriated to pay administrative costs, money available for administrative costs from other sources and money from payments of interest on loans or securities held by the authority, including but not limited to payments of interest on loans and securities held by the authority for public projects authorized specifically by law, that represents payments for administrative costs, shall not be deposited in the public project revolving fund and shall be deposited in a separate account of the authority and may be used by the authority to meet administrative costs of the authority.

D. Except as otherwise provided in the New Mexico Finance Authority Act, money in the public project revolving fund is appropriated to the authority to make loans or grants and to purchase or sell securities to assist qualified entities in financing public projects in accordance with the New Mexico Finance Authority Act and pursuant to specific authorization by law for each project.

E. Money in the public project revolving fund not needed for immediate disbursement, including any funds held in reserve, may be deposited with the state treasurer for short-term investment pursuant to Section 6-10-10.1 NMSA 1978 or may be invested in direct and general obligations of or obligations fully and unconditionally guaranteed by the United States, obligations issued by agencies of the United States, obligations of this state or any political subdivision of the state, interest-bearing time deposits, commercial paper issued by corporations organized and operating in the United States and rated "prime" quality by a national rating service, prime bankers' acceptances issued by money center banks or as otherwise provided by the trust indenture or bond resolution, if funds are pledged for or secure payment of bonds issued by the authority.

F. The authority shall establish fiscal controls and accounting procedures that are sufficient to assure proper accounting for fund payments, disbursements and balances.

G. Money on deposit in the public project revolving fund may be used to make interim loans for a term not exceeding one year to qualified entities for the purpose of providing interim financing for any project approved or funded by the legislature.

H. Money on deposit in the public project revolving fund may be designated as reserve funds for any bonds issued by the authority, including but not limited to bonds payable from sources other than the public project revolving fund, and the authority may covenant in any bond resolution or trust indenture to maintain and replenish the reserve funds from money deposited in the public project revolving fund after issuance of bonds by the authority."

Section 17

Section 17. Section 6-21-6.1 NMSA 1978 (being Laws 1994, Chapter 145, Section 2) is amended to read:

"6-21-6.1. PUBLIC PROJECT REVOLVING FUND--APPROPRIATIONS TO OTHER FUNDS.--

A. The authority and the department of environment may enter into a joint powers agreement pursuant to the Joint Powers Agreements Act for the purpose of describing and allocating duties and responsibilities with respect to creation of an integrated loan and grant program to be financed through issuance of bonds payable from the public project revolving fund and the use of proceeds of such bonds for purposes of the Wastewater Facility Construction Loan Act, the Rural Infrastructure Act or the Solid Waste Act. The authority is authorized to issue bonds for the following purposes:

(1) in an amount not to exceed two million dollars (\$2,000,000), the net proceeds of which are appropriated to the wastewater facility construction loan fund;

(2) in an amount not to exceed two million dollars (\$2,000,000), the net proceeds of which are appropriated to the rural infrastructure revolving loan fund; and

(3) in an amount not to exceed ten million dollars (\$10,000,000), the net proceeds of which are appropriated to the solid waste facility grant fund.

B. Public projects funded pursuant the Wastewater Facility Construction Loan Act, the Rural Infrastructure Act or the Solid Waste Act shall not require specific authorization by law as required in Sections 6-21-6 and 6-21-8 NMSA 1978.

C. At the end of each fiscal year, after all debt service charges, replenishment of reserves and administrative costs on all outstanding bonds, notes or other obligations payable from the public project revolving fund are satisfied, an

aggregate amount not to exceed thirty-five percent of the governmental gross receipts tax proceeds distributed to the public project revolving fund in the preceding fiscal year less all debt service charges and administrative costs of the authority paid in the preceding fiscal year on bonds issued pursuant to this section may be appropriated by the legislature from the public project revolving fund to the following funds for local infrastructure financing:

(1) the wastewater facility construction loan fund for purposes of the Wastewater Facility Construction Loan Act;

(2) the rural infrastructure revolving loan fund for purposes of the Rural Infrastructure Act; or

(3) the solid waste facility grant fund for purposes of the Solid Waste Act.

D. The authority and the department of environment in coordination with the New Mexico finance authority oversight committee may recommend annually to each regular session of the legislature amounts to be appropriated to the funds listed in Subsection C of this section for local infrastructure financing."

Section 18

Section 18. Section 6-21-16 NMSA 1978 (being Lws 1992, Chapter 61, Section 16) is amended to read:

"6-21-16. BOND ANTICIPATION NOTES.--The authority is authorized to issue negotiable bond anticipation notes and may renew the same from time to time, but the maximum maturity of such notes, including renewals of such notes, shall not exceed ten years from the date of issue of the original notes. The notes shall be payable from any money of the authority available for them and not otherwise pledged from loans to or securities issued by a qualified entity or from the proceeds of sale of the bonds of the authority, the state or a qualified entity in anticipation of which such notes were issued. The notes may be issued for any purpose of the authority. All such notes shall be issued and secured and shall be subject to the provisions of the New Mexico Finance Authority Act in the same manner and to the same extent as bonds issued pursuant to the New Mexico Finance Authority Act."

Section 19

Section 19. Section 6-21-21 NMSA 1978 (being Laws 1992, Chapter 61, Section 21) is amended to read:

"6-21-21. MONEY OF THE AUTHORITY--EXPENSES--AUDIT--ANNUAL REPORT.--

A. All money of the authority, except as otherwise authorized or provided in the New Mexico Finance Authority Act or in a bond resolution, trust indenture or other instrument under which bonds are issued, shall be deposited as soon as practical in a separate account or accounts in banks or trust companies organized under the laws of this state. All deposits of money shall be secured, if required by the authority, in such a manner as the authority determines to be prudent. Banks or trust companies are authorized to give security for deposits of the authority.

B. Subject to the provisions of any contract with bondholders, the authority shall prescribe a system of accounts.

C. Money held by the authority that is not needed for immediate disbursement, including any funds held in reserve, may be deposited with the state treasurer for short-term investment pursuant to Section 6-10-10.1 NMSA 1978 or may be invested in direct and general obligations of or obligations fully and unconditionally guaranteed by the United States, obligations issued by agencies of the United States, obligations of this state or any political subdivision of the state, interest-bearing time deposits, commercial paper issued by corporations organized and operating within the United States and rated "prime" quality by a national rating service, prime bankers' acceptances issued by money center or as otherwise provided by the trust indenture or bond resolution, if the funds are pledged for or secure payment of bonds issued by the authority.

D. The authority shall have an audit of its books and accounts made at least once each year by the state auditor or by a certified public accounting firm whose proposal has been reviewed and approved by the state auditor. The cost of the audit shall be an expense of the authority. Copies of the audit shall be submitted to the governor and the New Mexico finance authority oversight committee and made available to the public.

E. The authority shall submit a report of its activities to the governor and to the legislature not later than December 1 of each year. Each report shall set forth a complete operating and financial statement covering its operations for that year."

Section 20

Section 20. Section 6-21-23 NMSA 1978 (being Laws 1992, Chapter 61, Section 23) is amended to read:

"6-21-23. PROHIBITED ACTIONS.--The authority shall not:

A. lend money or make a grant other than to a qualified entity;

B. purchase securities other than from a qualified entity or other than for investment as provided in the New Mexico Finance Authority Act;

C. lease a public project to any entity other than a qualified entity;

D. deal in securities within the meaning of or subject to any securities law, securities exchange law or securities dealers law of the United States or of the state or of any other state or jurisdiction, domestic or foreign, except as authorized in the New Mexico Finance Authority Act;

E. issue bills of credit or accept deposits of money for time on demand deposit or administer trusts or engage in any form or manner, or in the conduct of, any private or commercial banking business, or act as a savings bank or savings and loan association, or any other kind of financial institution except as authorized in the New Mexico Finance Authority Act; or

F. engage in any form of private or commercial banking business except as authorized in the New Mexico Finance Authority Act."

Section 21

Section 21. Section 7-1-6.38 NMSA 1978 (being Laws 1994, Chapter 145, Section 1) is amended to read:

"7-1-6.38. DISTRIBUTION--GOVERNMENTAL GROSS RECEIPTS TAX.--

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the public project revolving fund administered by the New Mexico finance authority in an amount equal to seventy-five percent of the net receipts attributable to the governmental gross receipts tax.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the energy, minerals and natural resources department in an amount equal to twenty-five percent of the net receipts attributable to the governmental gross receipts tax. Forty percent of the distribution is appropriated to the energy, minerals and natural resources department to implement the provisions of the New Mexico Youth Conservation Corps Act, and sixty percent of the distribution is appropriated to the energy, minerals and natural resources department for state park and recreation area capital improvements, including the costs of planning, engineering, design, construction, renovation, repair, equipment and furnishings.

C. The state pledges to and agrees with the holders of any bonds or notes issued by the New Mexico finance authority or by the energy, minerals and natural resources department and payable from the net receipts attributable to the governmental gross receipts tax distributed to the New Mexico finance authority or the energy, minerals and natural resources department pursuant to this section that the state will not limit, reduce or alter the distribution of the net receipts attributable to the governmental gross receipts tax to the New Mexico finance authority or the energy, minerals and natural resources department or limit, reduce or alter the rate of imposition

of the governmental gross receipts tax until the bonds or notes together with the interest thereon are fully met and discharged. The New Mexico finance authority and the energy, minerals and natural resources department are authorized to include this pledge and agreement of the state in any agreement with the holders of the bonds or notes."

Section 22

Section 22. Section 16-2-19 NMSA 1978 (being Laws 1935, Chapter 57, Section 16, as amended) is amended to read:

"16-2-19. STATE PARK AND RECREATION REVENUES--SOURCE AND DISBURSEMENT.--All money derived from the operation of state parks or recreation areas or from the governmental gross receipts tax distributions pursuant to Section 7-1-6.38 NMSA 1978 appropriated to the energy, minerals and natural resources department for state park and recreation capital improvements, or from gifts, donations, bequests or endowments, except as the money may be pledged for the retirement of bonds issued under the State Park and Recreation Bond Act or appropriated for state park and recreation purposes by the legislature or acquired from any other source whatsoever, shall not at any time or in any event revert or be transferred to general or other state funds; and such funds shall be used solely for the purpose of acquiring, developing, operating and maintaining state parks or recreation areas and maintenance, operation and expenditures of the state park and recreation division of the energy, minerals and natural resources department, the payment of traveling expenses and salaries of officers, park superintendents and employees and the retirement of state park and recreation bonds. Expenditures shall be made in accordance with budgets approved by the department of finance and administration."

Section 23

Section 23. Section 16-2-29 NMSA 1978 (being Laws 1965, Chapter 280, Section 10, as amended) is amended to read:

"16-2-29. SECURITY--RETIREMENT OF BONDS.--The state park and recreation division of the energy, minerals and natural resources department may pledge for the retirement of bonds issued all or any part of the revenues to be produced from any project to be constructed with bond funds, all or any part of the governmental gross receipts tax distributions pursuant to Section 7-1-6.38 NMSA 1978, appropriated to the energy, minerals and natural resources department for state park and recreation area capital improvements and, except as may be prohibited by existing contractual arrangements, may also pledge money derived from the operation of present or future state parks or recreation areas or from gifts, donations, bequests or endowments for state park or recreation purposes or any portion of the same. Bonds are payable solely from the funds enumerated in this section and are not general obligations of the state."

Section 24

Section 24. Section 59A-53-3 NMSA 1978 (being Laws 1984, Chapter 127, Section 974, as amended) is amended to read:

"59A-53-3. DETERMINATION AND CERTIFICATION OF NEEDS.--

A. Annually, on or before the last day of May, the marshal shall consider and determine, in his reasonable discretion, the relative needs of incorporated cities, towns and villages and county fire districts for money in the fire protection fund, based upon the information available to him, and shall certify to the state treasurer the names of the incorporated cities, towns, villages and county fire districts that he determines need the assistance of a distribution from the money in the fire protection fund, and the amount required by each, in accordance with the provisions of Chapter 59A, Article 53 NMSA 1978. In making this determination and certification, the marshal will consider the intent and purpose of that article that no incorporated city, town or village or county fire district shall receive money distributed from the fire protection fund merely for the purpose of accumulation when the money is not required to accomplish the purposes of that article.

B. In making a determination and certification of needs, the marshal shall consider and provide for any debt obligations of existing or previously existing fire departments or fire districts.

C. For the purposes of Chapter 59A, Article 53 NMSA 1978, "marshal" means the state fire marshal, as further identified in Chapter 59A, Article 52 NMSA 1978."

Section 25

Section 25. Section 59A-53-14 NMSA 1978 (being Laws 1984, Chapter 127, Section 985, as amended) is amended to read:

"59A-53-14. CLOSURE OF FIRE DEPARTMENT.--

A. If any fire department operated by any incorporated city, town or village or by any county fire district should go out of existence or for any reason cease to operate and function for a period of ninety days, title to all fire-fighting equipment and apparatus held by or for the benefit of the fire department shall vest in the marshal and all funds distributed from the fire protection fund and held by or for the fire department shall revert to the fire protection fund. Any person having custody or control of any fire-fighting equipment and apparatus shall forthwith deliver same as directed by the marshal, and any person having custody or control of the funds shall forthwith remit the same to the state treasurer, who shall again deposit the funds in the state treasury to the credit of the fire protection fund. An action to recover the possession and control of such fire-fighting equipment and apparatus, or the amount of the funds, may be commenced by the attorney general or the district attorney in the county in which the

equipment and apparatus or funds are situate upon the filing with the officer of a verified statement of the circumstances.

B. Notwithstanding the provisions of Subsection A of this section, funds distributed from the fire protection fund needed to pay debt service on bonds or other obligations issued by or on behalf of a fire department or fire district may be used to pay such debt service, and the marshal and the state treasurer are authorized and shall continue to make distributions from the fire protection fund for and on behalf of the fire department or fire district until such bonds or other obligations are paid in full."

Section 26

Section 26. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE BILL 167 WITH EMERGENCY CLAUSE
SIGNED APRIL 5, 1995

CHAPTER 142

RELATING TO DOMESTIC AFFAIRS; ADJUSTING INCOME TABLES AND STREAMLINING METHODS USED TO CALCULATE CHILD SUPPORT; AMENDING THE NMSA 1978.

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

Section 1

Section 1. Section 40-4-11.1 NMSA 1978 (being Laws 1988, Chapter 87, Section 2, as amended) is amended to read:

"40-4-11.1. CHILD SUPPORT--GUIDELINES.--

A. In any action to establish or modify child support, the child support guidelines as set forth in this section shall be applied to determine the child support due and shall be a rebuttable presumption for the amount of such child support. Every decree or judgment of child support that deviates from the guideline amount shall contain a statement of the reasons for the deviation.

B. The purposes of the child support guidelines are to:

(1) establish as state policy an adequate standard of support for children, subject to the ability of parents to pay;

(2) make awards more equitable by ensuring more consistent treatment of persons in similar circumstances; and

(3) improve the efficiency of the court process by promoting settlements and giving courts and the parties guidance in establishing levels of awards.

C. For purposes of the guidelines specified in this section:

(1) "income" means actual gross income of a parent if employed to full capacity or potential income if unemployed or underemployed. Income need not be imputed to the primary custodial parent actively caring for a child of the parties who is under the age of six or disabled. If income is imputed, a reasonable child care expense may be imputed. The gross income of a parent means only the income and earnings of that parent and not the income of subsequent spouses, notwithstanding the community nature of both incomes after remarriage; and

(2) "gross income" includes income from any source and includes but is not limited to income from salaries, wages, tips, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, significant in-kind benefits that reduce personal living expenses, prizes and alimony or maintenance received, provided:

(a) "gross income" shall not include benefits received from means-tested public assistance programs or child support received by a parent for the support of other children;

(b) for income from self-employment, rent, royalties, proprietorship of a business or joint ownership of a partnership or closely held corporation, "gross income" means gross receipts minus ordinary and necessary expenses required to produce such income, but ordinary and necessary expenses do not include expenses determined by the court to be inappropriate for purposes of calculating child support;

(c) "gross income" shall not include the amount of alimony payments actually paid in compliance with a court order;

(d) "gross income" shall not include the amount of child support actually paid by a parent in compliance with a court order for the support of prior children; and

(e) "gross income" shall not include a reasonable amount for a parent's obligation to support prior children who are in that parent's custody. A duty to support subsequent children is not ordinarily a basis for reducing support

owed to children of the parties but may be a defense to a child support increase for the children of the parties. In raising such a defense, a party may use Table A as set forth in Subsection K of this section to calculate the support for the subsequent children.

D. As used in this section:

(1) "children of the parties" means the natural or adopted child or children of the parties to the action before the court but shall not include the natural or adopted child or children of only one of the parties;

(2) "basic visitation" means a custody arrangement whereby one parent has physical custody and the other parent has visitation with the children of the parties less than thirty-five percent of the time. Such arrangements can exist where the parties share responsibilities pursuant to Section 40-4-9.1 NMSA 1978; and

(3) "shared responsibility" means a custody arrangement whereby each parent provides a suitable home for the children of the parties, when the children spend at least thirty-five percent of the year in each home and the parents significantly share the duties, responsibilities and expenses of parenting.

E. The basic child support obligation shall be calculated based on the combined income of both parents and shall be paid by them proportionately pursuant to Subsections K and L of this section.

F. Physical custody adjustments shall be made as follows:

(1) for basic visitation situations, the basic child support obligation shall be calculated using the basic child support schedule, Worksheet A and instructions contained in Subsection K of this section. The court may provide for a partial abatement of child support for visitations of one month or longer; and

(2) for shared responsibility arrangements, the basic child support obligation shall be calculated using the basic child support schedule, Worksheet B and instructions contained in Subsection L of this section.

G. In shared responsibility situations, each parent retains the percentage of the basic support obligation equal to the number of twenty-four-hour days of responsibility spent by each child with each respective parent divided by three hundred sixty-five.

H. The cost of providing medical and dental insurance for the children of the parties and the net reasonable child-care costs incurred on behalf of these children due to employment or job search of either parent shall be paid by each parent in proportion to his income, in addition to the basic obligation.

I. The child support may also include the payment of the following expenses not covered by the basic child support obligation:

(1) any extraordinary medical, dental and counseling expenses incurred on behalf of the children of the parties. Such extraordinary expenses are uninsured expenses in excess of one hundred dollars (\$100) per child per year;

(2) any extraordinary educational expenses for children of the parties;
and

(3) transportation and communication expenses necessary for long distance visitation or time sharing.

J. Whenever application of the child support guidelines set forth in this section requires a person to pay to another person more than forty percent of his gross income for a single child support obligation for current support, there shall be a presumption of a substantial hardship, justifying a deviation from the guidelines.

K. BASIC CHILD SUPPORT SCHEDULE.--

Both Parents' BASIC CHILD SUPPORT SCHEDULE

Combined

Gross Monthly Number of children

Income 1 2 3 4 5 6

\$0 - 800 \$100 \$150 \$150 \$150 \$150 \$150

850 119 150 150 150 150 150

900 153 155 157 158 160 162

950 187 189 191 193 196 198

1,000 206 223 226 228 231 233

1,050 215 257 260 263 266 269

1,100 224 291 294 298 301 304

1,150 232 325 329 332 336 339

1,200 241 351 363 367 371 375

1,250 250 363 397 401 406 410

1,300 258 375 431 436 441 445

1,350 267 387 457 470 475 481

1,400 275 399 471 505 510 516

1,450 283 411 485 536 545 551

1,500 292 423 499 551 579 585

1,550 300 435 513 567 613 620

1,600 308 447 527 582 631 654

1,650 316 458 540 597 647 689

1,700 324 470 554 612 664 710

1,750 333 482 568 628 680 728

1,800 341 494 582 643 697 746

1,850 349 506 596 658 714 764

1,900 357 517 609 673 730 781

1,950 365 529 623 689 747 799

2,000 373 541 637 704 763 816

2,050 382 553 651 719 780 834

2,100 390 564 665 734 796 852

2,150 398 576 678 750 813 869

2,200 406 588 692 765 829 887

2,250 414 600 706 780 846 905

2,300 422 611 720 795 862 922

2,350 430 623 733 810 879 940

2,400 438 635 747 825 895 957

2,450 443 641 754 834 904 967
2,500 447 647 761 841 912 976
2,550 451 652 768 849 920 984
2,600 455 658 775 856 928 993
2,650 459 664 782 864 936 1,002
2,700 463 670 788 871 944 1,010
2,750 467 675 795 878 952 1,019
2,800 471 681 802 886 960 1,027
2,850 474 687 808 893 968 1,036
2,900 478 692 815 900 976 1,044
2,950 482 698 822 908 984 1,053
3,000 486 704 828 915 992 1,062
3,050 490 710 835 923 1,000 1,070
3,100 494 715 842 930 1,008 1,079
3,150 497 720 847 936 1,014 1,085
3,200 500 723 851 940 1,019 1,090
3,250 503 727 855 945 1,024 1,095
3,300 505 731 859 949 1,029 1,101
3,350 508 734 863 954 1,033 1,106
3,400 511 738 867 958 1,038 1,111
3,450 513 742 871 963 1,043 1,116
3,500 516 745 875 967 1,048 1,121
3,550 519 749 879 971 1,053 1,127

3,600 522 752 883 976 1,058 1,132
3,650 524 756 887 980 1,063 1,137
3,700 527 760 891 985 1,067 1,142
3,750 530 763 895 989 1,072 1,147
3,800 532 767 899 994 1,077 1,153
3,850 535 771 903 998 1,082 1,158
3,900 540 777 911 1,007 1,091 1,168
3,950 545 785 919 1,016 1,101 1,178
4,000 550 792 927 1,025 1,111 1,189
4,050 554 799 936 1,034 1,121 1,199
4,100 559 806 944 1,043 1,130 1,209
4,150 564 812 952 1,052 1,140 1,220
4,200 569 819 960 1,060 1,150 1,230
4,250 574 826 968 1,069 1,159 1,241
4,300 579 833 976 1,078 1,169 1,251
4,350 584 840 984 1,087 1,179 1,261
4,400 589 847 992 1,096 1,188 1,272
4,450 594 854 1,000 1,105 1,198 1,282
4,500 599 861 1,008 1,114 1,208 1,292
4,550 604 868 1,016 1,123 1,217 1,303
4,600 608 875 1,024 1,132 1,227 1,313
4,650 612 880 1,030 1,139 1,234 1,321
4,700 615 885 1,036 1,145 1,241 1,328

4,750 619 890 1,042 1,152 1,248 1,336
4,800 622 895 1,048 1,158 1,256 1,344
4,850 625 900 1,054 1,165 1,263 1,351
4,900 629 905 1,060 1,172 1,270 1,359
4,950 632 910 1,066 1,178 1,277 1,367
5,000 635 915 1,072 1,185 1,284 1,374
5,050 639 920 1,078 1,192 1,292 1,382
5,100 642 926 1,085 1,199 1,300 1,391
5,150 646 931 1,092 1,206 1,308 1,399
5,200 650 937 1,098 1,214 1,316 1,408
5,250 654 942 1,105 1,221 1,324 1,416
5,300 657 948 1,112 1,228 1,332 1,425
5,350 661 954 1,119 1,236 1,340 1,433
5,400 666 960 1,126 1,244 1,349 1,443
5,450 671 967 1,134 1,253 1,358 1,453
5,500 675 973 1,141 1,261 1,367 1,463
5,550 680 980 1,149 1,269 1,376 1,472
5,600 685 987 1,156 1,278 1,385 1,482
5,650 690 993 1,164 1,286 1,394 1,492
5,700 695 1,000 1,171 1,294 1,403 1,501
5,750 700 1,007 1,179 1,303 1,412 1,511
5,800 704 1,013 1,186 1,311 1,421 1,521
5,850 709 1,020 1,194 1,319 1,430 1,530

5,900 714 1,027 1,201 1,328 1,439 1,540
5,950 719 1,033 1,209 1,336 1,448 1,549
6,000 724 1,040 1,216 1,344 1,457 1,559
6,050 728 1,047 1,224 1,353 1,466 1,569
6,100 733 1,053 1,232 1,361 1,475 1,579
6,150 738 1,060 1,240 1,370 1,485 1,589
6,200 742 1,067 1,247 1,378 1,494 1,599
6,250 747 1,073 1,255 1,387 1,504 1,609
6,300 751 1,080 1,263 1,396 1,513 1,619
6,350 756 1,087 1,271 1,405 1,523 1,629
6,400 760 1,093 1,279 1,413 1,532 1,639
6,450 765 1,100 1,287 1,422 1,541 1,649
6,500 770 1,107 1,295 1,431 1,551 1,660
6,550 774 1,113 1,303 1,439 1,560 1,670
6,600 779 1,120 1,311 1,448 1,570 1,680
6,650 783 1,127 1,318 1,457 1,579 1,690
6,700 788 1,133 1,326 1,466 1,589 1,700
6,750 792 1,140 1,334 1,474 1,598 1,710
6,800 797 1,147 1,342 1,483 1,607 1,720
6,850 802 1,153 1,350 1,492 1,617 1,730
6,900 806 1,160 1,358 1,500 1,626 1,740
6,950 811 1,167 1,366 1,509 1,636 1,751
7,000 815 1,173 1,374 1,518 1,645 1,761

7,050 820 1,180 1,382 1,527 1,655 1,771

7,100 824 1,187 1,389 1,535 1,664 1,781

7,150 828 1,193 1,396 1,543 1,673 1,789

7,200 832 1,198 1,403 1,550 1,680 1,798

7,250 836 1,203 1,409 1,557 1,688 1,806

7,300 840 1,209 1,416 1,564 1,696 1,814

7,350 843 1,214 1,422 1,572 1,704 1,823

7,400 847 1,220 1,429 1,579 1,711 1,831

7,450 851 1,225 1,435 1,586 1,719 1,839

7,500 855 1,231 1,442 1,593 1,727 1,847

7,550 858 1,236 1,448 1,600 1,735 1,856

7,600 862 1,241 1,455 1,607 1,742 1,864

7,650 866 1,247 1,461 1,614 1,750 1,872

7,700 869 1,252 1,467 1,622 1,758 1,881

7,750 873 1,258 1,474 1,629 1,766 1,889

7,800 877 1,263 1,480 1,636 1,773 1,897

7,850 881 1,269 1,487 1,643 1,781 1,905

7,900 884 1,274 1,493 1,650 1,789 1,914

7,950 888 1,279 1,500 1,657 1,797 1,922

8,000 892 1,285 1,506 1,665 1,804 1,930

For gross monthly income greater than \$8,000,

multiply gross by the following percentages:

11% 16.1% 18.8% 20.8% 22.6% 24%.

WORKSHEET A - BASIC VISITATION

____ JUDICIAL DISTRICT COURT
COUNTY OF _____
STATE OF NEW MEXICO

NO. _____
_____ ,

Petitioner,
vs.
_____ ,

Respondent.

MONTHLY CHILD SUPPORT OBLIGATION

- | | Custodial
Parent | Other
Parent | Combined |
|----|---|-----------------|----------|
| 1. | Gross Monthly Income \$_____ + | \$_____ = | \$_____ |
| 2. | Percentage of Combined Income
(Each parent's income divided
by combined income) %____ + %____ = <u>100%</u> | | |
| 3. | Number of Children _____ | | |
| 4. | Basic Support from Schedule
(Use combined income from Line 1) | | = _____ |
| 5. | Children's Health and
Dental Insurance Premium _____ + | _____ = | _____ |
| 6. | Work-Related Child Care _____ + | _____ = | _____ |
| 7. | Additional Expenses _____ + | _____ = | _____ |
| 8. | Total Support (Add
Lines 4, 5, 6 and
7 for each parent | | |

and for combined
column) _____ + _____ = _____

9. Each Parent's Obligation
(Combined Column Line
8 X each parent's
Line 2) _____

10. Enter amount for
each parent from
Line 8 - _____ - _____

11. Each parent's net
obligation (Subtract
Line 10 from Line 9
for each parent). _____ Other Parent pays Custodial

Parent this Amount

_____ PAYS _____ EACH MONTH \$ _____

Petitioner's Signature

Respondent's Signature

Date: _____

BASIC VISITATION

INSTRUCTIONS FOR WORKSHEET A

Line 1. Gross monthly income:

Includes all income, except AFDC, food stamps and supplemental security income. If a parent pays child support by court order to other children, subtract from gross income. Use current income if steady. If income varies a lot from month to month, use an average of the last twelve months, if available, or last year's income tax return. Add both parents' gross incomes and put total under the combined column.

Line 2. Percentage of Combined Income:

Divide each parent's income by combined income to get that parent's percentage of combined income.

Line 4. Basic Support:

Fill in number of children on worksheet (Line 3). Round combined income to nearest one hundred dollars (\$100). Look at the basic child support schedule. In the far left-hand column of the basic child support schedule, find the rounded combined income figure. Read across to the column with the correct number of children. Enter that amount on Line 4.

Line 5. Children's Health and Dental Insurance Premium:

Enter the cost paid by a parent for covering these children with medical and dental insurance under that parent's column on Line 5. Add costs paid by each parent and enter under the combined column on Line 5.

Line 6. Work-Related Child Care:

Enter the cost paid by each parent for work-related child care. If the cost varies (for example, between school year and summer), take the total yearly cost and divide by twelve. Enter each parent's figure in that parent's column on Line 6. Add the cost for both parents and enter in the combined column on Line 6.

Line 7. Additional Expenses:

Enter the amounts paid by each parent for additional expenses provided by Subsection I of this section on Line 7. Add the cost for both parents and enter in the combined column on Line 7.

Line 8. Total Support:

Total the basic support amount from Line 4 in the combined column with the combined column on Lines 4, 5, 6 and 7 and enter the totals in combined column on Line 8.

Line 9. Each Parent's Obligation:

Multiply the total child support amount on Line 8 by each parent's percentage share on Line 2, and enter each parent's dollar share under that parent's column on Line 9.

Line 10. Total Support:

Enter the total amount shown for each parent on Line 8 beside the "minus" marks on Line 10.

Line 11. Net Obligation:

For each parent, subtract the amount on Line 10 from the amount on Line 9. Enter the difference for each parent in that parent's column on Line 11. The amount in the box "other parent" is what that parent pays to the custodial parent each month. Do not subtract the amount on the custodial parent's Line 11 from the amount in the other parent's box. The custodial parent is presumed to use the amount in that parent's column on Line 11 for the children.

SHARED RESPONSIBILITY

____ JUDICIAL DISTRICT COURT
COUNTY OF _____
STATE OF NEW MEXICO

Petitioner,
vs.

MONTHLY CHILD SUPPORT OBLIGATION

9. Amount retained (Line
6 X Line 8 for each
parent) _____

10. Each Parent's
Obligation (subtract
Line 9 from Line 6) _____

11. Amount Transferred
(subtract smaller amount
on Line 10 from larger
amount on Line 10.) Parent
with larger amount on Line
10 pays other parent the
difference. _____

PART 2 - ADDITIONAL PAYMENTS:

12. Children's Health and
Dental Insurance
Premium _____ + _____ = _____

13. Work-Related Child
Care _____ + _____ = _____

14. Additional
Expenses _____ + _____ = _____

15. Total Additional
Payments (Add Lines
12, 13 and 14 for each
parent and for combined
column) _____ + _____ = _____

16. Each Parent's Obligation
(Combined Column Line 15
X each parent's Line 2) _____

17. Amount transferred
(Subtract each parent's
Line 16 from his Line 15).
Parent with "minus"
figure pays that amount
to other parent. _____

PART 3 - NET AMOUNT TRANSFERRED:

18. Combine Lines 11 and 17 by
addition if same parent pays

on both lines, otherwise by
subtraction.

_____ PAYS _____ EACH MONTH \$ _____

Petitioner's Signature

Respondent's Signature

Date: _____

SHARED RESPONSIBILITY

INSTRUCTIONS FOR WORKSHEET B

Part 1 - Basic Support:

Line 1. Gross Monthly Income:

Includes all income, except AFDC, food stamps and supplemental security income. See text for allowed deductions from income. Use current income if steady. If income varies a lot from month to month, use an average of the last twelve months, if available, or last year's income tax return.

Add both parents' gross incomes and put total under the combined column.

Line 2. Percentage of Combined Income:

Divide each parent's income by combined income to get that parent's percentage of combined income.

Lines 3 and 4. Basic Support:

Fill in the number of children on the worksheet (Line 3). Round combined income to nearest one hundred dollars (\$100). Look at the basic child support schedule. In the far left-hand column of that schedule, find the rounded combined income figure. Read across to the column with the correct number of children. Enter that amount on Line 4.

Line 5. Shared Responsibility Basic Obligation:

Multiply the basic obligation on Line 4 by 1.5.

Line 6. Each Parent's Share:

Multiply the support amount on Line 5 by each parent's percentage share on Line 2, and enter each parent's dollar share under that parent's column on Line 6.

Line 7. Each Parent's Time of Care for Children:

Enter the number of twenty-four-hour days of responsibility that each parent has each child in a year according to the parenting plan.

Line 8. Percentage of Twenty-Four-Hour Days With Each Parent:

Divide each parent's number of twenty-four-hour days (Line 7) by three hundred sixty-five to obtain a percentage.

Line 9. Amount Retained:

Under shared responsibility arrangements, each parent retains the percentage of the basic support obligation equal to the number of twenty-four-hour days of responsibility spent by each child with each respective parent divided by three hundred sixty-five.

Multiply each parent's share of basic support (Line 6) by the percentage in that parent's Line 8 and enter the result on that parent's Line 9. This is the amount that each parent retains to pay the children's expenses during that parent's periods of responsibility.

Line 10. Each Parent's Basic Obligation:

Subtract the amount retained by each parent for direct expenses (Line 9) from that parent's basic obligation (Line 6) and enter the difference on that parent's Line 10.

Line 11. Amount Transferred for Basic Support:

In shared responsibility situations, both parents are entitled not only to retain money for direct expenses but also to receive contributions from the other parent toward those expenses. Therefore, subtract the smaller amount on Line 10 from the larger amount on Line 10 to arrive at a net amount transferred for basic support.

Part 2 - Additional Payments:

Line 12. Children's Health and Dental Insurance Premium:

Enter the cost paid by a parent for covering these children with medical and dental insurance under that parent's column on Line 12. Add costs paid by each parent and enter under the combined column on Line 12.

Line 13. Work-Related Child Care:

Enter the cost paid by each parent for work-related child care. If the cost varies (for example, between school year and summer), take the total yearly cost and divide by twelve. Enter each parent's figure in that parent's column on Line 13. Add the cost for both parents and enter in combined column on Line 13.

Line 14. Cost Paid For Additional Expenses:

Enter the cost paid by each parent for additional expenses provided by Subsection I of this section on Line 14.

Line 15. Enter Total of Lines 12, 13 and 14:

For each parent, total the amount paid by him for insurance, child care and additional expenses (Lines 12, 13 and 14). Enter the total in that parent's column on Line 15 and the total of both parents' expenses under the combined column on Line 15.

Line 16. Each Parent's Obligation:

Multiply the total additional payments (combined column on Line 15) by each parent's

percentage share of income on Line 2, and enter each parent's dollar share of the additional payments on his Line 16.

Line 17. Amount Transferred:

Subtract each parent's obligation for additional expenses (that parent's Line 16) from the total additional payments made by that parent (that parent's Line 15). The parent with a "minus" figure pays the other parent the amount on Line 17.

Part 3 - Net Amount Transferred:

Line 18. Combine Lines 11 and 17:

Combine the amount owed by one parent to the other for basic support (Line 11) and the amount owed by one parent to the other for additional payments (Line 17). If the same parent owes for both obligations, add Lines 11 and 17, and enter the total on Line 18. If one parent owes for basic support and the other owes for additional payments, subtract the smaller amount from the larger and enter on Line 18. Fill in the blanks by stating which parent pays and which parent receives the net amount transferred."

SENATE BILL 179

CHAPTER 143

RELATING TO LICENSING; CHANGING THE RENEWAL DATE OF LICENSES ISSUED BY THE NEW MEXICO REAL ESTATE COMMISSION; CHANGING CERTAIN LICENSE FEES; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 61-29-8 NMSA 1978 (being Laws 1959, Chapter 226, Section 7, as amended) is amended to read:

"61-29-8. LICENSE FEES--DISPOSITION.--

A. The following fees shall be charged by the commission and paid into the real estate commission fund:

(1) for each examination, a fee of sixty dollars (\$60.00);

(2) for each broker's license issued, a fee of one hundred eighty dollars (\$180) and for each renewal thereof, a fee of one hundred eighty dollars (\$180);

(3) for each salesperson's license issued, a fee of one hundred eighty dollars (\$180) and for each renewal thereof, a fee of one hundred eighty dollars (\$180);

(4) subject to the provisions of Paragraph (11) of this subsection, for each change of place of business or change of employer or contractual associate, a fee of twenty dollars (\$20.00);

(5) for each duplicate license, where the license is lost or destroyed and affidavit is made thereof, a fee of twenty dollars (\$20.00);

(6) for each license history, a fee of twenty-five dollars (\$25.00);

(7) for copying of documents by the commission, a fee set by the commission, not to exceed one dollar (\$1.00) per copy;

(8) for each additional license law and rules and regulations booklet, a fee set by the commission not to exceed ten dollars (\$10.00) per booklet;

(9) for each additional directory of licensed real estate brokers and salespersons, a fee set by the commission not to exceed twenty dollars (\$20.00);

(10) for each supplement to the directory of licensed real estate brokers and salespersons, a fee set by the commission not to exceed twenty dollars (\$20.00); and

(11) when a license must be reissued for a salesperson because of change of address of the licensed broker's office, death of the licensed broker when a successor licensed broker is replacing the decedent and the salesperson remains in the office or change of name of the office or the entity of the licensed broker, the licensed broker or successor licensed broker as the case may be shall pay to the commission as the affected salesperson's license reissue fee twenty dollars (\$20.00), but if there are eleven or more affected salespersons in the licensed broker's office, the total fee paid to effect reissuance of all of those licenses shall not exceed two hundred dollars (\$200).

B. All fees set by the commission shall be set by rule or regulation and only after all requirements have been met as prescribed by Chapter 61, Article 29 NMSA 1978. Any changes or amendments to the rules and regulations shall be filed in accordance with the provisions of the State Rules Act.

C. The commission shall deposit all money received by it from fees in accordance with the provisions of Chapter 61, Article 29 NMSA 1978 with the state treasurer, who shall keep that money in a separate fund to be known as the "real estate commission fund", and money so deposited in that fund is appropriated for the purpose of carrying out the provisions of Chapter 61, Article 29 NMSA 1978 or to maintain the real estate recovery fund as required by the Real Estate Recovery Fund Act and shall be paid out of the fund upon the vouchers of the president and secretary of the commission; provided that the total fees and charges collected and paid into the state treasury and any money so deposited shall be expended only for the purposes authorized by Chapter 61, Article 29 NMSA 1978.

D. The commission shall by regulation provide for a proportionate refund of the license issuance fee or the license renewal fee if the license is issued or renewed for a period of two or three years pursuant to Section 61-29-11 NMSA 1978 and is terminated with more than one year remaining."

Section 2

Section 2. Section 61-29-11 NMSA 1978 (being Laws 1959, Chapter 226, Section 10, as amended) is amended to read:

"61-29-11. ISSUANCE, RENEWAL AND SURRENDER OF LICENSES.--

A. The commission shall issue to each qualified applicant a permanent license in such form and size as shall be prescribed by the commission.

B. This license shall show the name and address of the licensee and, in the case of a real estate salesperson's license, shall show the name of the real estate broker by whom he is engaged. The license of each real estate salesperson shall be delivered or mailed to the real estate broker by whom such real estate salesperson is engaged and shall be kept in the custody and control of that broker.

C. Every license shall be renewed every three years on or before the last day of the month following the licensee's month of birth. The commission shall certify renewal of each license in the absence of any reason or condition that might warrant the refusal of the renewal of a license, upon written request for renewal by the licensee, proof of compliance with continuing education requirements and receipt of the renewal fee. In the event any licensee has not made application for renewal of license, furnished proof of compliance with continuing education requirements and paid the renewal fee by his license renewal date, the license shall expire. The commission may, in its discretion, require the person whose license has expired to apply for a license as if he had not been previously licensed under Chapter 61, Article 29 NMSA 1978 and further require that he be reexamined. The commission shall require the person whose license has expired to pay when he applies for a license, in addition to any other fee, a late fee of one hundred dollars (\$100). If during a period of one year from the date the license expires the person or his spouse is either absent from this state on active duty military service or the person is suffering from an illness or injury of such severity that the person is physically or mentally incapable of making application for a license, payment of the late fee and reexamination shall not be required by the commission if, within three months of the person's permanent return to this state or sufficient recovery from illness or injury to allow the person to make an application, the person makes application to the commission for a license. A copy of that person or his spouse's military orders or a certificate from the applicant's physician shall accompany the application. Any person excused by reason of active duty military service, illness or injury as provided for in this subsection may make application for a license without imposition of the late fee. All fees collected pursuant to this subsection shall be disposed of in accordance with the provisions of Section 61-29-8 NMSA 1978. The revocation of a broker's license shall

automatically suspend every real estate salesperson's license granted to any person by virtue of his association with the broker whose license has been revoked, pending a change of broker and the issuance of a new license. Such new license shall be issued without charge if granted during the same year in which the license was granted.

D. Each resident licensed broker shall maintain a fixed office within this state, which shall be so located as to conform with local regulations. Every office operated by a licensed broker under Chapter 61, Article 29 NMSA 1978 shall have a licensed broker in charge. The license of the broker and the license of each salesperson associated with or under contract to that broker shall be prominently displayed in the office. The address of the office shall be designated in the broker's license, and no license issued shall authorize the licensee to transact real estate business at any other address except a licensed branch office. In case of removal from the designated address, the licensee shall make application to the commission before such removal or within ten days thereafter, designating the new location of his office and paying the required fee, whereupon the commission shall issue a license for the new location if the new location complies with the terms of Chapter 61, Article 29 NMSA 1978. Each licensed broker shall maintain a sign on his office of such size and content as the commission prescribes. In making application for a license or for a change of address, the licensee shall verify that his office conforms with local regulations.

E. When any real estate salesperson is discharged or terminates his association employment with the real estate broker with whom he is associated, it is the duty of that real estate broker to immediately deliver or mail to the commission that real estate salesperson's license. The commission shall hold the license on inactive status. It is unlawful for any real estate salesperson to perform any of the acts contemplated by Chapter 61, Article 29 NMSA 1978 either directly or indirectly under authority of such license after his association has been terminated and his license as salesperson has been returned to the commission as provided in that article until the appropriate fee has been paid and the license has been reissued by the commission.

F. During the period from July 1, 1995 through June 30, 1998, the commission in its discretion may renew licenses for periods of one, two or three years for the purpose of coordinating continuing education requirements with license renewal requirements."

Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

SENATE BILL 202

CHAPTER 144

RELATING TO HEALTH PROFESSIONAL EDUCATION; CREATING A HEALTH PROFESSION ADVISORY COMMITTEE; AMENDING CERTAIN STUDENT LOAN FOR SERVICE ACTS; CREATING A HEALTH PROFESSIONAL LOAN REPAYMENT PROGRAM.

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

Section 1

Section 1. HEALTH PROFESSION ADVISORY COMMITTEE--CREATED--DUTIES.--

A. The "health profession advisory committee" is created to advise the commission on higher education on matters relating to the administration of student loan programs for health professionals. The health profession advisory committee replaces the medical shortage area committee.

B. The health profession advisory committee shall be composed of a representative of the department of health; a representative of the New Mexico health policy commission; and representatives of public post-secondary health and medical training programs, underserved health and medical area providers, recruiting and placement organizations and professional health and medical associations. Members shall be appointed by the commission on higher education pursuant to the policies and procedures of the commission.

C. The health profession advisory committee shall:

- (1) designate health professional shortage areas of the state;
- (2) make recommendations to the commission on higher education on applicants for medical, osteopathic, nursing and allied health loan for service programs and loan repayment programs; and
- (3) give advice or other assistance to the commission as requested.

Section 2

Section 2. Section 21-22-2 NMSA 1978 (being Laws 1975, Chapter 244, Section 2, as amended) is amended to read:

"21-22-2. PURPOSE--COMMITTEE.--The purpose of the Medical Student Loan for Service Act is to meet the emergency currently existing resulting from the shortage of medical doctors and physician assistants in the less populated areas of the state by increasing the number of practitioners in rural areas through a program of loans for medical and physician assistant students. The program shall require as a condition of each loan that the student declare his intent that after licensure he will commence his

practice of medicine within one of the areas of the state designated by the health profession advisory committee."

Section 3

Section 3. Section 21-22-6 NMSA 1978 (being Laws 1975, Chapter 244, Section 6, as amended) is amended to read:

"21-22-6. MEDICAL STUDENT LOANS -- CONTRACT TERMS --REPAYMENT.-

-

A. Each applicant who is approved for a loan by the commission may be granted a loan, in such amounts and for such periods as determined by the commission, with which to defray expenses incurred in obtaining a medical education at any reputable and accredited medical school in the United States if the applicant files with the commission a declaration of his intent to practice his profession as a licensed physician or physician assistant in areas of New Mexico designated as not being adequately served by medical practitioners.

B. The loans shall not exceed the necessary expenses incurred while attending a medical school or college and shall bear interest at the rate of:

(1) eighteen percent per year if the student completes his medical education and no portion of the principal and interest is forgiven pursuant to Subsection E of this section; and

(2) seven percent per year in all other cases.

C. The loan shall be evidenced by a contract between the student and the commission acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum covering the costs of a medical education and shall be conditioned upon the repayment of the loan to the state, together with interest, over a period established by the commission in consultation with the student after completion of medical school and any period of internship or residency required to complete the student's education. The contract shall further provide that immediately upon completion or termination of the student's medical education, all interest then accrued shall be capitalized.

D. Loans made to students who fail to complete their medical education shall become due, together with interest, immediately upon termination of their medical education. The commission, in consultation with the student, shall establish terms of repayment, alternate service or cancellation terms.

E. The contract shall provide that the commission shall forgive a portion of the loan principal and interest for each year that a loan recipient practices his profession as a licensed physician or physician assistant in areas approved by the health

profession advisory committee as not being adequately served by medical practitioners. Loan principal and interest shall be forgiven as follows:

(1) loan terms of one year shall require one year of practice in a designated health professional shortage area. Upon completion of service, one hundred percent of the principal plus accrued interest shall be forgiven;

(2) loan terms of two years shall require one year of practice in a designated health professional shortage area for each year of the loan. Upon completion of the first year of service, fifty percent of the principal plus accrued interest shall be forgiven. Upon completion of the second year of service, the remainder of the principal plus accrued interest shall be forgiven; and

(3) for loan terms of three years or more, forty percent of the principal plus accrued interest shall be forgiven upon completion of the first year of service in a designated health professional shortage area, thirty percent of the principal plus accrued interest shall be forgiven upon completion of the second year of service and the remainder of the principal plus accrued interest shall be forgiven upon completion of the third year of service.

F. Recipients shall serve a complete year in order to receive credit for that year. The minimum credit for a year shall be established by the commission.

G. If a loan recipient completes his professional education and does not serve in a health professional shortage area, the commission shall assess a penalty of up to three times the principal due, plus eighteen percent interest, unless the commission finds acceptable extenuating circumstances for why the student cannot serve. If the commission does not find acceptable extenuating circumstances for the student's failure to carry out his declared intent to serve in a health professional shortage area in the state, the commission shall require immediate repayment of the unpaid principal amount of the loan plus accrued interest owed the state plus the amount of any penalty assessed pursuant to this subsection.

H. The commission shall adopt regulations to implement the provisions of this section. The regulations may provide for the repayment of medical student loans in annual or other periodic installments."

Section 4

Section 4. Section 21-22A-2 NMSA 1978 (being Laws 1978, Chapter 109, Section 2, as amended) is amended to read:

"21-22A-2. PURPOSE--COMMITTEE.--The purpose of the Osteopathic Medical Student Loan for Service Act is to meet the emergency currently existing resulting from the shortage of osteopathic medical doctors and osteopathic physician's assistants in the less populated areas of the state by increasing the number of practitioners in rural

areas through a program of loans for osteopathic medical students. The program shall require as a condition of each loan that the student declare his intent that after licensure he will commence his practice as an osteopathic physician or osteopathic physician's assistant within one of the areas of the state designated by the health profession advisory committee."

Section 5

Section 5. Section 21-22A-3 NMSA 1978 (being Laws 1978, Chapter 109, Section 3, as amended) is amended to read:

"21-22A-3. DEFINITIONS.--As used in the Osteopathic Medical Student Loan for Service Act:

A. "commission" means the commission on higher education;

B. "loan" means a grant of funds to defray the costs incidental to an osteopathic medical education, under a contract between the commission and an osteopathic medical student, requiring either repayment with interest or repayment in services;

C. "osteopathic medical education" means the education required to be an osteopathic physician or osteopathic physician's assistant; and

D. "student" means a resident of New Mexico who is a student enrolled in a school of osteopathic medicine or an osteopathic physician's assistant program."

Section 6

Section 6. Section 21-22A-4 NMSA 1978 (being Laws 1978, Chapter 109, Section 4, as amended) is amended to read:

"21-22A-4. OSTEOPATHIC MEDICAL STUDENT LOANS--COMMISSION AUTHORIZED--QUALIFICATIONS.--

A. The commission is authorized to grant a loan to defray the expenses of the osteopathic medical education of a student deemed qualified by the commission to receive the osteopathic medical education, upon such terms and conditions as may be imposed by regulations of the commission.

B. The commission shall only receive, pass upon and allow or disallow those applications for loans made by those students enrolled in or accepted by colleges of osteopathic medicine or osteopathic physician's assistant programs who are bona fide citizens and residents of New Mexico and who declare their intent to practice as osteopathic physicians or osteopathic physician's assistants within designated areas of the state.

C. The commission shall make a full and careful investigation of the ability, character and qualifications of each applicant and determine his fitness to become a recipient of a student loan. The investigation of each applicant shall include an investigation of the ability of the applicant and his parents or guardians to pay the applicant's expenses for an osteopathic medical education. The commission shall give preference to qualified applicants who are unable, or whose parents or guardians are unable, to pay the applicant's expenses in obtaining an osteopathic medical education.

D. The commission shall arrange for loan recipients to receive assistance in locating, planning and implementing the establishment and maintenance of a practice as an osteopathic physician or osteopathic physician's assistant in designated underserved areas."

Section 7

Section 7. Section 21-22A-6 NMSA 1978 (being Laws 1978, Chapter 109, Section 6, as amended) is amended to read:

"21-22A-6. OSTEOPATHIC MEDICAL STUDENT LOANS--CONTRACT TERMS--REPAYMENT.--

A. Each applicant who is approved for a loan by the commission may be granted a loan, in such amounts and for such periods as determined by the commission, with which to defray expenses incurred in obtaining an osteopathic medical education at any reputable and accredited osteopathic medical school in the United States if the applicant files with the commission a declaration of his intent to practice his profession as a licensed osteopathic physician or osteopathic physician's assistant in areas of New Mexico designated as not being adequately served by osteopathic medical practitioners.

B. The loan shall not exceed the necessary expenses incurred while attending an osteopathic medical school or college or osteopathic physician's assistant program and shall bear interest at the rate of:

(1) eighteen percent per year if the student completes his osteopathic medical education and no portion of the principal and interest is forgiven pursuant to Subsection E of this section; and

(2) seven percent per year in all other cases.

C. The loan shall be evidenced by a contract between the student and the commission acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum covering the costs of an osteopathic medical education and shall be conditioned upon the repayment of the loan to the state, together with interest, over a period established by the commission in consultation with the student after the completion of osteopathic medical school or osteopathic physician's assistant program

and any period of internship or residency required to complete the student's education. The contract shall further provide that immediately upon completion or termination of the student's osteopathic medical education, all interest then accrued shall be capitalized.

D. Loans made to students who fail to complete their osteopathic medical education shall become due, together with interest, immediately upon termination of their osteopathic medical education. The commission, in consultation with the student, shall establish terms of repayment, alternate service or cancellation terms.

E. The contract shall provide that the commission shall forgive a portion of the loan principal and interest for each year that a loan recipient practices his profession as a licensed osteopathic physician or osteopathic physician's assistant in areas approved by the health profession advisory committee as not being adequately served by osteopathic medical practitioners. Loan principal and interest shall be forgiven as follows:

(1) loan terms of one year shall require one year of practice in a designated health professional shortage area. Upon completion of service, one hundred percent of the principal plus accrued interest shall be forgiven;

(2) loan terms of two years shall require one year of practice in a designated health professional shortage area for each year of the loan. Upon completion of the first year of service, fifty percent of the principal plus accrued interest shall be forgiven. Upon completion of the second year of service, the remainder of the principal plus accrued interest shall be forgiven; and

(3) for loan terms of three years or more, forty percent of the principal plus accrued interest shall be forgiven upon completion of the first year of service in a designated health professional shortage area, thirty percent of the principal plus accrued interest shall be forgiven upon completion of the second year of service and the remainder of the principal plus accrued interest shall be forgiven upon completion of the third year of service.

F. Recipients shall serve a complete year in order to receive credit for that year. The minimum credit for a year shall be established by the commission.

G. If a loan recipient completes his professional education and does not serve in a health professional shortage area, the commission shall assess a penalty of up to three times the principal due, plus eighteen percent interest, unless the commission finds acceptable extenuating circumstances for why the student cannot serve. If the commission does not find acceptable extenuating circumstances for the student's failure to carry out his declared intent to serve in a health professional shortage area in the state, the commission shall require immediate repayment of the unpaid principal amount of the loan plus accrued interest owed the state plus the amount of any penalty assessed pursuant to this section.

H. The commission shall adopt regulations to implement the provisions of this section. The regulations may provide for the repayment of osteopathic medical student loans in annual or other periodic installments."

Section 8

Section 8. Section 21-22A-10 NMSA 1978 (being Laws 1978, Chapter 109, Section 10, as amended) is amended to read:

"21-22A-10. REPORTS.--The commission shall make annual reports to the governor and to the legislature, prior to each regular session, of its activities, the loans granted and the names and addresses of persons to whom loans were granted and the osteopathic medical schools or colleges or osteopathic physician's assistant programs attended by those receiving the loans, together with a list of the names and locations of practice of those students who have completed their education and have become licensed osteopathic physicians or osteopathic physician's assistants in New Mexico as a result of a student loan pursuant to the Osteopathic Medical Student Loan for Service Act."

Section 9

Section 9. Section 21-22B-2 NMSA 1978 (being Laws 1987, Chapter 299, Section 2, as amended) is amended to read:

"21-22B-2. PURPOSE.--The purpose of the Nursing Student Loan for Service Act is to meet the emergency currently existing resulting from the shortage of nurses in the underserved areas of the state by increasing the number of practitioners in rural areas through a program of loans for nursing students. The program will require as a condition of each loan that the student declare intent prior to the granting of the loan that the nurse will practice nursing within one of the areas of the state designated as an underserved area by the health profession advisory committee."

Section 10

Section 10. Section 21-22B-3 NMSA 1978 (being Laws 1987, Chapter 299, Section 3, as amended) is amended to read:

"21-22B-3. DEFINITIONS.--As used in the Nursing Student Loan for Service Act:

A. "commission" means the commission on higher education;

B. "loan" means a grant of funds to defray the costs incidental to a nursing education, under a contract between the commission and a nursing student, requiring repayment with services or repayment with interest;

C. "student" means a resident of New Mexico who is a student enrolled in a program of nursing; and

D. "program of nursing" means a nursing education program in a New Mexico institution accredited by a member of the council on post-secondary accreditation or a nursing education program approved by the New Mexico board of nursing."

Section 11

Section 11. Section 21-22B-6 NMSA 1978 (being Laws 1987, Chapter 299, Section 6, as amended) is amended to read:

"21-22B-6. NURSING STUDENT LOANS--CONTRACT TERMS--REPAYMENT.-

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A. Each applicant who is approved for a loan by the commission may be granted a loan, in such amounts for such periods as determined by the commission, with which to defray expenses incurred in obtaining a nursing education; provided that the applicant files with the commission a declaration of intent to practice as a licensed nurse in areas of New Mexico designated as underserved.

B. The loans shall not exceed the necessary expenses incurred while attending a program of nursing and shall bear interest at the rate of:

(1) eighteen percent per year if the student completes his nursing education and no portion of the principal and interest is forgiven pursuant to Subsection E of this section; and

(2) seven percent per year in all other cases.

C. The loan shall be evidenced by a contract between the student and the commission acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum covering the costs of a nursing education and shall be conditioned upon the repayment of the loan to the state, together with interest, over a period negotiated between the student and the commission after completion of a nursing program. The contract shall further provide that immediately upon completion or termination of the student's nursing education, all interest then accrued shall be capitalized.

D. Loans made to students who fail to complete their nursing education shall become due, together with interest, immediately upon termination of nursing education. The commission, in consultation with the student, shall establish terms of repayment, alternate service or cancellation terms with the commission.

E. The contract shall provide that the commission may forgive a portion of the loan principal and interest for each year that a loan recipient practices nursing in areas approved by the health profession advisory committee. Loan principal and interest shall be forgiven as follows:

(1) loan terms of one year shall require one year of practice in a designated health professional shortage area. Upon completion of service, one hundred percent of the principal plus accrued interest shall be forgiven;

(2) loan terms of two years shall require one year of practice in a designated health professional shortage area for each year of the loan. Upon completion of the first year of service, fifty percent of the principal plus accrued interest shall be forgiven. Upon completion of the second year of service, the remainder of the principal plus accrued interest shall be forgiven; and

(3) for loan terms of three years or more, forty percent of the principal plus accrued interest shall be forgiven upon completion of the first year of service in a designated health professional shortage area, thirty percent of the principal plus accrued interest shall be forgiven upon completion of the second year of service and the remainder of the principal plus accrued interest shall be forgiven upon completion of the third year of service.

F. Recipients shall serve a complete year in order to receive credit for that year. The minimum credit for a year shall be established by the commission.

G. The commission shall adopt regulations to implement the provisions of this section. The regulations may provide for the repayment of nursing student loans in annual or other periodic installments."

Section 12

Section 12. Section 21-22C-2 NMSA 1978 (being Laws 1994, Chapter 57, Section 4) is amended to read:

"21-22C-2. PURPOSE.--The purpose of the Allied Health Student Loan for Service Act is to meet the emergency currently existing resulting from the shortage of allied health professionals in underserved areas of the state by increasing the number of practitioners in rural areas through a program of loans for allied health students. Each applicant shall declare his intent to practice his allied health profession within one of the areas of the state designated as an underserved area by the health profession advisory committee."

Section 13

Section 13. Section 21-22C-3 NMSA 1978 (being Laws 1994, Chapter 57, Section 5) is amended to read:

"21-22C-3. DEFINITIONS.--As used in the Allied Health Student Loan for Service Act:

A. "allied health profession" means physical therapy, occupational therapy, speech-language pathology, audiology, pharmacy, nutrition, respiratory care, laboratory technology, radiologic technology, mental health services, emergency medical services or a licensed or certified health profession as defined by the commission;

B. "commission" means the commission on higher education;

C. "loan" means a grant of money to defray the costs incidental to an allied health profession education, under a contract between the commission and an allied health profession student, requiring repayment with services or repayment of principal and interest; and

D. "student" means a resident of New Mexico who is enrolled in an accredited program for one of the allied health professions."

Section 14

Section 14. Section 21-22C-6 NMSA 1978 (being Laws 1994, Chapter 57, Section 8) is amended to read:

"21-22C-6. ALLIED HEALTH STUDENT LOANS--CONTRACT TERMS--REPAYMENT.--

A. Prior to receiving a loan, each applicant approved for a loan shall file with the commission a declaration of intent to practice as a licensed allied health professional in areas of New Mexico designated as underserved.

B. The loans shall not exceed the necessary expenses incurred while attending an allied health profession program and shall bear interest at the rate of:

(1) eighteen percent per year if the student completes his allied health profession education and no portion of the principal and interest is forgiven pursuant to Subsection E of this section; and

(2) seven percent per year in all other cases.

C. The loan shall be evidenced by a contract between the student and the commission acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum covering the costs of an allied health profession education and shall be conditioned on the repayment of the loan to the state, together with interest, over a period negotiated between the student and the commission after completion of an allied health profession education. The contract shall further provide that immediately

upon completion or termination of the student's allied health profession education, all interest then accrued shall be capitalized.

D. Loans made to students who fail to complete their allied health profession education shall become due, together with interest, immediately upon termination of that education. The commission, in consultation with the student, shall establish repayment terms, alternate service or cancellation terms.

E. The contract shall provide that the commission shall forgive a portion of the loan principal and interest for each year that a loan recipient practices an allied health profession in areas approved by the health profession advisory committee. Loan principal and interest shall be forgiven as follows:

(1) loan terms of one year shall require one year of practice in a designated health professional shortage area. Upon completion of service, one hundred percent of the principal plus accrued interest shall be forgiven;

(2) loan terms of two years shall require one year of practice in a designated health professional shortage area for each year of the loan. Upon completion of the first year of service, fifty percent of the principal plus accrued interest shall be forgiven. Upon completion of the second year of service, the remainder of the principal plus accrued interest shall be forgiven; and

(3) for loan terms of three years or more, forty percent of the principal plus accrued interest shall be forgiven upon completion of the first year of service, thirty percent of the principal plus accrued interest shall be forgiven upon completion of the second year of service and the remainder of the principal plus accrued interest shall be forgiven upon completion of the third year of service.

F. Recipients shall serve a complete year in order to receive credit for that year. The minimum credit for a year shall be established by the commission.

G. If a loan recipient completes his professional education and does not serve the required number of years in a health professional shortage area, the commission shall assess a penalty of up to three times the principal due, plus eighteen percent interest, unless the commission finds acceptable extenuating circumstances for why the student cannot serve. If the commission does not find acceptable extenuating circumstances for the student's failure to carry out his declared intent to serve in a health professional shortage area in the state, the commission shall require immediate repayment of the unpaid principal amount of the loan plus accrued interest owed the state plus the amount of any penalty assessed pursuant to this subsection.

H. The commission shall adopt regulations to implement the provisions of this section. The regulations may provide for the repayment of allied health student loans in annual or other periodic installments."

Section 15

Section 15. Section 21-22C-10 NMSA 1978 (being Laws 1994, Chapter 57, Section 12) is amended to read:

"21-22C-10. REPORTS.--The commission shall make annual reports to the governor and to the legislature, prior to each regular session, of its activities, the loans granted, the names and addresses of loan recipients, the allied health program attended by loan recipients, the names and locations of the practices of those allied health professionals who have completed their education and are serving in a health professional shortage area of the state and the name of each loan recipient who has completed his education and is not serving in a health professional shortage area, the reason the person is not serving and the amount owed and paid on the loan."

Section 16

Section 16. SHORT TITLE.--Sections 16 through 25 of this act may be cited as the "Health Professional Loan Repayment Act".

Section 17

Section 17. PURPOSE.--The purpose of the Health Professional Loan Repayment Act is to increase the number of health professionals in underserved areas of the state through an educational loan repayment program. The act provides for repayment of the principal and reasonable interest accrued on loans obtained from the federal government or a commercial lender for health education purposes.

Section 18

Section 18. DEFINITIONS.--As used in the Health Professional Loan Repayment Act:

A. "commission" means the commission on higher education;

B. "health professional" means a primary care physician, optometrist, podiatrist, physician's assistant, dentist, nurse, member of an allied health profession as defined in the Allied Health Student Loan for Service Act or a licensed or certified health professional as determined by the commission; and

C. "loan" means a grant of money to defray the costs incidental to a health education, under a contract between the federal government or a commercial lender and a health professional, requiring either repayment of principal and interest or repayment in services.

Section 19

Section 19. COMMISSION POWERS AND DUTIES--PARTICIPANT ELIGIBILITY--QUALIFICATIONS.--

A. The commission may grant an award to repay loans obtained for health educational expenses of a health professional upon such terms and conditions as may be imposed by regulations of the commission.

B. Applicants shall be licensed or certified to practice in New Mexico as health professionals and shall be bona fide citizens and residents of the United States and of New Mexico. Applicants shall declare their intent to practice as health professionals within designated health professional shortage areas of the state.

C. The commission shall make a full and careful investigation of the ability, character and qualifications of each applicant and determine fitness to become a health professional in the health professional loan repayment program.

D. The commission shall assist selected health professionals in locating practice positions in designated health professional shortage areas.

Section 20

Section 20. DELEGATION OF DUTIES.--The commission may delegate to other agencies or contract for the performance of services required by the provisions of the Health Professional Loan Repayment Act.

Section 21

Section 21. AWARD CRITERIA--CONTRACT TERMS--PAYMENT.--

A. Prior to receiving an award, the health professional shall file with the commission a declaration of intent to practice as a health professional in areas of New Mexico designated as underserved by the health profession advisory committee.

B. Award criteria shall provide that:

(1) amounts shall be dependent upon the location of the practice, the applicant's total health professional educational indebtedness and characteristics of the practice;

(2) preference in making awards shall be to individuals who have graduated from a New Mexico public post-secondary educational institution;

(3) recruitment awards shall be made to eligible participants who agree to relocate to an approved designated area;

(4) highest priority shall be given to participants in practices in which health profession vacancies are difficult to fill, practices that require after hours call at least every other night and practices that have heavy obstetrical responsibilities;

(5) award amounts may be modified based upon available funding or other special circumstances; and

(6) an award shall not exceed the total medical educational indebtedness of any participant.

C. The following educational debts are not eligible for repayment pursuant to the Health Professional Loan Repayment Act:

(1) amounts incurred as a result of participation in state loan-for-service programs or other state programs whose purpose states that service be provided in exchange for financial assistance;

(2) scholarships that have a service component or obligation;

(3) personal loans from friends or relatives; and

(4) loans that exceed individual standard school expense levels.

D. The loan repayment award shall be evidenced by a contract between the health professional and the commission acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum to the health professional's debtors and shall state the obligations of the health professional under the program, including a minimum two-year period of service, quarterly reporting requirements and other policies established by the commission.

E. Recipients shall serve a complete year in order to receive credit for that year. The minimum credit for a year shall be established by the commission.

F. If a health professional does not comply with the terms of the contract, the commission shall assess a penalty of up to three times the amount of award disbursed plus eighteen percent interest, unless the commission finds acceptable extenuating circumstances for why the health professional cannot serve or comply with the terms of the contract. If the commission does not find acceptable extenuating circumstances for the health professional's failure to comply with the contract, the commission shall require immediate repayment plus the amount of the penalty.

G. The commission shall adopt regulations to implement the provisions of this section. The regulations may provide for the disbursement of loan repayment awards to the lenders of health professionals in annual or other periodic installments.

Section 22

Section 22. CONTRACTS--ENFORCEMENT.--The general form of the contract required shall be prepared and approved by the attorney general and signed by the health professional and the designated representative of the commission on behalf of the state. The commission is vested with full and complete authority and power to sue in its own name for any balance due the state from any student on any such contract.

Section 23

Section 23. FUND CREATED--METHOD OF PAYMENT.--The "health professional loan repayment fund" is created in the state treasury. All money appropriated for the health professional loan repayment program shall be credited to the fund, and all payments for penalties or repayment of awards received by the commission shall be credited to the fund or shall be deposited with the commission's administrative agent. All payments for loan repayment awards shall be made upon vouchers signed by the designated representative of the commission and upon warrant issued by the secretary of finance and administration.

Section 24

Section 24. CANCELLATION.--The commission may cancel any contract made between it and any health professional for any reasonable cause deemed sufficient by the commission.

Section 25

Section 25. REPORTS.--The commission shall make annual reports to the governor and to the legislature, prior to each regular session, of its activities, the loan repayment awards granted, the names and addresses of loan repayment award recipients, the names and locations of the practices of those health professionals who are serving in a designated health professional shortage area of the state pursuant to the Health Professional Loan Repayment Act and the name of each loan repayment award recipient who is not serving in a designated health professional shortage area, the reason the person is not serving and the amount owed and paid on the loan and loan repayment award.

Section 26

Section 26. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

SENATE BILL 241

CHAPTER 145

RELATING TO WILDLIFE; AMENDING THE WILDLIFE CONSERVATION ACT TO PROVIDE PROCEDURES FOR LISTING AND DELISTING ENDANGERED AND THREATENED SPECIES; PROVIDING FOR THE DEVELOPMENT AND IMPLEMENTATION OF RECOVERY PLANS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 17-2-37 NMSA 1978 (being Laws 1974, Chapter 83, Section 1) is amended to read:

"17-2-37. SHORT TITLE.--Sections 17-2-37 through 17-2-46 NMSA 1978 may be cited as the "Wildlife Conservation Act"."

Section 2

Section 2. Section 17-2-38 NMSA 1978 (being Laws 1974, Chapter 83, Section 2) is amended to read:

"17-2-38. DEFINITIONS.--As used in the Wildlife Conservation Act:

- A. "commission" means the state game commission;
- B. "director" means the director of the department of game and fish;
- C. "ecosystem" means a system of living organisms and their environment;
- D. "endangered species" means any species of fish or wildlife whose prospects of survival or recruitment within the state are in jeopardy due to any of the following factors:
 - (1) the present or threatened destruction, modification or curtailment of its habitat;
 - (2) overutilization for scientific, commercial or sporting purposes;
 - (3) the effect of disease or predation;
 - (4) other natural or man-made factors affecting its prospects of survival or recruitment within the state; or
 - (5) any combination of the foregoing factors.

The term may also include any species of fish or wildlife appearing on the United States list of endangered native and foreign fish and wildlife as set forth in Section 4 of the Endangered Species Act of 1973 as endangered species, provided that the commission adopts those lists in whole or in part. The term shall not include any species covered by the provisions of 16 U.S.C. 1331 through 1340 (1971) and shall not include any species of the class insecta determined by the director to constitute a pest whose protection under the Wildlife Conservation Act would present an overwhelming and overriding risk to man;

E. "investigation" means a process pursuant to Subsections B through L of Section 17-2-40 NMSA 1978 undertaken whenever the director suspects that a species may be threatened or endangered and which consists of a formal review of existing data and studies and may include additional field research to determine whether a species is threatened or endangered;

F. "land or aquatic habitat interests" means interests in real property or water rights consisting of fee simple title, easements in perpetuity, time certain easements, long-term leases and short-term leases;

G. "management" means the collection and application of biological information for the purposes of establishing and maintaining a congruous relationship between individuals within species and populations of wildlife and the carrying capacity of their habitat. The term includes the entire range of activities that constitutes a full scientific resource program of, including but not limited to, research, census, law enforcement, propagation, acquisition or maintenance of land or aquatic habitat interests appropriate for recovery of the species, improvement and maintenance, education and related activities or protection and regulated taking;

H. "recovery plan" means a designated program or methodology reasonably expected to lead to restoration and maintenance of a species and its habitat;

I. "peer review panel" means an advisory panel of scientists, each of whom possesses expertise relevant to the proposed investigation and at least one of whom is a wildlife biologist, convened to review the scientific methodology for collection and analysis of data by a researcher based on commonly accepted scientific peer review;

J. "species" means any species or subspecies;

K. "substantial public interest" means a nonfrivolous claim indicated by a broad-based expression of public concern;

L. "take" or "taking" means to harass, hunt, capture or kill any wildlife or attempt to do so;

M. "threatened species" means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range in New Mexico; the term may also include any species of fish or wildlife appearing on the United States list of endangered native and foreign fish and wildlife as set forth in Section 4 of the Endangered Species Act of 1973 as threatened species, provided that the commission adopts the list in whole or in part; and

N. "wildlife" means any nondomestic mammal, bird, reptile, amphibian, fish, mollusk or crustacean or any part, egg or offspring, or the dead body or parts thereof."

Section 3

Section 3. Section 17-2-39 NMSA 1978 (being Laws 1974, Chapter 83, Section 3) is amended to read:

"17-2-39. FINDINGS AND DECLARATIONS.--The legislature finds and declares that:

A. species of wildlife indigenous to the state that may be found to be threatened or endangered should be managed to maintain and, to the extent possible, enhance their numbers within the carrying capacity of the habitat;

B. the state should assist in the management of species of wildlife that are deemed to be endangered elsewhere by prohibiting the taking, possession, transportation, exportation, processing, sale or offering for sale or shipment within this state of species of wildlife listed on the United States lists of endangered fish and wildlife, unless such actions will assist in preserving or propagating the species;

C. adequate funding should be made available to the department of game and fish by annual appropriations from the general fund or from other sources separate and apart from the game protection fund for management of threatened or endangered species; and

D. because the management and recovery of threatened or endangered species are the responsibility of and a benefit to all of society, the costs of management and recovery should be the responsibility of all sectors of society, and those costs should be minimized and should be borne by federal, state and local governments with contributions from the private sector."

Section 4

Section 4. Section 17-2-40 NMSA 1978 (being Laws 1974, Chapter 83, Section 4) is amended to read:

"17-2-40. BIENNIAL REVIEW--INVESTIGATIONS--RECOMMENDATIONS OF THE DIRECTOR--PROCEDURES.--

A. The director shall conduct a biennial review of all species of wildlife named on the list required by Section 17-2-41 NMSA 1978. The director may conduct investigations at any time of those other species of wildlife indigenous to the state that are suspected of being threatened or endangered in order to develop information relating to population, distribution, habitat needs, limiting factors and other biological and ecological data to determine his recommendations for listing or not listing a species and management measures and requirements necessary for their survival. The director shall also conduct, within a reasonable time, an investigation to support listing or delisting of a species based upon new evidence or, with the advice and consent of the commission, based upon substantial public interest. Upon completion of an investigation or investigations, he shall make written recommendations to the commission to list or not list any unlisted species or to delist any listed species investigated. In conducting any investigation for new listing or delisting required or undertaken pursuant to this subsection, the director shall comply with the procedures established in Subsections B through L of this section. Species listed as threatened or endangered on the state list through adoption of the United States list pursuant to Subsections D and M of Section 17-2-38 NMSA 1978 shall not be subject at the time of adoption to the listing procedures established in Subsections B through K of this section.

B. The director shall select a researcher to conduct an investigation pursuant to Subsection A of this section and request the appointment of a peer review panel composed of one qualified individual from each of the four-year state universities to be appointed by the presidents of the respective universities. The peer review panel shall be requested to submit comments according to a schedule determined by the director. The researcher shall submit his research design to the peer review panel.

C. When additional field research is undertaken as part of an investigation, the peer review panel shall examine the proposed research design for methodology for collection and analysis of data. Upon receipt of the peer review panel's submitted comments, the researcher shall initiate the field research regarding the designated species.

D. To the extent practicable, as part of his investigation the researcher shall meet and consult with private landowners, lessees and land and resource managers who are or may be affected by or have information pertinent to the investigation.

E. When the researcher initiates his investigation, the director shall:

(1) create a public repository file in which copies of all documents filed with the director pertaining to the investigation or a potential recovery plan, to be developed pursuant to Section 17-2-40.1 NMSA 1978, including all peer review comments, shall be maintained;

(2) mail a notice of the initiation of the investigation to federal and state agencies, local and tribal governments that are or may be affected by the results of the investigation and individuals and organizations that have requested notification of department actions regarding threatened or endangered species;

(3) notify the general public of the initiation of the investigation by information releases to the media in the area of the state affected;

(4) indicate, in all notices and information releases, where and until what date information may be submitted for inclusion in the public repository file;

(5) accept data, views or information about the biological or ecological status of the species for use in both the investigation and the development of the potential recovery plan; and

(6) accept data, views and information on the potential economic or social impacts or opportunities of a change in the legal status of the species for inclusion in the recovery plan.

F. The director shall file all written comments, data, views and information furnished pursuant to Subsection D of this section in the public repository file and shall preserve that file for use in connection with the listing process and development of any recovery plan developed pursuant to the provisions of Section 17-2-40.1 NMSA 1978. The director shall file in the public repository file all records indicating contact by the director, the researcher, employees or contractors with land owners or public or private resource managers affected by the potential action.

G. Information from the public repository file relating to social and economic impacts shall not be considered by the director in making his recommendation or the commission in making its decision to list, delist, not list, continue to list, upgrade or downgrade a species, but shall be considered only in the development of any recovery plan for the species.

H. The commission shall adopt, notwithstanding the provisions of Section 14-2-1 NMSA 1978, regulations by January 1, 1996 governing the confidentiality of data from an investigation.

I. The researcher shall prepare and submit draft reports to the peer review panel and to the public repository file. The peer review panel will be requested to examine and comment on the draft report in a timely manner.

J. After consideration of the peer review panel's submitted comments on the draft reports, the researcher shall prepare final reports and file them and all peer review panel comments with the director and in the public repository file. The peer review panel shall not be compelled to attend any hearing before the commission.

K. Upon receipt of the researcher's final reports, the director shall make recommendations to the commission to list, not list or delist the species based upon criteria listed in Subsection L of this section. The commission shall establish dates and locations for public hearings on the recommended actions and give notice of the public hearings in the same manner and to the same persons as notice was given of the initiation of the investigation and, in addition, publish legal notice in a newspaper of general circulation in the area affected at least ninety days before the date set for the hearing. Public hearings shall be held at a place within any quadrant of the state affected by the recommended actions when the director determines that there is substantial public interest indicated in holding a hearing in that quadrant. All hearings on the recommended actions shall be held within six months of the date the director makes his recommendations. The notice shall:

- (1) include the date, time and location of all hearings on the matter;
- (2) include a statement of the recommended action;
- (3) include an indication of the location and availability of the public repository file;
- (4) indicate where and by what date written comments and testimony to be included in the hearing record may be filed;
- (5) indicate that views, data and comments pertaining to the final report may be presented orally at or in writing to the hearing;
- (6) specify that notice of intent to present technical and scientific testimony and a written copy of the testimony to be presented shall be submitted to the commission not less than thirty days prior to the initial hearing; and
- (7) specify that the public record shall remain open for comments for thirty days after the date of the final hearing.

L. The commission shall make its decisions and take action based upon relevant and reliable evidence to list, not list or delist a species at its next regularly scheduled meeting within no more than thirty days after the close of the hearing record. The commission shall:

- (1) list or maintain a species as endangered and shall not delist a species if it finds that the species' prospects for survival or recruitment within the state are in jeopardy based upon the biological and ecological evidence in the public repository file and based upon biological and ecological evidence received in the public hearings; and
- (2) list or maintain a species as threatened and shall not delist a species if it finds that the species' prospects for survival or recruitment within the state

are likely within the foreseeable future to be in jeopardy based upon the biological and ecological evidence in the public repository file and biological and ecological evidence received in public hearings.

M. Whenever the director finds that there is an emergency posing a significant risk to the well-being of any species and that risk is likely to jeopardize the continued survival or recruitment of the species within the state, the director shall recommend to the commission that the species should be listed as endangered. The commission shall act upon the director's recommendation immediately and shall either list or not list the species by regulation based upon the evidence supporting the recommendation if it finds that the continued survival of the species is in jeopardy. If the commission lists the species as endangered, it shall waive the requirements of Subsections A through L of this section. Whenever the commission adopts a regulation listing a species as endangered pursuant to this subsection, it shall give notice of the listing in the same manner and to the same persons as notice is given in the initiation of investigations and in addition shall publish legal notice in a newspaper of general circulation in the area affected. The emergency listing shall cease to have force and effect at the close of a three-year period following the date of the finding unless, during the three year period, the procedures for listing pursuant to Subsections B through L of this section or continuing to list pursuant to commission regulations for the biennial review are completed."

Section 5

Section 5. A new Section 17-2-40.1 NMSA 1978 is enacted to read:

"17-2-40.1. RECOVERY PLANS--PROCEDURES.--

A. To the extent practicable, a recovery plan shall be developed pursuant to Subsections B through G of this section for any species listed as threatened or endangered. If indicated, the director shall conduct a social and economic analysis and, if adverse impacts are found, develop a social or economic mitigation plan.

B. To the extent practicable, the director shall develop recovery plans that include several threatened or endangered species that utilize similar habitats or share a common threat or both. A multiple-species recovery plan shall be designed to accomplish recovery of the shared habitat or reduce a common threat or both.

C. As the initial action in the development of a recovery plan, the director shall, within one year of listing, schedule a public information meeting in each of the quadrants of the state determined by the director to be affected by the development of a recovery plan. These meetings shall be held in a manner calculated to provide a reasonable opportunity for individuals and private and public entities to participate and express their views about the development of a recovery plan for one or more species and the attendant adverse social or economic impacts, if any, that may result from implementation of a recovery plan. At these meetings the director shall present

background information about the basis of the listing, an explanation of the process to develop a recovery plan and the probable content in general terms, if known, of the recovery plan and if needed, the process to develop a social and economic mitigation plan.

D. Upon completion of the public information meeting or meetings on a recovery plan, the director shall consult and cooperate with other states or countries when appropriate and shall solicit interest from representatives of affected local governments, tribal governments, landowners, state and federal agencies and other interested individuals and organizations to serve on an advisory committee. He shall appoint to the advisory committee all of those who are willing to participate in the development of the recovery plan. When necessary, he may appoint from the membership of the advisory committee a working group reflecting the diversity of the advisory committee.

E. With the assistance of the advisory committee, the director shall develop a draft recovery plan to achieve the following objectives:

(1) restoration and maintenance of a viable population of the threatened or endangered species and its habitat reasonably expected to lead to the delisting of the species;

(2) avoidance or mitigation of adverse social or economic impacts;

(3) identification of social or economic benefits and opportunities;
and

(4) use of volunteer resources and existing economic recovery and assistance programs and funding available from public and private sources to implement the plan.

F. The director shall mail the draft recovery plan to federal and state agencies, local and tribal governments that are or may be affected by the recovery plan and individuals and organizations that have requested notification of department actions regarding threatened or endangered species.

G. The final recovery plan shall be presented to the commission for its consideration not later than two years from the date the species was listed. If the commission determines that the proposed plan has achieved the objectives set forth in Subsection E of this section, it shall approve the recovery plan or approve with conditions. After approval of the plan, the director shall seek cooperation with other states and countries, when appropriate, and landowners, state and federal agencies and local and tribal governments for implementation of the recovery plan and when appropriate submit the recovery plan to the secretary of the interior for approval pursuant to the federal Endangered Species Act of 1973."

Section 6

Section 6. Section 17-2-41 NMSA 1978 (being Laws 1974, Chapter 83, Section 5) is amended to read:

"17-2-41. ENDANGERED SPECIES.--

A. On the basis of investigations concerning wildlife, other available scientific and commercial data and after consultation with wildlife agencies in other states, appropriate federal agencies, local and tribal governments and other interested persons and organizations, the commission shall by regulation develop a list of those species of wildlife indigenous to the state that are determined to be threatened or endangered within the state, giving their common and scientific names by species and subspecies.

B. The director shall conduct a review of the state list of threatened or endangered species and shall present biennially to the commission his recommendations for appropriate action. The commission shall act on the director's biennial recommendations at its next regularly scheduled meeting. The commission shall adopt, no later than January 1, 1996, regulations providing procedures for commission actions on the director's recommendations to continue to list or to upgrade or downgrade a species.

C. Except as otherwise provided in the Wildlife Conservation Act, it is unlawful for any person to take, possess, transport, export, process, sell or offer for sale or ship any species of wildlife appearing on any of the following lists:

(1) the list of wildlife indigenous to the state determined to be endangered within the state as set forth by regulations of the commission; and

(2) the United States lists of endangered native and foreign fish and wildlife as set forth in Section 4 of the Endangered Species Act of 1973 as endangered or threatened species, but only to the extent that those lists are adopted for this purpose by regulations of the commission; provided that any species of wildlife appearing on any of the lists set forth in this subsection, transported into the state from another state or from a point outside the territorial limits of the United States and which is destined for a point beyond the state, may be transported across the state without restriction in accordance with the terms of any federal permit or permit issued under the laws or regulations of another state or otherwise in accordance with the laws of another state.

D. The provisions of Subsection C of this section shall not apply to a taking of wildlife by a Native American for religious purposes, unless it materially and negatively affects an endangered species or threatened species."

Section 7

Section 7. Section 17-2-44 NMSA 1978 (being Laws 1974, Chapter 83, Section 8) is amended to read:

"17-2-44. DIRECTOR--LAND OR AQUATIC HABITAT INTEREST ACQUISITION.--In addition to other powers and duties, the director:

A. may acquire land or aquatic habitat interests for the conservation, management, restoration, propagation and protection of threatened or endangered species; and

B. shall conduct studies to determine the status and requirements for survival of threatened or endangered species."

Section 8

Section 8. A new section of the Wildlife Conservation Act is enacted to read:

"JUDICIAL REVIEW--ADMINISTRATIVE ACTIONS.--

A. Any person adversely affected by an administrative action taken by the commission may appeal to the court of appeals. All appeals shall be upon the record made at the hearing or contained in the public repository file and shall be taken to the court of appeals within thirty days following the date of the action.

B. For appeals of regulations, the date of the action shall be the date of the filing of the regulation by the commission, pursuant to the provisions of the State Rules Act.

C. Upon appeal, the court of appeals shall set aside the action 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 law.

D. After a hearing and a showing of good cause by the appellant, a stay of the action being appealed may be granted:

(1) by the commission; or

(2) by the court of appeals if the commission denies a stay or fails to act upon an application for a stay within sixty days after receipt of the application.

E. The appellant shall pay all costs for any appeal found to be frivolous by the court of appeals."

Section 9

Section 9. EFFECTIVE DATE.--The provisions of these 1995 amendments to the Wildlife Conservation Act shall become effective only upon the appropriation of sufficient funds from the general fund to the conservation services division of the department of game and fish in an amount not less than three hundred fifty thousand dollars (\$350,000) to fulfill the responsibilities established in Laws 1994, Chapter 129 and the appropriation of sufficient funds from the general fund of not less than one hundred thousand dollars (\$100,000) to implement these 1995 amendments to the Wildlife Conservation Act.

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 371

CHAPTER 146

RELATING TO MISSING PERSONS; ENACTING THE MISSING PERSONS INFORMATION ACT; ESTABLISHING A CLEARINGHOUSE; PROVIDING POWERS AND DUTIES FOR THE DEPARTMENT OF PUBLIC SAFETY AND LAW ENFORCEMENT AGENCIES.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Missing Persons Information Act".

Section 2

Section 2. DEFINITIONS.--As used in the Missing Persons Information Act:

A. "child" means an individual under the age of eighteen years who is not emancipated;

B. "clearinghouse" means the missing persons information clearinghouse;

C. "custodian" means a parent, guardian or other person who exercises legal physical control, care or custody of a child;

D. "immediate family member" means the spouse or nearest relative of a person;

E. "missing person" means a person whose whereabouts are unknown to the person's custodian or immediate family member and the circumstances of whose absence indicate that:

(1) the person did not leave the care and control of the custodian or immediate family member voluntarily and the taking of the person was not authorized by law; or

(2) the person voluntarily left the care and control of his custodian without the custodian's consent and without intent to return;

F. "missing person report" means information that is:

(1) given to a law enforcement agency on a form used for sending information to the national crime information center; and

(2) about a person whose whereabouts are unknown to the reporter and who is alleged in the form submitted by the reporter to be missing;

G. "person" means an individual, regardless of his age;

H. "possible match" means the similarities between an unidentified body of a person and a missing person that would lead one to believe they are the same person;

I. "reporter" means the person who reports a missing person; and

J. "state agency" means an agency of the state, political subdivision of the state or public post-secondary educational institution.

Section 3

Section 3. MISSING PERSONS INFORMATION CLEARINGHOUSE --FUNCTION.--

A. The "missing persons information clearinghouse" is established in the department of public safety. The department of public safety shall provide for the administration of the clearinghouse. The department of public safety may adopt rules and regulations to carry out the provisions of the Missing Persons Information Act in the manner prescribed in Subsection E of Section 9-1-5 NMSA 1978.

B. The clearinghouse is a central repository of information on missing persons and shall be used by all law enforcement agencies, including tribal agencies, in this state.

C. The clearinghouse shall:

- (1) establish a system of intrastate communication of information relating to missing persons;
- (2) provide a centralized file for the exchange of information on missing persons and unidentified bodies of persons within the state;
- (3) communicate with the national crime information center for the exchange of information on missing persons suspected of interstate travel;
- (4) collect, process, maintain and disseminate accurate and complete information on missing persons;
- (5) provide a statewide toll-free telephone line for the reporting of missing persons and for receiving information on missing persons;
- (6) disseminate to custodians, law enforcement agencies, the state department of public education, the children, youth and families department and the general public information that explains how to prevent child abduction and what to do if a child becomes missing;
- (7) compile statistics relating to the incidence of missing persons within the state;
- (8) provide training and technical assistance to law enforcement agencies and social services agencies pertaining to missing persons; and
- (9) establish a media protocol for disseminating information pertaining to missing persons.

D. The clearinghouse shall print and distribute posters, flyers and other forms of information containing descriptions of missing persons.

E. The department of public safety may accept public or private grants, gifts and donations to assist the department in carrying out the provisions of the Missing Persons Information Act.

Section 4

Section 4. STATE DEPARTMENT OF PUBLIC EDUCATION--COOPERATION WITH CLEARINGHOUSE.--The state department of public education shall cooperate with the clearinghouse in seeking to locate missing children who may be enrolled in New Mexico school systems, including private schools, and for the reporting of children who may be missing or who may be unlawfully removed from schools.

Section 5

Section 5. CUSTODIAN OR IMMEDIATE FAMILY MEMBER REQUEST FOR INFORMATION.--

A. Upon written notification to a law enforcement agency by a custodian or immediate family member of a missing person, the law enforcement agency shall immediately request from the clearinghouse information concerning the person that may aid the custodian or immediate family member in the identification or location of the person.

B. A law enforcement agency to which notification has been provided pursuant to Subsection A of this section shall report to the custodian or immediate family member on the results of its inquiry within seven calendar days after the day the written notification is received by the law enforcement agency, or as soon as the results of its inquiry become available, whichever occurs last.

Section 6

Section 6. MISSING PERSON REPORT FORMS.--

A. The clearinghouse shall distribute missing person report forms to law enforcement agencies in the state.

B. A missing person report may be made to a law enforcement agency in person or by telephone or other indirect method of communication and the person taking the report may enter the information on the form for the reporter. A missing person report form may be completed by the reporter and delivered to a law enforcement officer.

C. A copy of the missing person report form shall be filed with the clearinghouse.

Section 7

Section 7. LAW ENFORCEMENT REQUIREMENTS--MISSING PERSON REPORTS--UNIDENTIFIED BODIES.--

A. A law enforcement agency, upon receiving a missing person report, shall:

(1) immediately start an appropriate investigation to determine the present location of the person;

(2) provide to the clearinghouse all information the law enforcement agency has relating to an investigation regarding or the location or identification of a missing person; and

(3) immediately enter the name of the missing person into the clearinghouse and the national crime information center missing person file.

B. Information not immediately available shall be obtained as soon as possible by the law enforcement agency and entered into the clearinghouse and the national crime information center file as a supplement to the original entry.

C. All New Mexico law enforcement agencies are required to enter information about all unidentified bodies of persons found in their jurisdiction into the clearinghouse and the national crime information center unidentified person file, including all available identifying features of the body and a description of the clothing found on the body. If an information entry into the national crime information center file results in an automatic entry of the information into the clearinghouse, the law enforcement agency is not required to make a direct entry of that information into the clearinghouse.

Section 8

Section 8. RELEASE OF DENTAL RECORDS--IMMUNITY.--

A. At the time a missing person report is made, the law enforcement agency to which the missing person report is given shall provide a dental record release form to the custodian or immediate family member of the missing person. The law enforcement agency shall endorse the dental record release form with a notation that a missing person report has been made in compliance with the provisions of the Missing Persons Information Act. When the dental record release form is properly completed by the custodian or immediate family member of the missing person and contains the endorsement, the form is sufficient to permit a dentist or physician in this state to release dental records relating to the missing person to the law enforcement agency.

B. A district court judge may for good cause shown authorize the release of dental records of a missing person to a law enforcement agency.

C. The law enforcement agency shall send the dental records to the clearinghouse.

D. A dentist or physician who releases dental records to a person presenting a proper release executed or ordered pursuant to this section is immune from civil liability or criminal prosecution for the release of the dental records.

Section 9

Section 9. CROSS-CHECKING AND MATCHING.--

A. The clearinghouse shall cross-check and attempt to match unidentified bodies with descriptions of missing persons. When the clearinghouse discovers a possible match between an unidentified body and a missing person description, the clearinghouse shall notify the appropriate law enforcement agencies.

B. Law enforcement agencies that receive notice of a possible match shall make arrangements for positive identification. If a positive identification is made, the law enforcement agency shall complete and close the investigation with written notification to the clearinghouse.

Section 10

Section 10. INTERAGENCY COOPERATION.--

A. State agencies and public and private schools shall cooperate with a law enforcement agency that is investigating a missing person report and shall furnish any information that will assist the law enforcement agency in completing the investigation.

B. Information provided by a state agency or a public or private school shall not be released to any person outside the law enforcement agency or the clearinghouse, except as provided by regulation of the department of public safety.

Section 11

Section 11. CONFIDENTIALITY OF RECORDS.--

A. The department of public safety shall by regulation provide for the classification of information and records as confidential that:

(1) are otherwise confidential under state or federal law or regulations adopted pursuant to state or federal law;

(2) are related to the investigation by a law enforcement agency of a missing person or an unidentified body, if the department of public safety, in consultation with the law enforcement agency, determines that release of the information would be deleterious to the investigation;

(3) are records or notations that the clearinghouse maintains for internal use in matters relating to missing persons and unidentified bodies and the department of public safety determines that release of the internal documents might interfere with an investigation by a law enforcement agency in New Mexico or any other jurisdiction; or

(4) the department of public safety determines might interfere with an investigation or otherwise harm a person, custodian or reporter.

B. The regulation may provide for the sharing of confidential information with the custodian or immediate family member of the missing person.

Section 12

Section 12. ATTORNEY GENERAL TO REQUIRE COMPLIANCE.--The attorney general shall require each law enforcement agency to comply with the provisions of the Missing Persons Information Act and may seek writs of mandamus or other appropriate remedies to enforce the provisions of that act.

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 942

CHAPTER 147

RELATING TO PUBLIC WORKS; AMENDING SECTIONS 13-4-27 THROUGH 13-4-29 NMSA 1978 (BEING LAWS 1985, CHAPTER 124, SECTIONS 1 AND 2 AND LAWS 1989, CHAPTER 217, SECTION 1, AS AMENDED).

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

Section 1

Section 1. Section 13-4-27 NMSA 1978 (being Laws 1985, Chapter 124, Section 1, as amended) is amended to read:

"13-4-27. DEFINITIONS.--As used in Sections 13-4-27 through 13-4-30 NMSA 1978:

A. "central purchasing office" means the governing authority of a state agency or local public body that enters into a public works contract pursuant to applicable state laws. The term "owner" may be used in contract documents and will have the same meaning as central purchasing office;

B. "contractor" means the prime contractor on a public works project who contracts directly with the central purchasing office;

C. "public works" means a construction project of the state, or local public body, not including highway projects of the state highway and transportation department, to design, construct, repair, alter or extend an improvement on real

property or to improve real property owned, used or leased by the state or local public body;

D. "retainage" means the amount of money otherwise due to a contractor or subcontractor under a public works contract that may be withheld by a contracting authority to secure performance of the contract;

E. "subcontractor" means a person or other legal entity who contracts with a contractor or other subcontractor to work, or who has fulfilled an obligation to a contractor by contributing toward the completion of work, on a public works project; and

F. "supplier" means a person or other legal entity who supplies materials to a contractor or subcontractor for work on a public works project."

Section 2

Section 2. Section 13-4-28 NMSA 1978 (being Laws 1985, Chapter 124, Section 2) is amended to read:

"13-4-28. PROMPT PAYMENT--PUBLIC WORKS CONTRACTS.-- Public works contracts shall provide that all payment for amounts due and owing shall be paid within twenty-one days after receipt of the request for payment by the central purchasing office to the contractor by mailing via first class mail or by hand delivery of the undisputed amount of any pay request based on work completed or service provided under the contract. If the central purchasing office receives an improperly completed invoice, the central purchasing office shall notify the sender of the invoice within seven days of receipt in what way the invoice is improperly completed. If the central purchasing office fails to pay the prime contractor within twenty-one days after receipt of an undisputed request for payment, the central purchasing office shall pay an interest penalty to the prime contractor beginning on the twenty-second day, computed at one and one-half percent of the undisputed request for payment per month or fraction thereof until payment is issued. The contract shall also provide that contractors and subcontractors make prompt payment to their subcontractors and suppliers for amounts due and owing within seven days after receipt of payment from the central purchasing office or the contractor or subcontractor. When the contractor receives payment from the central purchasing office for work completed, he is required to pay his subcontractors and suppliers promptly by mailing via first class mail or by hand delivery. If the contractor fails to pay his subcontractors and suppliers within seven days of receipt of payment from the central purchasing office, the contractor shall pay an interest penalty beginning on the eighth day after payment was due. Interest penalties shall be computed at one and one-half percent of the undisputed request for payment per month or fraction thereof until payment is issued. These payment provisions apply to all tiers of contractors, subcontractors and suppliers."

Section 3

Section 3. Section 13-4-29 NMSA 1978 (being Laws 1989, Chapter 217, Section 1) is amended to read:

"13-4-29. RETAINAGE.--

A. The central purchasing office shall not withhold an amount in excess of five percent of payments due and owing a contractor and shall not withhold an amount in excess of two percent of the total contract price as retainage after it determines that the contract is substantially completed.

B. Any home rule municipality or H class county chartered under the provisions of Article 10, Section 6 of the constitution of New Mexico is expressly denied authority to require retainage provisions in conflict with the provisions of this subsection.

C. On completion and acceptance of each separate building, public work or other division of the contract, on which the price is stated separately in the contract, payment may be made therefor without retention of a percentage."

Section 4

Section 4. APPLICABILITY.--The provisions of this act apply to lump-sum or unit price public works contracts but do not apply to public works contracts entered into prior to the effective date of this act.

Section 5

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

SENATE BILL 964

CHAPTER 148

RELATING TO EDUCATIONAL RETIREMENT; AMENDING AND ENACTING SECTIONS OF THE EDUCATIONAL RETIREMENT ACT PERTAINING TO THE DEFINITION AND CALCULATION OF SALARY.

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

Section 1

Section 1. Section 22-11-2 NMSA 1978 (being Laws 1967, Chapter 16, Section 126, as amended by Laws 1993, Chapter 69, Section 1 and also by Laws 1993, Chapter 232, Section 7) is amended to read:

"22-11-2. DEFINITIONS.--As used in the Educational Retirement Act:

A. "member" means any employee, except for a participant coming within the provisions of the Educational Retirement Act;

B. "regular member" means:

(1) a person regularly employed as a teaching, nursing or administrative employee of a state educational institution, except for:

(a) a participant; or

(b) all employees of a general hospital or outpatient clinics thereof operated by state educational institution named in Article 12, Section 11 of the constitution of New Mexico;

(2) a person regularly employed as a teaching, nursing or administrative employee of a junior college or community college created pursuant to Chapter 21, Article 13 NMSA 1978;

(3) a person regularly employed as a teaching, nursing or administrative employee of a technical and vocational institute created pursuant to the Technical and Vocational Institute Act;

(4) a person regularly employed as a teaching, nursing or administrative employee of the New Mexico boys' school, the New Mexico girls' school, the Los Lunas medical center or a school district or as a certified school instructor of a state institution or agency providing an educational program and holding a standard or substandard certificate issued by the state board;

(5) a person regularly employed by the department of education or the board holding a standard or substandard certificate issued by the state board at the time of commencement of such employment;

(6) a member classified as a regular member in accordance with the regulations of the board;

(7) a person regularly employed by the New Mexico activities association holding a standard certificate issued by the state board at the time of commencement of such employment; or

(8) a person regularly employed by a regional education cooperative holding a standard certificate issued by the state board at the time of commencement of such employment;

C. "provisional member" means a person not eligible to be a regular member but who is employed by a local administrative unit designated in Subsection B of this section; provided, however, that employees of a general hospital or outpatient clinics thereof operated by a state educational institution named in Article 12, Section 11 of the constitution of New Mexico are not provisional members;

D. "local administrative unit" means an employing agency however constituted that is directly responsible for the payment of compensation for the employment of members or participants;

E. "beneficiary" means a person having an insurable interest in the life of a member or a participant designated by written instrument duly executed by the member or participant and filed with the director to receive a benefit pursuant to the Educational Retirement Act that may be received by someone other than the member or participant;

F. "employment" means employment by a local administrative unit that qualifies a person to be a member or participant;

G. "service employment" means employment that qualifies a person to be a regular member;

H. "provisional service employment" means employment that qualifies a person to be a provisional member;

I. "prior employment" means employment performed prior to the effective date of the Educational Retirement Act that would be service employment or provisional service employment if performed thereafter;

J. "service credit" means that period of time with which a member is accredited for the purpose of determining his eligibility for and computation of retirement or disability benefits;

K. "earned service credit" means that period of time during which a member was engaged in employment or prior employment with which he is accredited for the purpose of determining his eligibility for retirement or disability benefits;

L. "allowed service credit" means that period of time during which a member has performed certain nonservice employment with which he may be accredited, as provided in the Educational Retirement Act, for the purpose of computing retirement or disability benefits;

M. "retirement benefit" means an annuity paid monthly to members whose employment has been terminated by reason of their age;

N. "disability benefit" means an annuity paid monthly to members whose employment has been terminated by reason of a disability;

O. "board" means the educational retirement board;

P. "fund" means the educational retirement fund;

Q. "director" means the educational retirement director;

R. "medical authority" means a medical doctor within the state or as provided in Subsection D of Section 22-11-36 NMSA 1978 either designated or employed by the board to examine and report on the physical condition of applicants for or recipients of disability benefits;

S. "actuary" means a person trained and regularly engaged in the occupation of calculating present and projected monetary assets and liabilities under annuity or insurance programs;

T. "actuarial equivalent" means a sum paid as a current or deferred benefit that is equal in value to a regular benefit, computed upon the basis of interest rates and mortality tables;

U. "contributory employment" means employment for which contributions have been made by both a member and a local administrative unit pursuant to the Educational Retirement Act;

V. "qualifying state educational institution" means the university of New Mexico, New Mexico state university, New Mexico institute of mining and technology, New Mexico highlands university, eastern New Mexico university and western New Mexico university;

W. "participant" means:

(1) a person regularly employed as a faculty or professional employee of a qualifying state educational institution who first becomes employed with such an educational institution on or after July 1, 1991 and who elects, pursuant to Section 22-11-47 NMSA 1978, to participate in the alternative retirement plan; and

(2) a person regularly employed who performs research or other services pursuant to a contract between a qualifying state educational institution and the United States government or any of its agencies who elects, pursuant to Section 22-11-47 NMSA 1978, to participate in the alternative retirement plan, provided that the research or other services are performed outside the state;

X. "salary" means the compensation or wages paid to a member or participant by any local administrative unit for services rendered; and

Y. "alternative retirement plan" means the retirement plan provided for in Sections 22-11-47 through 22-11-52 NMSA 1978."

Section 2

Section 2. A new section of the Educational Retirement Act, Section 22-11-21.2 NMSA 1978, is enacted to read:

"22-11-21.2. SALARY CALCULATION--LIMITATIONS.--In establishing a member's average annual salary for determination of retirement benefits, salary in excess of limitations set forth in Section 401(a)(17) of the Internal Revenue Code of 1986, as amended, shall be disregarded. The limitation on compensation for eligible employees shall not be less than the amount allowed pursuant to the Educational Retirement Act in effect on July 1, 1993. For purposes of this section, "eligible employee" means an individual who was a member or participant of the educational retirement plan or alternative retirement plan prior to the first plan year beginning after December 31, 1995."

Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

SENATE BILL 1096

CHAPTER 149

RELATING TO INSURANCE; PROVIDING FOR IMPROVED INSURER SOLVENCY REGULATION THROUGH RISK-BASED CAPITAL STANDARDS; AMENDING AND ENACTING CERTAIN SECTIONS OF THE NEW MEXICO INSURANCE CODE.

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

Section 1

Section 1. A new Section 59A-5A-1 NMSA 1978 is enacted to read:

"59A-5A-1. SHORT TITLE.--Chapter 59A, Article 5A, NMSA 1978 may be cited as the "Risk-Based Capital Act"."

Section 2

Section 2. A new Section 59A-5A-2 NMSA 1978 is enacted to read:

"59A-5A-2. DEFINITIONS.--As used in the Risk-Based Capital Act:

A. "adjusted risk-based capital report" means a risk-based capital report adjusted in accordance with Subsection E of Section 59A-5A-3 NMSA 1978;

B. "authorized control level risk-based capital" means the number determined under the risk-based capital formula in accordance with the risk-based capital instructions bearing the same designation;

C. "company action level risk-based capital" means an amount equal to two hundred percent of an insurer's authorized control level risk-based capital;

D. "corrective order" means an order issued by the superintendent specifying required corrective actions;

E. "life or health insurer" means any authorized life insurer, health insurer, casualty insurer writing only health insurance or nonprofit health care plan;

F. "mandatory control level risk-based capital" means an amount equal to seventy percent of an insurer's authorized control level risk-based capital;

G. "property or casualty insurer" means any insurer authorized to write property, marine and transportation, casualty, vehicle or surety insurance, but does not include any insurer writing only one of the following:

(1) mortgage guaranty insurance;

(2) financial guaranty insurance;

(3) title insurance; or

(4) health insurance;

H. "negative trend" means, with respect to a life or health insurer, negative trend over a period of time, as determined in accordance with the trend test calculation included in the risk-based capital instructions;

I. "regulatory action level risk-based capital" means an amount equal to one hundred fifty percent of an insurer's authorized control level risk-based capital;

J. "revised risk-based capital plan" means a risk-based capital plan that has been rejected by the superintendent and revised by the insurer, with or without the superintendent's recommendation;

K. "risk-based capital instructions" means the risk-based capital report, including risk-based capital instructions, adopted by the national association of insurance commissioners, as they may be amended by the national association of insurance commissioners from time to time, and not disapproved by the superintendent;

L. "risk-based capital level" means an insurer's company action level risk-based capital, regulatory action level risk-based capital, authorized control level risk-based capital or mandatory control level risk-based capital;

M. "risk-based capital plan" means a comprehensive financial plan as specified in Subsection B of Section 59A-5A-4 NMSA 1978;

N. "risk-based capital report" means the report specified in Section 59A-5A-3 NMSA 1978; and

O. "total adjusted capital" means the sum of:

(1) an insurer's capital and surplus as determined in accordance with statutory accounting principles applicable to annual financial statements required to be filed under Section 59A-5-29 NMSA 1978; and

(2) such other items, if any, as the risk-based capital instructions may provide."

Section 3

Section 3. A new Section 59A-5A-3 NMSA 1978 is enacted to read:

"59A-5A-3. RISK-BASED CAPITAL REPORTS.--

A. On or before March 1 each year, every domestic insurer shall prepare and submit to the superintendent a report of its risk-based capital levels as of December 31 of the immediately preceding calendar year, in a form and containing such information as is required by the risk-based capital instructions. In addition, every domestic insurer shall file its risk-based capital report with:

(1) the national association of insurance commissioners in accordance with the risk-based capital instructions; and

(2) the insurance commissioner of each state in which the insurer is authorized to do business, if the insurance commissioner for that state has notified the insurer of his request in writing. The insurer shall file a copy of its risk-based capital report with each such commissioner not later than March 1 each year or fifteen days from receipt of the notice, whichever is later.

B. A life or health insurer's risk-based capital shall be determined in accordance with the formula in the risk-based capital instructions. The formula shall take into account and may adjust for the covariance among the following factors:

(1) asset risk;

(2) the risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(3) the interest rate risk with respect to the insurer's business; and

(4) all other business risks and other relevant risks set forth in the risk-based capital instructions.

C. A property or casualty insurer's risk-based capital shall be determined in accordance with the formula in the risk-based capital instructions. The formula shall take into account and may adjust for the covariance among the following factors:

(1) asset risk;

(2) credit risk;

(3) underwriting risk; and

(4) all other business risks and other relevant risks set forth in the risk-based capital instructions.

D. An excess of capital over the amount calculated by the formulas, schedules and instructions referenced in the Risk-Based Capital Act is desirable in the business of insurance. Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in the Risk-Based Capital Act. Accordingly, insurers should seek to maintain capital above the risk-based capital levels required by that act.

E. If a domestic insurer files a risk-based capital report which in the superintendent's judgment is inaccurate, then the superintendent shall adjust the risk-based capital report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment."

Section 4

Section 4. A new Section 59A-5A-4 NMSA 1978 is enacted to read:

"59A-5A-4. COMPANY ACTION LEVEL EVENT.--

A. As used in the Risk-Based Capital Act, a "company action level event" means any one or more of the following events:

(1) the filing of a risk-based capital report by an insurer which indicates that:

(a) the insurer has total adjusted capital greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital; or

(b) a life or health insurer has total adjusted capital greater than or equal to its company action level risk-based capital but less than two hundred fifty percent of its authorized control level risk-based capital and has a negative trend;

(2) the superintendent's notification to an insurer that its adjusted risk-based capital report indicates the existence of an event described in Paragraph (1) of this subsection, unless the insurer challenges the adjusted report pursuant to Section 59A-5A-8 NMSA 1978; or

(3) if an insurer challenges the adjusted report, notification to the insurer that the superintendent has, after hearing, rejected the challenge.

B. In the event of a company action level event, the insurer shall prepare and submit to the superintendent a risk-based capital plan, which shall:

(1) identify the conditions which contribute to the company action level event;

(2) contain proposals of corrective actions which the insurer intends to take to eliminate the company action level event;

(3) provide projections of the insurer's expected financial results in the current year and at least the four succeeding years, both in the absence of and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital and surplus. Projections for new and renewal business may, if appropriate, include separate projections for each major line of business and separately identify each significant income, expense and benefit component;

(4) identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(5) identify the quality of, and problems associated with, the insurer's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any, in each case.

C. The risk-based capital plan shall be submitted on or before the later of the following dates:

(1) forty-five days after the company action level event; or

(2) if the insurer challenges the adjusted risk-based capital report pursuant to Section 59A-5A-8 NMSA 1978, forty-five days after the date of the notification to the insurer that the superintendent has, after hearing, rejected the insurer's challenge.

D. Within sixty days after the submission of an insurer's risk-based capital plan, the superintendent shall notify the insurer whether the plan shall be implemented or is, in the superintendent's judgment, unsatisfactory. If the superintendent determines the risk-based capital plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions that will render the plan satisfactory. Upon notification, the insurer shall prepare a revised risk-based capital plan, which may incorporate by reference any revisions proposed by the superintendent, and shall submit the revised plan to the superintendent. The revised plan shall be submitted on or before the last of the following dates:

(1) forty-five days after the date of the superintendent's notification;
or

(2) if the insurer challenges the notification pursuant to Section 59A-5A-8 NMSA 1978, forty-five days after the date of the notification to the insurer that the superintendent has, after hearing, rejected the insurer's challenge.

E. A notification that the insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory may include a statement that the notification constitutes a regulatory action level event, subject to the insurer's right to a hearing pursuant to Section 59A-5A-8 NMSA 1978.

F. Every domestic insurer which files a risk-based capital plan or revised risk-based capital plan with the superintendent shall file a copy of the risk-based capital plan and any revised risk-based capital plan with the insurance commissioner of each state in which the insurer is authorized to do business if:

(1) the state has confidentiality provisions substantially similar to those in Subsection A of Section 59A-5A-9 NMSA 1978; and

(2) the insurance commissioner for that state has notified the insurer of his request in writing. The insurer shall file a copy of the risk-based capital plan or revised risk-based capital plan with each such commissioner on or before the later of the following dates:

(a) fifteen days after the receipt of notice to file a copy of its risk-based capital plan or revised risk-based capital plan with the state; or

(b) the date the risk-based capital plan or revised risk-based capital plan is filed under Subsections C and D of this section."

Section 5

Section 5. A new Section 59A-5A-5 NMSA 1978 is enacted to read:

"59A-5A-5. REGULATORY ACTION LEVEL EVENT.--

A. For purposes of the Risk-Based Capital Act, "regulatory action level event" means any of the following events:

(1) the filing of a risk-based capital report by an insurer which indicates that the insurer's total adjusted capital is greater than or equal to its authorized control level risk-based capital but less than its regulatory action level risk-based capital;

(2) the superintendent's notification to an insurer that its adjusted risk-based capital report indicates the existence of an event described in Paragraph (1) of this subsection, unless the insurer challenges the adjusted report pursuant to Section 59A-5A-8 NMSA 1978;

(3) if an insurer challenges the adjusted report, notification to the insurer that the superintendent has, after hearing, rejected the challenge;

(4) an insurer's failure to file a risk-based capital report by the filing date, unless the insurer has provided an explanation satisfactory to the superintendent and has cured the failure within ten days after the filing date;

(5) an insurer's failure to submit a risk-based capital plan to the superintendent by the date specified in Subsection C of Section 59A-5A-4 NMSA 1978;

(6) the superintendent's notification to an insurer that:

(a) the risk-based capital plan or revised risk-based capital plan submitted by the insurer is, in the superintendent's judgment, unsatisfactory; and

(b) the notification constitutes a regulatory action level event with respect to the insurer, unless the insurer has challenged the determination pursuant to Section 59A-5A-8 NMSA 1978;

(7) if an insurer challenges the superintendent's determination made pursuant to Paragraph (6) of this subsection, notification to the insurer that the superintendent has, after hearing, rejected the challenge;

(8) the superintendent's notification to an insurer that the insurer has failed to adhere to its risk-based capital plan or revised risk-based capital plan and that the failure has had or will have a substantial adverse effect on the ability of the insurer to eliminate the company action level event, unless the insurer has challenged the determination pursuant to Section 59A-5A-8 NMSA 1978; or

(9) if an insurer challenges the superintendent's determination made pursuant to Paragraph (8) of this subsection, notification to the insurer that the superintendent has, after hearing, rejected the challenge.

B. In the event of a regulatory action level event the superintendent shall:

(1) require the insurer to prepare and submit a risk-based capital plan or, if applicable, a revised risk-based capital plan;

(2) perform such examination or analysis as the superintendent deems necessary of the assets, liabilities and operations of the insurer, including a review of its risk-based capital plan or revised risk-based capital plan; and

(3) subsequent to the examination or analysis, issue an order specifying such corrective actions as the superintendent determines are required.

C. In determining corrective actions, the superintendent may take into account such factors as are deemed relevant based upon the superintendent's examination or analysis of the assets, liabilities and operations of the insurer, including but not limited to the results of any sensitivity tests undertaken pursuant to the risk-based capital instructions. The risk-based capital plan or revised risk-based capital plan shall be submitted on or before the later of the following dates:

(1) forty-five days after the occurrence of the regulatory action level event; or

(2) if the insurer challenges an adjusted risk-based capital report or plan pursuant to Section 59A-5A-8 NMSA 1978 and the challenge is not frivolous in the superintendent's judgment, forty-five days after notification to the insurer that the superintendent has, after hearing, rejected the insurer's challenge.

D. The superintendent may retain actuaries and investment experts and other consultants as he may deem necessary to review the insurer's risk-based capital plan or revised risk-based capital plan, examine or analyze the assets, liabilities and operations of the insurer and formulate the corrective order with respect to the insurer. The fees, costs and expenses incurred by consultants shall be paid by the affected insurer or such other party as the superintendent directs."

Section 6

Section 6. A new Section 59A-5A-6 NMSA 1978 is enacted to read:

"59A-5A-6. AUTHORIZED CONTROL LEVEL EVENT.--

A. As used in the Risk-Based Capital Act, "authorized control level event" means any of the following events:

(1) the filing of a risk-based capital report by an insurer which indicates that the insurer's total adjusted capital is greater than or equal to its mandatory control level risk-based capital but less than its authorized control level risk-based capital;

(2) the superintendent's notification to an insurer that its adjusted risk-based capital report indicates the existence of an event described in Paragraph (1) of this subsection, unless the insurer challenges the adjusted report pursuant to Section 59A-5A-8 NMSA 1978;

(3) if an insurer challenges the adjusted capital report, notification to the insurer that the superintendent has, after hearing, rejected the challenge;

(4) an insurer's failure to respond, in a manner satisfactory to the superintendent, to a corrective order unless the insurer has challenged the order pursuant to Section 59A-5A-8 NMSA 1978; or

(5) if an insurer has challenged a corrective order and the superintendent has, after hearing, rejected the challenge or modified the corrective order, the failure of the insurer to respond, in a manner satisfactory to the superintendent, to the corrective order subsequent to rejection or modification.

B. In the event of an authorized control level event with respect to an insurer, the superintendent shall:

(1) take such actions as are required pursuant to Section 59A-5A-5 NMSA 1978 regarding an insurer with respect to which a regulatory action level event has occurred; or

(2) if the superintendent deems it to be in the best interests of the insurer's policyholders and creditors and of the public, take such actions as are necessary to cause the insurer to be placed under regulatory control pursuant to Chapter 59A, Article 41 NMSA 1978. The authorized control level event shall constitute sufficient grounds for the superintendent to take action pursuant to Chapter 59A, Article 41 NMSA 1978, and the superintendent shall have the rights, powers and duties with respect to the insurer set forth in Chapter 59A, Article 41 NMSA 1978."

Section 7

Section 7. A new Section 59A-5A-7 NMSA 1978 is enacted to read:

"59A-5A-7. MANDATORY CONTROL LEVEL EVENT.--

A. As used in the Risk-Based Capital Act, "mandatory control level event" means any of the following events:

(1) the filing of a risk-based capital report which indicates that an insurer's total adjusted capital is less than its mandatory control level risk-based capital;

(2) the superintendent's notification to an insurer that its adjusted risk-based capital report indicates the existence of an event described in Paragraph (1) of this subsection, unless the insurer challenges the adjusted report pursuant to Section 59A-5A-8 NMSA 1978; or

(3) if the insurer challenges the adjusted report, notification to the insurer that the superintendent has, after hearing, rejected the insurer's challenge.

B. In the event of a mandatory control level event, the superintendent shall:

(1) with respect to a life insurer, take such actions as are necessary to place the insurer under regulatory control pursuant to Chapter 59A, Article 41 NMSA 1978. In that event, the mandatory control level event shall constitute sufficient grounds for the superintendent to take action pursuant to Chapter 59A, Article 41 NMSA 1978, and the superintendent shall have the rights, powers and duties with respect to the insurer set forth in Chapter 59A, Article 41 NMSA 1978. Notwithstanding the foregoing provisions of this paragraph, the superintendent may forego action for up to ninety days after the mandatory control level event if the superintendent finds there is a reasonable expectation that the mandatory control level event can be eliminated within the ninety-day period; or

(2) with respect to a property or casualty insurer, take such actions as are necessary to place the insurer under regulatory control pursuant to Chapter 59A, Article 41 NMSA 1978, or, in the case of an insurer that is writing no business and that is running off its existing business, may allow the insurer to continue its run off under the superintendent's supervision. In either event, the mandatory control level event shall constitute sufficient grounds for the superintendent to take action pursuant to Chapter 59A, Article 41 NMSA 1978, and the superintendent shall have the rights, powers and duties with respect to the insurer as are set forth in Chapter 59A, Article 41 NMSA 1978. Notwithstanding the foregoing provisions of this paragraph, the superintendent may forego action for up to ninety days after the mandatory control level event if the superintendent finds there is a reasonable expectation that the mandatory control level event can be eliminated within the ninety-day period."

Section 8

Section 8. A new Section 59A-5A-8 NMSA 1978 is enacted to read:

"59A-5A-8. CHALLENGE HEARINGS.--Any insurer has the right to a confidential administrative hearing of record in accordance with Chapter 59A, Article 4 NMSA 1978 at which the insurer may challenge any determination or action by the superintendent pursuant to the Risk-Based Capital Act.

A. The insurer shall file and serve on the superintendent its request for hearing within five days after any of the following events:

(1) the superintendent's notification to the insurer of an adjusted risk-based capital report;

(2) the superintendent's notification to the insurer that:

(a) the insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory; and

(b) such notification constitutes a regulatory action level event with respect to such insurer;

(3) the superintendent's notification to the insurer that the insurer has failed to adhere to its risk-based capital plan or revised risk-based capital plan and that such failure has had or will have a substantial adverse effect on the ability of the insurer to eliminate the company action level event; or

(4) the superintendent's notification to an insurer of a corrective order with respect to the insurer.

B. Upon receipt of the insurer's request for hearing, the superintendent shall set a hearing date, which shall be not less than ten nor more than thirty days after the date of the insurer's request."

Section 9

Section 9. A new Section 59A-5A-9 NMSA 1978 is enacted to read:

"59A-5A-9. CONFIDENTIALITY--PROHIBITION ON ANNOUNCEMENTS--PROHIBITION ON USE IN RATEMAKING.--

A. To the extent not set forth in any other form accessible to the public, all information in risk-based capital reports, risk-based capital plans, results or reports of any examination or analysis of an insurer performed pursuant to the Risk-Based Capital Act and all corrective orders issued by the superintendent pursuant to such examination or analysis, is and shall be kept confidential by the superintendent. This information shall not be made public or be subject to subpoena, other than by the superintendent and then only for the purpose of enforcement actions taken by the superintendent pursuant to the Insurance Code.

B. The comparison of an insurer's total adjusted capital to any of its risk-based capital levels is a regulatory tool that may indicate the need for possible corrective action by the superintendent with respect to the insurer, and is not intended as a means to rank insurers generally or to compare insurers for marketing purposes.

Use of such comparisons for such purposes is inherently misleading and deceptive. Except as otherwise required under the provisions of the Risk-Based Capital Act or applicable law, no insurer, agent, broker or other person engaged in any manner in the business of insurance shall make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing an assertion, representation or statement with regard to the risk-based capital levels of any insurer, or of any component derived in their calculation; provided, however, that if any materially false statement with respect to the comparison regarding an insurer's total adjusted capital to its risk-based capital levels or an inappropriate comparison of any other amount to the insurer's risk-based capital levels is published in any written publication and the insurer is able to demonstrate to the superintendent's satisfaction the falsity or inappropriateness of the statement, then the insurer may publish an announcement approved in advance by the superintendent in a written publication whose sole purpose is to rebut the materially false statement.

C. The risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans and revised risk-based capital plans are intended solely for use by the superintendent in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers. They shall not be used by the superintendent for ratemaking, considered or introduced as evidence in any rate proceeding or used to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which an insurer or any affiliate is authorized to write."

Section 10

Section 10. A new Section 59A-5A-10 NMSA 1978 is enacted to read:

"59A-5A-10. SUPPLEMENTAL PROVISIONS--RULES--EXEMPTION.--

A. The provisions of the Risk-Based Capital Act are supplemental to any other provisions of law, and shall not supersede, preclude the exercise of or limit any other powers or duties of the superintendent under such laws, including but not limited to Chapter 59A, Article 41 NMSA 1978.

B. The superintendent may adopt reasonable rules and regulations for the implementation of the Risk-Based Capital Act.

C. The superintendent may exempt from the application of the Risk-Based Capital Act any domestic insurer which:

(1) writes direct business only in this state;

(2) writes direct annual premiums of two million dollars (\$2,000,000) or less; and

(3) assumes no reinsurance in excess of five percent of direct premium written."

Section 11

Section 11. A new Section 59A-5A-11 NMSA 1978 is enacted to read:

"59A-5A-11. FOREIGN INSURERS.--

A. Any foreign insurer shall, upon the superintendent's written request, submit to the superintendent a risk-based capital report as of the end of the most recent calendar year the same date risk-based capital reports are required to be filed by domestic insurers under the Risk-Based Capital Act, or fifteen days after the request is received by the foreign insurer, whichever is later. Any foreign insurer shall, upon the superintendent's written request, promptly submit to the superintendent a copy of any risk-based capital plan filed with the insurance commissioner of any other state.

B. In the event of a company action level event, regulatory action level event or authorized control level event with respect to any foreign insurer as determined pursuant to the risk-based capital statute applicable in an insurer's state of domicile, or, if no risk-based capital requirements are in force in that state, under the provisions of the Risk-Based Capital Act, the superintendent may require the foreign insurer to file a risk-based capital plan with the superintendent unless the insurance commissioner of the insurer's state of domicile has previously so required. The failure of the foreign insurer to timely file a risk-based capital plan with the superintendent shall be grounds to order the insurer to cease and desist from writing new insurance business in this state or to suspend or revoke its certificate of authority.

C. In the event of a mandatory control level event with respect to any foreign insurer, the superintendent may proceed in accordance with Subsection B of Section 59A-5A-7 NMSA 1978."

Section 12

Section 12. A new Section 59A-5A-12 NMSA 1978 is enacted to read:

"59A-5A-12. IMMUNITY.--There shall be no civil liability on the part of, and no civil cause of action shall arise against the superintendent, the insurance department or its employees or agents for any action taken by them in the performance of their powers and duties under the Risk-Based Capital Act."

Section 13

Section 13. A new Section 59A-5A-13 NMSA 1978 is enacted to read:

"59A-5A-13. NOTICES.--The superintendent's notices to an insurer pursuant to the Risk-Based Capital Act shall be effective upon mailing by certified mail or, in the case of any other mode of transmission, shall be effective upon the insurer's receipt."

Section 14

Section 14. Section 59A-7-2 NMSA 1978 (being Laws 1984, Chapter 127, Section 108) is amended to read:

"59A-7-2. "LIFE" INSURANCE DEFINED.--"Life" insurance is insurance of human lives and every insurance appertaining thereto, and the granting, purchasing or disposing of annuities as defined in Section 59A-20-2 NMSA 1978. The transaction of life insurance includes health insurance, as defined in Section 59A-7-3 NMSA 1978, the granting of endowment benefits, additional incidental benefits in event of death or dismemberment by accident or accidental means, additional incidental benefits in event of the insured's or annuitant's disability, optional modes of settlement of proceeds, and provisions operating to safeguard life insurance and annuity contracts against lapse."

Section 15

Section 15. Section 59A-41-24 NMSA 1978 (being Laws 1984, Chapter 127, Section 716, as amended) is amended to read:

"59A-41-24. HAZARDOUS FINANCIAL CONDITION, DETERMINATION.--

A. For the purposes of Sections 59A-41-25 and 59A-41-26 NMSA 1978, an insurer may be deemed to be in a hazardous financial condition when the superintendent has determined, after notice and hearing, that the loss experience of the insurer, when reviewed in conjunction with the kinds and characteristics of risks insured, or the insurer's financial condition, or its ownership, or the ratio of its annual premium volume in relation to its policyholders' surplus, would make further assumption of risks by the insurer hazardous to those persons doing business with the insurer or to the general public.

B. The following items may be considered by the superintendent to determine whether the continued operation of any insurer transacting an insurance business in this state is hazardous to the policyholders, creditors or the general public:

(1) findings reported in financial condition and market conduct examination reports;

(2) the national association of insurance commissioners insurance regulatory information system and its related reports;

(3) ratios of commission expense, general insurance expense, policy benefits and reserve increases to annual premium and net investment income;

(4) the value, liquidity or diversity of the insurer's asset portfolio when viewed in light of current economic conditions with regard to assuring the company's ability to meet its outstanding obligations as they mature;

(5) the adequacy, reliability and soundness of the insurer's reinsurance program as well as the financial condition of the assuming reinsurer and the ability of the assuming reinsurer to perform under its reinsurance agreements;

(6) the insurer's operating loss in the last twelve-month period or any shorter period of time, including net capital gain or loss, change in non-admitted assets, and cash dividends paid to shareholders, in comparison to such insurer's remaining surplus as regards policyholders in excess of the minimum required;

(7) whether any affiliate, subsidiary or reinsurer is insolvent, threatened with insolvency or delinquent in payment of its monetary or other obligation;

(8) contingent liabilities, pledges or guaranties which may affect the solvency of the insurer;

(9) whether any person having control of an insurer is delinquent in transmitting or paying net premiums to such insurer;

(10) the age and collectibility of receivables;

(11) whether the management of an insurer, including officers, directors or any other person who directly or indirectly controls the operation of such insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in such position;

(12) whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false or misleading information concerning an inquiry;

(13) whether management of an insurer has filed with any regulatory authority or released to lending institutions or to the general public any false or misleading financial statements, or has made a false or misleading entry or has omitted an entry of material amount in the books of the insurer;

(14) whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;

(15) whether the company has experienced or will experience in the foreseeable future cash flow or liquidity problems;

(16) risk-based capital reports and other information obtained pursuant to the Risk-Based Capital Act; or

(17) such other material information and data as the superintendent may deem relevant.

C. For the purposes of making a determination of an insurer's financial condition under this section, the superintendent may:

(1) disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired or otherwise subject to a delinquency proceeding;

(2) make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries or affiliates;

(3) refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or

(4) increase the insurer's liability in an amount equal to any contingent liability, pledge or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next twelve-month period."

Section 16

Section 16. Section 59A-41-28 NMSA 1978 (being Laws 1984, Chapter 127, Section 720) is amended to read:

"59A-41-28. GROUNDS FOR REHABILITATION, LIQUIDATION OF DOMESTIC INSURER.--The superintendent may apply under Chapter 59A, Article 41 NMSA 1978 for an order directing him to rehabilitate or liquidate a domestic insurer or the United States branch of an alien insurer having trustee assets in this state upon any one or more of the following grounds, that the insurer:

A. is insolvent as determined from an examination of the insurer conducted by the superintendent;

B. has refused to submit its books, papers, accounts or affairs to the reasonable inspection of the superintendent or his deputy or examiner;

C. has failed or refused to comply, within the time designated by the superintendent, with an order of the superintendent, pursuant to law, to make good an impairment of its capital, if a stock insurer, or an impairment of its minimum surplus, if a mutual, reciprocal or Lloyds insurer;

D. has, by contract of reinsurance or otherwise, transferred or attempted to transfer substantially its entire property or business or entered into any transaction the effect of which is to merge substantially its entire property or business in the property or business of any other person, without having first obtained the written approval of the superintendent;

E. is found, after an examination, to be in such condition that its further transaction of business will be hazardous to its policyholders, or to its creditors, or to the public;

F. has willfully violated its charter or any law of the state;

G. has an officer who has refused to be examined under oath, concerning its affairs;

H. after examination, is found to no longer meet the requirements for organization and incorporation to do business under the laws of this state;

I. has ceased to do business for a period of two years;

J. has commenced voluntary liquidation or dissolution, or attempts to commence or prosecute any action or proceeding to liquidate its business or affairs, or to dissolve its corporate charter, or to procure the appointment of a receiver, trustee, custodian or sequestrator under any law except Chapter 59A, Article 41 NMSA 1978;

K. has been the subject of an application for the appointment of a receiver, trustee, custodian or sequestrator of the insurer or its property, or if a receiver, trustee, custodian or sequestrator is appointed by a federal court or if such appointment is imminent;

L. has consented to such an order through a majority of its directors, stockholders or members;

M. has not organized or completed its organization and obtained a certificate authorizing it to commence the doing of an insurance business within one year from the date of its incorporation or within such further period as may have been allowed under Section 59A-34-7 NMSA 1978;

N. has failed or refused to take such steps as may be necessary to remove from office any officer or director whom the superintendent has found, after

notice to and hearing of such insurer and of such officer or director, to be a dishonest or untrustworthy person; or

O. has failed to maintain adequate risk-based capital levels as determined by the superintendent pursuant to the Risk-Based Capital Act."

Section 17

Section 17. Section 59A-41-31 NMSA 1978 (being Laws 1984, Chapter 127, Section 723) is amended to read:

"59A-41-31. GROUNDS FOR CONSERVATION OF ASSETS OF FOREIGN INSURER.--The superintendent may apply under Chapter 59A, Article 41 NMSA 1978 for an order directing him to conserve the assets within the state of a foreign insurer upon any one or more of the grounds specified in Subsection A, B, C, D, E, F, G, J, K or O of Section 59A-41-28 NMSA 1978 or upon the ground that such foreign insurer has consented to such an order through a majority of its directors, stockholders or members, or has had its property sequestered in its domiciliary country or state or in any other country or state. The superintendent may apply under Chapter 59A, Article 41 NMSA 1978 for an order directing him to conserve the assets within this state of an alien insurer, other than one which has its trustee assets in this state, on any one or more of the grounds specified in Subsections A, B, C, D, E, F, G, J, K or O of Section 59A-41-28 NMSA 1978 or upon the ground that such alien insurer has failed or refused to comply, within the time designated by the superintendent, with an order of the superintendent, pursuant to law, to make good an impairment of its trustee surplus, or that such alien insurer has consented to such an order through a majority of its directors, stockholders or members, or that it has had its property sequestered in its domiciliary country or elsewhere."

Section 18

Section 18. TEMPORARY PROVISION--PHASE-IN.--

A. For risk-based capital reports required to be filed by life or health insurers with respect to 1995, the following requirements shall apply in lieu of the provisions of Sections 59A-5A-4 through 59A-5A-7 NMSA 1978:

(1) in the event of a company action level event with respect to a domestic insurer, the superintendent of insurance shall take no regulatory action under the Risk-Based Capital Act. However the superintendent may take any other action authorized by the New Mexico Insurance Code;

(2) in the event of a regulatory action level event pursuant to Paragraph (1), (2) or (3) of Subsection A of Section 59A-5A-5 NMSA 1978, the superintendent of insurance shall take the actions required pursuant to Section 59A-5A-4 NMSA 1978;

(3) in the event of a regulatory action level event pursuant to Paragraph (4), (5), (6), (7), (8) or (9) of Subsection A of Section 59A-5A-5 NMSA 1978 or an authorized control level event, the superintendent of insurance shall take the actions required pursuant to Section 59A-5A-5 NMSA 1978 with respect to the insurer; and

(4) in the event of a mandatory control level event, the superintendent of insurance shall take the actions required pursuant to Section 59A-5A-6 NMSA 1978 with respect to the insurer.

B. For risk-based capital reports required to be filed by property or casualty insurers with respect to 1995, the following requirements shall apply in lieu of the provisions of Sections 59A-5A-4 through 59A-5A-7 NMSA 1978:

(1) in the event of a company action level event with respect to a domestic insurer, the superintendent of insurance shall take no regulatory action under the Risk-Based Capital Act; however, the superintendent may take any other action authorized by the New Mexico Insurance Code;

(2) in the event of a regulatory action level event pursuant to Paragraph (1), (2) or (3) of Subsection A of Section 59A-5A-5 NMSA 1978, the superintendent of insurance shall take the actions required pursuant to Section 59A-5A-4 NMSA 1978;

(3) in the event of a regulatory action level event pursuant to Paragraph (4), (5), (6), (7), (8) or (9) of Subsection A of Section 59A-5A-5 NMSA 1978 or an authorized control level event, the superintendent of insurance shall take the actions required pursuant to Section 59A-5A-5 NMSA 1978 with respect to the insurer; and

(4) in the event of a mandatory control level event, the superintendent of insurance shall take the actions required pursuant to Section 59A-5A-6 NMSA 1978 with respect to the insurer.

Section 19

Section 19. SEVERABILITY.--If any part or application of the Risk-Based Capital Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

SENATE BILL 1113

CHAPTER 150

RELATING TO FACULTY TENURE; REQUIRING A POST-TENURE REVIEW PROCESS AT STATE BACCALAUREATE DEGREE-GRANTING EDUCATIONAL INSTITUTIONS; PROVIDING FOR A TENURE STUDY; DECLARING AN EMERGENCY.

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

Section 1

Section 1. POST-TENURE REVIEW PROCESS REQUIRED.--

A. The boards of regents at all state baccalaureate degree-granting educational institutions are authorized to direct the president of the university to institute a periodic post-tenure review process for all tenured faculty.

B. The boards of regents are authorized to direct the president of the university to establish programs designed to assist faculty members in enhancing their teaching skills.

C. The tenured faculty member shall be subject to review every three to five years based on a review of a number of factors, including the following:

(1) an evaluation of the faculty member's teaching;

(2) an evaluation of the faculty member's research and scholarly output; and

(3) an evaluation of the contributions made by the faculty member in the area of public service to the institution and the community.

D. The boards of regents shall ensure that a peer review is afforded the faculty member and that student evaluations are considered in the evaluation of the tenured faculty member's teaching.

E. In the event a faculty member receives an unfavorable evaluation in the area of the faculty member's teaching, the post-tenure review process shall include:

(1) a two-year probation and reevaluation period; and

(2) loss of tenure if, during the subsequent probation and reevaluation period, the faculty member fails to demonstrate improvement in the area of teaching.

Section 2

Section 2. REPORTING--COMMISSION ON HIGHER EDUCATION.--Each board of regents shall file annually a report on the post-tenure review process instituted at the institution.

Section 3

Section 3. TEMPORARY PROVISIONS--TENURE STUDY.--The boards of regents of all state baccalaureate degree-granting educational institutions shall study the options, advantages and disadvantages of developing a procedure for granting tenure based solely on a faculty member's teaching ability.

Section 4

Section 4. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE FLOOR SUBSTITUTE FOR
SENATE BILL 1131 WITH EMERGENCY CLAUSE
SIGNED APRIL 5, 1995

CHAPTER 151

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; DELAYING THE MANDATORY EMPLOYMENT OF SCHOOL NURSES FOR ONE YEAR.

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

Section 1

Section 1. Laws 1994, Chapter 68, Section 2 is amended to read:

"EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1996."

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 1149

CHAPTER 152

RELATING TO EMPLOYMENT; PROTECTING EMPLOYERS WITH IMMUNITY FROM LIABILITY FOR PROVIDING REFERENCES ON FORMER OR CURRENT EMPLOYEES.

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

Section 1

Section 1. EMPLOYER IMMUNITY FROM LIABILITY FOR REFERENCES ON FORMER EMPLOYEE.--When requested to provide a reference on a former or current employee, an employer acting in good faith is immune from liability for comments about the former employee's job performance. The immunity shall not apply when the reference information supplied was knowingly false or deliberately misleading, was rendered with malicious purpose or violated any civil rights of the former employee.

SENATE BILL 376

CHAPTER 153

RELATING TO GOVERNMENTAL ETHICS; REVISING PROVISIONS RELATING TO ELECTION CAMPAIGN, LOBBYIST REGULATION, GOVERNMENTAL CONDUCT AND FINANCIAL DISCLOSURE REQUIREMENTS; PROVIDING CIVIL PENALTIES; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 1-19-26 NMSA 1978 (being Laws 1979, Chapter 360, Section 2, as amended by Laws 1993, Chapter 46, Section 1 and by Laws 1993, Chapter 55, Section 12 and also by Laws 1993, Chapter 314, Section 58) is amended to read:

"1-19-26. DEFINITIONS.--As used in the Campaign Reporting Act:

A. "anonymous contribution" means a contribution the contributor of which is unknown to the candidate or his agent or the political committee or its agent who accepts the contribution;

B. "bank account" means an account in a financial institution located in New Mexico;

C. "campaign committee" means two or more persons authorized by a candidate to raise, collect or expend contributions on the candidate's behalf for the purpose of electing him to office;

D. "candidate" means an individual who seeks or considers an office in an election covered by the Campaign Reporting Act, including a public official, who either has filed a declaration of candidacy or nominating petition or:

(1) for a non-statewide office, has received contributions or made expenditures of one thousand dollars (\$1,000) or more or authorized another

person or campaign committee to receive contributions or make expenditures of one thousand dollars (\$1,000) or more for the purpose of seeking election to the office; or

(2) for a statewide office, has received contributions or made expenditures of two thousand five hundred dollars (\$2,500) or more or authorized another person or campaign committee to receive contributions or make expenditures of two thousand five hundred dollars (\$2,500) or more for the purpose of seeking election to the office or for candidacy exploration purposes in the years prior to the year of the election;

E. "contribution" means a gift, subscription, loan, advance or deposit of any money or other thing of value, including the estimated value of an in-kind contribution, that is made or received for a political purpose, including payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee;

F. "deliver" or "delivery" means by certified or registered mail, by telecopier, electronic mail or facsimile or by personal service;

G. "election" means any primary, general or statewide special election in New Mexico and includes county and judicial retention elections but excludes municipal, school board and special district elections;

H. "election year" means an even-numbered year in which an election covered by the Campaign Reporting Act is held;

I. "expenditure" means a payment, transfer or distribution or obligation or promise to pay, transfer or distribute any money or other thing of value for a political purpose, including payment of a debt incurred in an election campaign or pre-primary convention, but does not include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee;

J. "person" means an individual or entity;

K. "political committee" means two or more persons, other than members of a candidate's immediate family or campaign committee or a husband and wife who make a contribution out of a joint account, who are selected, appointed, chosen, associated, organized or operated primarily for a political purpose and includes political action committees or similar organizations composed of employees or members of any corporation, labor organization, trade or

professional association or any other similar group that raises, collects, expends or contributes money or any other thing of value for a political purpose; provided that a political committee includes a single individual who by his actions represents that he is a political committee;

L. "political purpose" means influencing or attempting to influence an election or re-primary convention, including a constitutional amendment or other question submitted to the voters;

M. "prescribed form" means a form prepared and prescribed by the secretary of state;

N. "proper filing officer" means either the secretary of state or the county clerk as provided in Section 1-19-27 NMSA 1978;

O. "public official" means a person elected to an office in an election covered by the Campaign Reporting Act or a person appointed to an office that is subject to an election covered by that act;

P. "reporting individual" means every public official, candidate or treasurer of a campaign committee and every treasurer of a political committee; and

Q. "statement of exception" or "statement" means the prescribed form subscribed and sworn to by a candidate to indicate that the candidate does not intend to raise or expend the minimum amount required for the filing of a report of expenditures and contributions as provided in Section 1-19-33 NMSA 1978."

Section 2

Section 2. Section 1-19-26.1 NMSA 1978 (being Laws 1993, Chapter 46, Section 2) is amended to read:

"1-19-26.1. POLITICAL COMMITTEES--REGISTRATION--DISCLOSURES.--

A. It is unlawful for any political committee that receives, contributes or expends in excess of two thousand dollars (\$2,000) in any calendar year to continue to receive or make any contribution or expenditure for a political purpose unless that political committee appoints and maintains a treasurer and registers with the secretary of state.

B. A political committee shall register with the secretary of state within ten days of receiving, contributing or expending in excess of two thousand dollars (\$2,000) by paying a filing fee of fifty dollars (\$50.00) and filing a statement of organization under oath on a prescribed form showing:

(1) the full name of the political committee, which shall fairly and accurately reflect the identity of the committee, including any sponsoring organization, and its address;

(2) a statement of the purpose for which the political committee was organized;

(3) the name, address and relationship of any connected or associated organization or entity;

(4) the names and addresses of the officers of the committee; and

(5) an identification of the bank used by the committee for all expenditures or contributions made or received.

C. The provisions of this section do not apply to a political committee that is located in another state and is registered with the federal election commission if the political committee reports on federal reporting forms filed with the federal election commission all expenditures for and contributions made to reporting individuals in New Mexico and files with the secretary of state, according to the schedule required for the filing of forms with the federal election commission, a copy of either the full report or the cover sheet and the portions of the federal reporting forms that contain the information on expenditures for and contributions made to reporting individuals in New Mexico."

Section 3

Section 3. Section 1-19-27 NMSA 1978 (being Laws 1979, Chapter 360, Section 3, as amended) is amended to read:

"1-19-27. REPORTS REQUIRED--PROPER FILING OFFICER.--

A. Except for those candidates who file a statement of exception in an election year pursuant to Section 1-19-33 NMSA 1978, all reporting individuals shall annually file with the proper filing officer a report of expenditures and contributions on a prescribed form. The report shall be filed on the second Monday in May pursuant to the provisions of Subsection A of Section 1-19-29 NMSA 1978.

B. The proper filing officer for filing reports of expenditures and contributions or statements of exception is the secretary of state for a public official in or a candidate seeking any of the following offices:

(1) a statewide elective office;

(2) an elected judicial office in the judicial department, except a magistrate; and

(3) an office representing a district composed of more than one county, except that legislators representing or candidates seeking to represent multicounty districts may file reports of expenditures and contributions or statements of exception with either the secretary of state or with the county clerk in the county in which they reside.

C. The proper filing officer for filing reports of expenditures and contributions or statements of exception is the county clerk for a public official in or a candidate seeking any of the following offices:

(1) an elective county office;

(2) a magistrate; and

(3) a state legislative office elected from a district located wholly within one county.

D. The proper filing officer for filing reports of expenditures and contributions by a political committee is the secretary of state."

Section 4

Section 4. Section 1-19-28 NMSA 1978 (being Laws 1979, Chapter 360, Section 4, as amended by Laws 1993, Chapter 46, Section 4 and by Laws 1993, Chapter 55, Section 13 and also by Laws 1993, Chapter 314, Section 59) is amended to read:

"1-19-28. FURNISHING REPORT FORMS--POLITICAL COMMITTEES--CANDIDATES.--

A. The secretary of state annually shall furnish to all reporting individuals the prescribed forms for the reporting of expenditures and contributions, supplemental reports and a statement of exception and the specific dates the reports and statement are due.

B. In addition to the provisions of Subsection A of this section, at the time of filing a declaration of candidacy or a nominating petition, the proper filing officer shall give the candidate the prescribed reporting forms and the schedule of specific dates for filing the required reports or a statement of exception. The prescribed forms shall also be made available to all reporting individuals at the office of the secretary of state and in each county at the office of the county clerk."

Section 5

Section 5. Section 1-19-29 NMSA 1978 (being Laws 1993, Chapter 46, Section 5) is amended to read:

"1-19-29. TIME AND PLACE OF FILING REPORTS.--

A. Annually, all reporting individuals shall file with the proper filing officer by 5:00 p.m. on the second Monday in May a report of all expenditures made and contributions received on or before the first Monday in May and not previously reported. The report shall be filed annually until the reporting individual's bank account has been closed and the other provisions specified in Subsection E of this section have been satisfied.

B. In an election year, in addition to the May report provided for in Subsection A of this section, all reporting individuals, except for persons who file a statement of exception pursuant to Section 1-19-33 NMSA 1978 and except for public officials who are not candidates in an election that year, shall file reports of all expenditures made and contributions received according to the following schedule:

(1) by 5:00 p.m. on the second Monday in October a report of all expenditures made and contributions received on or before the first Monday in October and not previously reported;

(2) by 12:00 noon on the Friday before a primary, general or statewide special election a report of all expenditures made and contributions received by 5:00 p.m. on the Tuesday before the election. Any contribution or pledge to contribute that is received after 5:00 p.m. on the Tuesday before the election and that is for five hundred dollars (\$500) or more in a non-statewide election, or two thousand five hundred dollars (\$2,500) or more in a statewide election, shall be reported to the proper filing officer in a supplemental report on a prescribed form within twenty-four hours of receipt, except that any such contribution or pledge to contribute that is received after 5:00 p.m. on the Friday before the election may be reported by 12:00 noon on the Monday before the election; and

(3) by 5:00 p.m. on the thirtieth day after a primary, general or statewide special election a report of all expenditures made and contributions received on or before the twenty-fifth day after the election and not previously reported.

C. Notwithstanding the other provisions of this section, the report due on the thirtieth day after an election need be the only report filed after the annual May report if the candidate is not opposed in the election and if the report includes all expenditures made and contributions received for that election and not previously reported.

D. A report of expenditures and contributions filed after a deadline set forth in this section shall not be deemed to have been timely filed.

E. Each reporting individual shall file a report of expenditures and contributions annually pursuant to the filing schedule set forth in this section until the reporting individual delivers a report to the proper filing officer stating that:

(1) there are no outstanding campaign debts;

(2) all money has been expended in accordance with the provisions of Section 1-19-29.1 NMSA 1978; and

(3) the bank account has been closed.

F. Each treasurer of a political committee shall file a report of expenditures and contributions annually pursuant to the filing schedule set forth in this section until the treasurer files a report that affirms that the committee has dissolved or no longer exists and that its bank account has been closed.

G. A reporting individual who is a candidate within the meaning of the Campaign Reporting Act because of the amount of contributions he receives or expenditures he makes and who does not ultimately file a declaration of candidacy or a nominating petition with the proper filing officer shall nevertheless file a report, not later than the second Monday in May for a primary election or the second Monday in October for a general election, of all contributions received and expenditures made on or before the first Monday in May for a primary election or the first Monday in October for a general election, and not previously reported."

Section 6

Section 6. Section 1-19-29.1 NMSA 1978 (being Laws 1993, Chapter 46, Section 6) is amended to read:

"1-19-29.1. CAMPAIGN FUNDS--LIMITATION ON USE.--

A. It is unlawful for any candidate or his agent to make an expenditure of contributions received, except for the following purposes or as otherwise provided in this section:

(1) expenditures of the campaign;

(2) expenditures of legislators that are reasonably related to performing the duties of the office held, including mail, telephone and travel expenditures to serve constituents, but excluding personal and legislative session living expenses;

(3) donations to the state general fund;

(4) donations to an organization to which a federal income tax deduction would be permitted under Subparagraph (A) of Paragraph (1) of Subsection (b) of Section 170 of the Internal Revenue Code of 1986, as amended;

(5) expenditures to eliminate the campaign debt of the candidate for the office sought or expenditures incurred by the candidate when seeking election to another public office covered by the Campaign Reporting Act;

(6) donations to a political party or to another candidate seeking election to public office; or

(7) disbursements to return unused funds pro rata to the contributors if no campaign debt exists.

B. A judge subject to a nonpartisan retention election or a candidate for judicial office shall solicit or accept campaign funds and return unused funds in accordance with the provisions of the Code of Judicial Conduct.

C. No contributions solicited for or received in a federal election campaign may be used in a state election campaign."

Section 7

Section 7. Section 1-19-31 NMSA 1978 (being Laws 1979, Chapter 360, Section 7, as amended) is amended to read:

"1-19-31. CONTENTS OF REPORT.--

A. Each required report of expenditures and contributions shall be typed or printed legibly, or on a computer disc or format approved by the secretary of state, and shall include:

(1) the name and address of the person or entity to whom an expenditure was made or from whom a contribution was received, except as provided for anonymous contributions or contributions received from special events as provided in Section 1-19-34 NMSA 1978; provided that for contributors, the name of the entity or the first and last names of any individual shall be the full name of the entity or individual, and initials only shall not constitute a full name unless that is the complete legal name;

(2) the occupation or type of business of any person or entity making contributions of two hundred fifty dollars (\$250) or more in the aggregate per election;

- (3) the amount of the expenditure or contribution or value thereof;
- (4) the purpose of the expenditure; and
- (5) the date the expenditure was made or the contribution was received.

B. The report of expenditures and contributions shall be subscribed and sworn to by the candidate or the treasurer of the political committee. If the report of expenditures and contributions is filed in an electronically readable format, the report shall be subscribed and sworn to in an independent affidavit signed by the candidate or the treasurer of the political committee and delivered to the secretary of state within forty-eight hours after the report is electronically filed.

C. Each report shall contain an opening and closing cash balance for the bank account maintained by the reporting individual during the reporting period and the name of the financial institution.

D. Each report shall specify the amount of each unpaid debt and the identity of the person to whom the debt is owed."

Section 8

Section 8. Section 1-19-32 NMSA 1978 (being Laws 1979, Chapter 360, Section 8, as amended) is amended to read:

"1-19-32. INSPECTION OF PUBLIC RECORDS.--

A. Each of the following documents is a public record open to public inspection during regular office hours in the office in which the document was filed or from which the document was issued:

- (1) a statement of exception;
- (2) a report of expenditures and contributions;
- (3) an advisory opinion issued by the secretary of state;
- (4) a document specified as a public record in the Campaign Reporting Act; and
- (5) an arbitration decision issued by an arbitration panel and filed with the secretary of state.

B. Each public record described in Subsection A of this section shall be retained by the state for five years and may be destroyed five years after the date

of filing unless a legal action or prosecution is pending that requires the preservation of the public record."

Section 9

Section 9. Section 1-19-32.1 NMSA 1978 (being Laws 1981, Chapter 331, Section 9, as amended) is amended to read:

"1-19-32.1. REPORTS EXAMINATION--FORWARDING OF REPORTS.--

A. The secretary of state shall conduct a thorough examination of at least ten percent of all reports filed during a year by reporting individuals, selected at random at least forty days after the general election and ten days after the May reports are filed in a nonelection year, to determine compliance with the provisions of the Campaign Reporting Act. The examination may include an investigation of any discrepancies, including a cross-reference to reports filed by any other reporting individual. A reporting individual shall be notified in writing if a discrepancy is found in the report filed and shall be permitted to file a written explanation for the discrepancy within ten working days of the date of the notice. The notice, penalty and arbitration provisions set forth in Section 1-19-34.4 NMSA 1978 shall apply to examinations conducted under this section.

B. After the date stated in the notice of final action for submission of a written explanation, the secretary of state shall prepare an annual report of any unresolved discrepancies found after examination of the random sample provided for in Subsection A of this section. A copy of this report shall be transmitted to the attorney general for enforcement pursuant to the provisions of Section 1-19-36 NMSA 1978. This report is a public record open to public inspection and subject to the retention and destruction provisions set forth in Section 1-19-32 NMSA 1978.

C. A county clerk shall deliver to the secretary of state, within forty-eight hours of the county clerk's receipt, each report of expenditures and contributions or statement of exception filed with the county clerk's office. Within forty-eight hours of receipt of a report of expenditures and contributions or statement of exception filed by a legislative candidate for a multicounty district, the secretary of state shall deliver to each county clerk in the multicounty legislative district a copy of the report or statement filed."

Section 10

Section 10. Section 1-19-33 NMSA 1978 (being Laws 1979, Chapter 360, Section 9, as amended) is amended to read:

"1-19-33. EXCLUSION OF CERTAIN CANDIDATES FROM REPORTING--
STATEMENT OF EXCEPTION.--

A. In a year in which a primary, general or special statewide election is held, a person who seeks or considers a public office covered by the Campaign Reporting Act and who anticipates receiving or expending for the election less than one thousand dollars (\$1,000) for a non-statewide office, or two thousand five hundred dollars (\$2,500) for a statewide office, may file, in lieu of filing a report of expenditures and contributions, a statement of exception to that effect before the election on a prescribed form and under penalty of perjury. The statement of exception shall be filed by 5:00 p.m. on the second Monday in May for a primary or special statewide election or by 5:00 p.m. on the second Monday in October for a general or special statewide election. The statement shall be filed with the proper filing officer.

B. Upon the filing of the statement of exception, the candidate shall not be required to file a report of expenditures and contributions except as provided in Subsection D of this section.

C. A statement of exception that is not timely filed or that includes false or incomplete information shall be subject to the notice, penalty and arbitration provisions set forth in Section 1-19-34.4 NMSA 1978.

D. If at any time after filing a statement of exception a candidate receives or expends in an election more than the threshold amounts provided in Subsection A of this section, the candidate shall file reports of expenditures and contributions according to the reporting schedule provided in Section 1-19-29 NMSA 1978."

Section 11

Section 11. Section 1-19-34 NMSA 1978 (being Laws 1979, Chapter 360, Section 10, as amended) is amended to read:

"1-19-34. CANDIDATES--POLITICAL COMMITTEES--TREASURER--BANK ACCOUNT--ANONYMOUS CONTRIBUTIONS--CONTRIBUTIONS FROM SPECIAL EVENTS.--

A. It is unlawful for the members of any political committee or any candidate to make any expenditure or solicit or accept any contribution for a political purpose unless:

(1) a treasurer has been appointed and is constantly maintained; provided, however, when a duly appointed treasurer is unable for any reason to continue as treasurer, the candidate or political committee shall appoint a successor; and provided further that a candidate may serve as his own treasurer;

(2) all disbursements of money and receipts of contributions are authorized by and through the candidate or treasurer;

(3) a separate bank account has been established and all receipts of money contributions and all expenditures of money are deposited in and disbursed from the one bank account maintained by the treasurer in the name of the candidate or political committee; provided that nothing in this section shall prohibit investments from the bank account to earn interest as long as the investments and earnings are fully reported. All disbursements except for disbursements made from a petty cash fund of one hundred dollars (\$100) or less shall be by check made payable to the person or entity receiving the disbursement and not to "cash" or "bearer"; and

(4) the treasurer upon disbursing or receiving money or other things of value immediately enters and thereafter keeps a proper record preserved by him, including a full, true and itemized statement and account of each sum disbursed or received, the date of such disbursement or receipt, to whom disbursed or from whom received and the object or purpose for which it was disbursed or received.

B. No anonymous contributions may be accepted in excess of one hundred dollars (\$100). The aggregate amount of anonymous contributions received by a reporting individual during a primary or general election or a statewide special election shall not exceed two thousand dollars (\$2,000) for statewide races and five hundred dollars (\$500) for all other races.

C. Cash contributions received at special events that are unidentifiable as to specific contributor but identifiable as to the special event are not subject to the anonymous contribution limits provided for in this section so long as no single special event raises, after expenses, more than one thousand dollars (\$1,000) in such cash contributions. For those contributions, due diligence and best efforts shall be made to disclose on a special prescribed form the sponsor, date, place, total amount received, expenses incurred, estimated number of persons in attendance and other identifiable factors that describe the special event. For purposes of this subsection, "special event" includes an event such as a barbecue or similar fundraiser where tickets costing fifteen dollars (\$15.00) or less are sold or an event such as a coffee, tea or similar reception.

D. Any contributions received pursuant to this section in excess of the limits established in Subsections B and C of this section shall be donated to the state general fund or an organization to which a federal income tax deduction would be available under Subparagraph (A) of Paragraph (1) of Subsection (b) of Section 170 of the Internal Revenue Code of 1986, as amended."

Section 12

Section 12. Section 1-19-34.1 NMSA 1978 (being Laws 1993, Chapter 46, Section 12) is amended to read:

"1-19-34.1. LEGISLATIVE SESSION FUNDRAISING PROHIBITION.--

A. It is unlawful during the prohibited period for a state legislator or a candidate for state legislator, or any agent on behalf of either, to knowingly solicit a contribution for a political purpose. For purposes of this subsection, "prohibited period" means that period beginning January 1 prior to any regular session of the legislature or, in the case of a special session, after the proclamation has been issued, and ending on adjournment of the regular or special session.

B. It is unlawful during the prohibited period for the governor, or any agent on his behalf, to knowingly solicit a contribution for a political purpose. For purposes of this subsection, "prohibited period" means that period beginning January 1 prior to any regular session of the legislature or, in the case of a special session, after the proclamation has been issued, and ending on the twentieth day following the adjournment of the regular or special session."

Section 13

Section 13. Section 1-19-34.2 NMSA 1978 (being Laws 1993, Chapter 46, Section 13) is amended to read:

"1-19-34.2. REGULATED INDUSTRY SOLICITATIONS PROHIBITED.--It is unlawful for an elected state official, public officer or employee who works for a regulatory office or a candidate who seeks election to a regulatory office or anyone authorized by a candidate to solicit funds on his behalf to knowingly solicit a contribution from an entity or its officers or employees or a person that is directly regulated by the office. For purposes of this section, an entity or person is directly regulated by an office when the entity's or person's charges for services offered to the public are set or directly subject to approval by the regulatory office or when a license to do business in the state is determined by the regulatory office."

Section 14

Section 14. Section 1-19-34.3 NMSA 1978 (being Laws 1993, Chapter 46, Section 14, as amended) is amended to read:

"1-19-34.3. CONTRIBUTIONS IN ONE NAME GIVEN FOR ANOTHER PROHIBITED.--It is unlawful for a person or political committee to make, or a candidate or his agent to accept, a contribution that is reported as coming from one person or entity when the candidate or his agent knows that the contribution is actually from another person or entity that directed that the contribution not be publicly reported."

Section 15

Section 15. Section 1-19-34.4 NMSA 1978 (being Laws 1993, Chapter 46, Section 15) is amended to read:

"1-19-34.4. EDUCATION AND VOLUNTARY COMPLIANCE--
INVESTIGATIONS--BINDING ARBITRATION--REFERRALS FOR ENFORCEMENT.--

A. The secretary of state shall advise and seek to educate all persons required to perform duties under the Campaign Reporting Act of those duties. This includes advising all known reporting individuals at least annually of the Campaign Reporting Act's deadlines for submitting required reports and statements of exception. The secretary of state, in consultation with the attorney general, shall issue advisory opinions, when requested in writing to do so, on matters concerning the Campaign Reporting Act. All prescribed forms prepared shall be clear and easy to complete.

B. The secretary of state may initiate investigations to determine whether any provision of the Campaign Reporting Act has been violated. Additionally, any person who believes that a provision of that act has been violated may file a written complaint with the secretary of state anytime prior to ninety days after an election, except that no complaints from the public may be filed within eight days prior to an election. The secretary of state shall adopt procedures for issuing advisory opinions, processing complaints and notifications of violations.

C. The secretary of state shall at all times seek to ensure voluntary compliance with the provisions of the Campaign Reporting Act. If the secretary of state determines that a provision of that act for which a penalty may be imposed has been violated, the secretary of state shall by written notice set forth the violation and the fine imposed and inform the reporting individual that he has ten working days from the date of the letter to correct the matter and to provide a written explanation, under penalty of perjury, stating any reason why the violation occurred. If a timely explanation is filed and the secretary of state determines that good cause exists to waive the fine imposed, the secretary of state may by a written notice of final action partially or fully waive any fine imposed for any late, incomplete or false report or statement of exception. A written notice of final action shall be sent by certified mail.

D. Upon receipt of the notice of final action, the person against whom the penalty has been imposed may protest the secretary of state's determination, including an advisory opinion, by submitting on a prescribed form a written request for binding arbitration to the secretary of state within ten working days of the date of the notice of final action. Any fine imposed shall not be due and payable until the arbitration decision is issued, and no additional fine shall accrue pending the issuance of the arbitration decision.

E. An arbitration hearing shall be conducted by a panel of three persons. The person against whom the penalty has been imposed shall choose one panel member and submit that panel member's name with the request for arbitration. The secretary of state shall choose one panel member and provide notice of the selection within fifteen days of receipt of the request for arbitration. The two panel members shall then choose the third panel member. If no agreement is reached on a third panel member within thirty days of receipt of the request for arbitration, the presiding judge of

the district court for the first judicial district shall appoint the third panel member within ten days thereafter. Neither the secretary of state nor a person subject to the Campaign Reporting Act, Lobbyist Regulation Act or Financial Disclosure Act may serve as a panel member. Panel members shall be paid per diem and mileage by the secretary of state in accordance with the provisions of the Per Diem and Mileage Act plus reimbursement for reasonable actual expenses.

F. The arbitration panel shall conduct the hearing within sixty days of the request for arbitration. The arbitration panel may impose any penalty the secretary of state is authorized to impose. The panel shall state the reasons for its decision in a written document that shall be a public record. The decision shall be final and binding. The decision shall be issued and filed with the secretary of state within forty-five days of the conclusion of the hearing. Unless otherwise provided for in this section, the procedures for the arbitration shall be governed by the Uniform Arbitration Act, including the procedures set forth in Section 44-7-7 NMSA 1978 authorizing the issuance of subpoenas. No panel member shall be subject to liability for actions taken pursuant to this section.

G. The secretary of state may refer a matter to the attorney general or a district attorney for a civil injunctive or other appropriate order or for criminal enforcement."

Section 16

Section 16. Section 1-19-35 NMSA 1978 (being Laws 1979, Chapter 360, Section 11, as amended) is amended to read:

"1-19-35. REPORTS AND STATEMENTS--LATE FILING PENALTY--FAILURE TO FILE.--

A. Except for the report required to be filed and delivered the Friday prior to the election and any supplemental report, as required in Paragraph (2) of Subsection B of Section 1-19-29 NMSA 1978, that is due prior to the election, and subject to the provisions of Section 1-19-34.4 NMSA 1978, if a statement of exception or a report of expenditures and contributions contains false or incomplete information or is filed after any deadline imposed by the Campaign Reporting Act, the responsible reporting individual or political committee, in addition to any other penalties or remedies prescribed by the Election Code, shall be liable for and shall pay to the secretary of state fifty dollars (\$50.00) per day for each regular working day after the time required by the Campaign Reporting Act for the filing of statements of exception or reports of expenditures and contributions until the complete or true statement or report is filed, up to a maximum of five thousand dollars (\$5,000).

B. If any reporting individual files a false, incomplete or late report of expenditures and contributions due on the Friday prior to the election, the reporting individual or political committee shall be liable and pay to the secretary of state five

hundred dollars (\$500) for the first working day and fifty dollars (\$50.00) for each subsequent working day after the time required for the filing of the report until the true and complete report is filed, up to a maximum of five thousand dollars (\$5,000).

C. If a reporting individual fails to file or files a late supplemental report of expenditures and contributions as required in Paragraph (2) of Subsection B of Section 1-19-29 NMSA 1978, the reporting individual or political committee shall be liable for and pay to the secretary of state a penalty equal to the amount of each contribution received or pledged after the Tuesday before the election that was not timely filed.

D. All sums collected for the penalty shall be deposited in the state general fund. A report or statement of exception shall be deemed timely filed only if it is received by the proper filing officer by the date and time prescribed by law.

E. Any candidate who fails or refuses to file a report of expenditures and contributions or statement of exception or to pay a penalty imposed by the secretary of state as required by the Campaign Reporting Act shall not, in addition to any other penalties provided by law:

(1) have his name printed upon the ballot if the violation occurs before and through the final date for the withdrawal of candidates; or

(2) be issued a certificate of nomination or election, if the violation occurs after the final date for withdrawal of candidates or after the election, until the candidate satisfies all reporting requirements of the Campaign Reporting Act and pays all penalties owed.

F. Any candidate who loses an election and who failed or refused to file a report of expenditures and contributions or a statement of exception or to pay a penalty imposed by the secretary of state as required by the Campaign Reporting Act shall not be, in addition to any other penalties provided by law, permitted to file a declaration of candidacy or nominating petition for any future election until the candidate satisfies all reporting requirements of the Campaign Reporting Act and pays all penalties owed."

Section 17

Section 17. Section 1-19-36 NMSA 1978 (being Laws 1979, Chapter 360, Section 12, as amended) is amended to read:

"1-19-36. PENALTIES--CRIMINAL ENFORCEMENT.--

A. Any person who knowingly and willfully violates any provision of the Campaign Reporting Act is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year or both.

B. The Campaign Reporting Act may be enforced by the attorney general or the district attorney in the county where the candidate resides, where a political committee has its principal place of business or where the violation occurred."

Section 18

Section 18. A new section of the Campaign Reporting Act is enacted to read:

"PRESUMPTIONS--CIVIL ACTION.--

A. For purposes of a civil action, it shall be presumed that a public official or a candidate for public office subject to the Campaign Reporting Act has authorized and approved each solicitation for campaign contributions made by his campaign committee or a person authorized by the candidate to solicit campaign contributions on his behalf.

B. For purposes of a civil action, it shall be presumed that a candidate who seeks election to a regulatory office, as described in Section 1-19-34.2 NMSA 1978, has advised his campaign committee and all persons authorized by the candidate to solicit campaign contributions on his behalf that it is unlawful to solicit contributions from an entity or its officers or employees or a person that is directly regulated by the office the candidate seeks."

Section 19

Section 19. A new section of the Campaign Reporting Act is enacted to read:

"CIVIL PENALTIES.--

A. If the secretary of state reasonably believes that a person committed, or is about to commit, a violation of the Campaign Reporting Act, the secretary of state shall refer the matter to the attorney general or a district attorney for enforcement.

B. The attorney general or district attorney may institute a civil action in district court for any violation of the Campaign Reporting Act or to prevent a violation of that act that involves an unlawful solicitation or the making or acceptance of an unlawful contribution. An action for relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including a civil penalty of two hundred fifty dollars (\$250) for each violation not to exceed five thousand dollars (\$5,000), and forfeiture of any contribution received as a result of an unlawful solicitation or unlawful contribution. Each unlawful solicitation and each unlawful contribution made or accepted shall be deemed a separate violation of the Campaign Reporting Act.

C. The attorney general or district attorney may institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Campaign Reporting Act other than that specified in Subsection B of this section. Relief

may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of fifty dollars (\$50.00) for each violation not to exceed five thousand dollars (\$5,000)."

Section 20

Section 20. Section 2-11-6 NMSA 1978 (being Laws 1977, Chapter 261, Section 6, as amended) is amended to read:

"2-11-6. EXPENDITURE REPORT TO BE FILED--CONTENTS--REPORTING PERIODS.--

A. Each lobbyist or lobbyist's employer who makes or incurs expenditures or political contributions for the benefit of a state legislator or candidate for the state legislature, a state public officer or candidate for state public office, a board or commission member or state employee who is involved in an official action affecting the lobbyist's employer or in support of or in opposition to a ballot issue or pending legislation or official action shall file an expenditure report with the secretary of state on a prescribed form or in an electronic format approved by the secretary of state. The expenditure report shall include a sworn statement that sets forth:

(1) the cumulative total of the expenditures made or incurred, separated into categories that identify the total separate amounts spent on:

- (a) meals and beverages;
- (b) other entertainment expenditures;
- (c) gifts; and
- (d) other expenditures;

(2) each political contribution made, identified by amount, date and name of the candidate or ballot issue supported or opposed; and

(3) the names, addresses, and occupations of other contributors and the amounts of their separate political contributions if the lobbyist or lobbyist's employer delivers directly or indirectly separate contributions from those contributors in excess of five hundred dollars (\$500) in the aggregate for each election to a candidate, a campaign committee or anyone authorized by a candidate to receive funds on his behalf.

B. If the expenditure report is filed electronically, the report shall be subscribed and sworn to in an independent affidavit that shall be delivered to the secretary of state within forty-eight hours after the expenditure report is electronically filed.

C. In identifying expenditures pursuant to the provisions of Paragraph (1) of Subsection A of this section, any individual expenditure that is more than the threshold level established in the Internal Revenue Code of 1986, as amended, that must be reported separately to claim a business expense deduction, as published by the secretary of state, shall be identified by amount, date, purpose, type of expenditure and name of the person who received or was benefited by the expenditure; provided, in the case of special events, including parties, dinners, athletic events, entertainment and other functions, to which all members of the legislature, to which all members of either house or any legislative committee or to which all members of a board or commission are invited, expenses need not be allocated to each individual who attended, but the date, location, name of the body invited and total expenses incurred shall be reported.

D. The reports required pursuant to the provisions of the Lobbyist Regulation Act shall be filed:

(1) by January 15 for all expenditures and political contributions made or incurred during the preceding year and not previously reported;

(2) within ten days after a legislative session ends for each separate expenditure made or incurred during the session that was for five hundred dollars (\$500) or more; and

(3) by May 1 for all expenditures and political contributions made or incurred since the January filing.

E. A lobbyist's personal living expenses and the expenses incidental to establishing and maintaining an office in connection with lobbying activities or compensation paid to a lobbyist by a lobbyist's employer need not be reported.

F. A lobbyist or lobbyist's employer shall obtain and preserve all records, accounts, bills, receipts, books, papers and documents necessary to substantiate the financial statements required to be made under the Lobbyist Regulation Act for a period of two years from the date of filing of the report containing such items. When the lobbyist is required under the terms of his employment to turn over any such records to his employer, responsibility for the preservation of them as required by this section and the filing of reports required by this section shall rest with the employer. Such records shall be made available to the secretary of state or attorney general upon written request.

G. Any lobbyist's employer who also engages in lobbying shall comply with the provisions of the Lobbyist Regulation Act.

H. An organization of two or more persons, including an individual who holds himself out as an organization, that within one calendar year expends funds in excess of two thousand five hundred dollars (\$2,500) not otherwise reported under the Lobbyist Regulation Act to conduct an advertising campaign for the purpose of lobbying

shall register with the secretary of state within forty-eight hours after expending two thousand five hundred dollars (\$2,500). Such registration shall indicate the name of the organization and the names, addresses and occupations of any of its principals, organizers or officers and shall include the name of any lobbyist or lobbyist's employer who is a member of the organization. Within fifteen days after a legislative session, the organization shall report the contributions, pledges to contribute, expenditures and commitments to expend for the advertising campaign for the purpose of lobbying, including the names, addresses and occupations of the contributors, to the secretary of state on a prescribed form."

Section 21

Section 21. Section 2-11-8.1 NMSA 1978 (being Laws 1993, Chapter 46, Section 23) is amended to read:

"2-11-8.1. RESTRICTIONS ON CAMPAIGN ACTIVITIES AND CONTRIBUTIONS.--

A. No lobbyist may serve as a campaign chairman, treasurer or fundraising chairman for a candidate for the legislature or a statewide office.

B. It is unlawful during the prohibited period for any lobbyist or lobbyist's employer to contribute to or act as an agent or intermediary for political contributions to or arrange for the making of political contributions to the campaign funds of any statewide elected official or legislator or any candidate for those offices.

C. For purposes of this section, "prohibited period" is that period beginning January 1 prior to any regular session of the legislature or, in the case of a special session, after the proclamation has been issued, and ending on:

(1) the day the session ends for:

(a) any statewide elected official or candidate for statewide office except the governor; and

(b) a legislator or any candidate for the legislature; and

(2) the twentieth day following the adjournment of the regular or special session for the governor or candidate for governor."

Section 22

Section 22. Section 2-11-8.2 NMSA 1978 (being Laws 1977, Chapter 261, Section 4, as amended) is amended to read:

"2-11-8.2. COMPLIANCE WITH ACT--ENFORCEMENT OF ACT--BINDING
ARBITRATION--CIVIL PENALTIES.--

A. The secretary of state shall advise and seek to educate all persons required to perform duties pursuant to the Lobbyist Regulation Act of those duties. This includes advising all registered lobbyists at least annually of the Lobbyist Regulation Act's deadlines for submitting required reports. The secretary of state, in consultation with the attorney general, shall issue advisory opinions, when requested to do so in writing, on matters concerning the Lobbyist Regulation Act. All prescribed forms prepared shall be clear and easy to complete.

B. The secretary of state may conduct thorough examinations of reports and initiate investigations to determine whether the Lobbyist Regulation Act has been violated. Additionally, any person who believes that a provision of that act has been violated may file a written complaint with the secretary of state. The secretary of state shall adopt procedures for issuing advisory opinions, processing complaints and notifications of violations.

C. The secretary of state shall at all times seek to ensure voluntary compliance with the provisions of the Lobbyist Regulation Act. If the secretary of state determines that a provision of that act for which a penalty may be imposed has been violated, the secretary of state shall by written notice set forth the violation and the fine imposed and inform the person that he has ten working days to provide a written explanation, under penalty of perjury, stating any reason the violation occurred. If a timely explanation is filed and the secretary of state determines that good cause exists, the secretary of state may by a written notice of final action partially or fully waive any fine imposed. A written notice of final action shall be sent by certified mail.

D. If the person charged disputes the secretary of state's determination, including an advisory opinion, the person charged may request binding arbitration within ten working days of the date of the final action. Any penalty imposed shall not be due and payable until the arbitration decision is issued, and no additional penalty shall accrue pending issuance of the arbitration decision.

E. An arbitration hearing shall be conducted by a panel of three persons. The person against whom the penalty has been imposed shall choose one panel member and submit the panel member's name with the request for arbitration. The secretary of state shall choose one panel member and provide notice of the selection within fifteen days of receipt of the request for arbitration. The two members shall then choose the third panel member. If no agreement is reached on a third panel member within thirty days of receipt of the request for arbitration, the presiding judge of the district court for the first judicial district shall appoint the third panel member within ten days thereafter. Neither the secretary of state nor a person subject to the Lobbyist Regulation Act, Campaign Reporting Act or Financial Disclosure Act may serve as a panel member. Panel members shall be paid per diem and mileage by the secretary of

state in accordance with the provisions of the Per Diem and Mileage Act plus reimbursement for reasonable actual expenses.

F. The arbitration panel may impose any penalty and take any action the secretary of state is authorized to take. The panel shall state the reasons for its decision in a written document that shall be a public record. The decision shall be final and binding. The decision shall be issued and filed with the secretary of state within forty-five days of the conclusion of the hearing. Unless otherwise provided for in this section, the procedures for the arbitration shall be governed by the Uniform Arbitration Act, including the procedures set forth in Section 44-7-7 NMSA 1978 authorizing the issuance of subpoenas. No panel member shall be subject to liability for actions taken pursuant to this section.

G. Any person who files a report after the deadline imposed by the Lobbyist Regulation Act, or any person who files a false or incomplete report, shall be liable for and shall pay to the secretary of state fifty dollars (\$50.00) per day for each regular working day after the time required for the filing of the report until the complete report is filed, up to a maximum of five thousand dollars (\$5,000).

H. The secretary of state may refer a matter to the attorney general or a district attorney for a civil injunctive or other appropriate order or enforcement."

Section 23

Section 23. A new section of the Governmental Conduct Act is enacted to read:

"ENFORCEMENT--CIVIL PENALTIES.--

A. If the secretary of state reasonably believes that a person committed, or is about to commit, a violation of the Governmental Conduct Act, the secretary of state shall refer the matter to the attorney general or a district attorney for enforcement.

B. The attorney general or a district attorney may institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Governmental Conduct Act. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of two hundred fifty dollars (\$250) for each violation not to exceed five thousand dollars (\$5,000)."

Section 24

Section 24. Section 10-16A-3 NMSA 1978 (being Laws 1993, Chapter 46, Section 41) is amended to read:

"10-16A-3. REQUIRED DISCLOSURES FOR CERTAIN CANDIDATES AND PUBLIC OFFICERS AND EMPLOYEES--CONDITION FOR PLACEMENT ON BALLOT OR APPOINTMENT.--

A. At the time of filing a declaration of candidacy or nominating petition, a candidate for legislative or statewide office shall file with the proper filing officer, as defined in Section 1-8-25 NMSA 1978, a financial disclosure statement on a prescribed form. In addition, each year thereafter during the month of January, a legislator and a person holding a statewide office shall file with the proper filing officer a financial disclosure statement. If the proper filing officer is not the secretary of state, the proper filing officer shall forward a copy of the financial disclosure statement to the secretary of state within seventy-two hours.

B. A state agency head or official whose appointment to a board or commission is subject to confirmation by the senate shall file with the secretary of state a financial disclosure statement within thirty days of appointment and during the month of January every year thereafter that he holds public office.

C. The financial disclosure statement shall include for any person identified in Subsection A or B of this section and the person's spouse the following information for the prior calendar year:

(1) the full name, mailing address and residence address of each person covered in the disclosure statement, except the address of the spouse need not be disclosed; the name and address of the person's and spouse's employer and the title or position held; and a brief description of the nature of the business or occupation;

(2) all sources of gross income of more than five thousand dollars (\$5,000) to each person covered in the disclosure statement, identified by general category descriptions that disclose the nature of the income source, in the following broad categories: law practice or consulting operation or similar business, finance and banking, farming and ranching, medicine and health care, insurance (as a business and not as payment on an insurance claim), oil and gas, transportation, utilities, general stock market holdings, bonds, government, education, manufacturing, real estate, consumer goods sales with a general description of the consumer goods and the category "other", with direction that the income source be similarly described. In describing a law practice, consulting operation or similar business of the person or spouse, the major areas of specialization or income sources shall be described, and if the spouse or a person in the reporting person's or spouse's law firm, consulting operation or similar business is or was during the reporting calendar year or the prior calendar year a registered lobbyist under the Lobbyist Regulation Act, the names and addresses of all clients represented for lobbying purposes during those two years shall be disclosed;

(3) a general description of the type of real estate owned in New Mexico, other than a personal residence, and the county where it is located;

(4) all other New Mexico business interests not otherwise listed of ten thousand dollars (\$10,000) or more in a New Mexico business or entity, including any position held and a general statement of purpose of the business or entity;

(5) all memberships held by the reporting individual and his spouse on boards of for-profit businesses in New Mexico;

(6) all New Mexico professional licenses held;

(7) each state agency that was sold goods or services in excess of five thousand dollars (\$5,000) during the prior calendar year by a person covered in the disclosure statement;

(8) each state agency, other than a court, before which a person covered in the disclosure statement represented or assisted clients in the course of his employment during the prior calendar year; and

(9) a general category that allows the person filing the disclosure statement to provide whatever other financial interest or additional information the person believes should be noted to describe potential areas of interest that should be disclosed.

D. A complete financial disclosure statement shall be filed every year. The secretary of state shall mail each person required to file a financial disclosure statement a copy of any statement the person filed the previous year.

E. The financial disclosure statements filed pursuant to this section are public records open to public inspection during regular office hours and shall be retained by the state for five years from the date of filing.

F. A person who files a financial disclosure statement may file an amended statement at any time to reflect significant changed circumstances that occurred since the last statement was filed.

G. Any candidate for a legislative or statewide office who fails or refuses to file a financial disclosure statement required by this section before the final date for the withdrawal of candidates provided for in the Election Code shall not have his name printed on the election ballot.

H. For a state agency head or an official whose appointment to a board or commission is subject to confirmation by the senate, the filing of the financial disclosure statement required by this section is a condition of entering upon and continuing in state employment or holding an appointed position."

Section 25

Section 25. A new section of the Financial Disclosure Act is enacted to read:

"ENFORCEMENT--CIVIL PENALTIES.--

A. If the secretary of state reasonably believes that a person committed, or is about to commit, a violation of the Financial Disclosure Act, the secretary of state shall refer the matter to the attorney general or a district attorney for enforcement.

B. The attorney general or a district attorney may institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Financial Disclosure Act. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of two hundred fifty dollars (\$250) for each violation not to exceed five thousand dollars (\$5,000)."

SENATE RULES COMMITTEE SUBSTITUTE
FOR SENATE BILL 514

CHAPTER 154

RELATING TO VETERINARY PRACTICE; PROVIDING FOR FACILITY PERMITS, LICENSURE RENEWAL, TEMPORARY AND PROBATIONARY LICENSURE AND INCREASED EMPLOYMENT OF VETERINARY TECHNICIANS; PROVIDING FOR CONFIDENTIALITY OF CERTAIN RECORDS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 61-14-4 NMSA 1978 (being Laws 1967, Chapter 62, Section 3, as amended) is amended to read:

"61-14-4. BOARD CREATED--TERMS--COMPENSATION--FINANCE.--

A. The "board of veterinary medicine" is created. The board shall consist of seven members who are citizens of the United States and residents of New Mexico. Veterinary members shall have been licensed to practice veterinary medicine in the state for five years preceding their appointment to the board.

B. Members of the board and their successors shall be appointed by the governor. Five of the members shall be licensed veterinarians, and these appointments may be made from a list of five names for each professional vacancy, submitted to the governor by the New Mexico veterinary medical association. Two members shall represent the public and shall not have been licensed as veterinarians or have any significant financial interest, whether direct or indirect, in the occupation regulated.

C. Members shall be appointed to staggered terms of four years each. Appointments shall be made in such manner that the terms of no more than two board members expire on July 1 of each year. All board members shall hold office until their successors are appointed and qualified. Appointments to vacancies shall be for the unexpired terms. Board members shall not serve more than two consecutive four-year terms.

D. A majority of the members of the board constitutes a quorum for the transaction of business, except that the vote of four members is required for suspension or revocation of a license. The board shall elect a chairman and other necessary officers prescribed by regulation of the board.

E. Members of the board shall receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance. This reimbursement and all other expenses involved in carrying out the Veterinary Practice Act shall be paid exclusively from fees received pursuant to provisions of the Veterinary Practice Act. The board shall deposit all fees received pursuant to provisions of the Veterinary Practice Act with the state treasurer for the exclusive use of the board, and money shall be expended only upon vouchers certified by a majority of the board.

F. Any board member failing to attend, after proper notice, three consecutive meetings, either regular or special, shall automatically be removed as a member of the board."

Section 2

Section 2. Section 61-14-5 NMSA 1978 (being Laws 1967, Chapter 62, Section 4, as amended) is amended to read:

"61-14-5. BOARD--DUTIES.--The board shall:

A. examine and determine the qualifications and fitness of applicants for a license to practice veterinary medicine in New Mexico and issue, renew, deny, suspend or revoke licenses;

B. regulate artificial insemination and pregnancy diagnosis by establishing standards of practice and issuing permits to persons found qualified;

C. establish annually a schedule of license and permit fees based on the board's financial requirements for the ensuing year;

D. conduct investigations necessary to determine violations of the Veterinary Practice Act and discipline persons found in violation;

E. employ personnel necessary to carry out its duties;

F. promulgate and enforce regulations necessary to establish recognized standards for the practice of veterinary medicine and to carry out the provisions of the Veterinary Practice Act. The board shall make available to interested members of the public copies of the Veterinary Practice Act and all regulations promulgated by the board;

G. examine applicants for veterinary technician certification purposes. Such examination shall be held at least once a year at the times and places designated by the board;

H. establish a five-member veterinary technician examining committee;

I. adopt regulations establishing continuing education requirements as a condition for license renewal; and

J. adopt regulations for the inspection and operation of facilities in accordance with recognized standards for the practice of veterinary medicine as a condition for licensure."

Section 3

Section 3. Section 61-14-10 NMSA 1978 (being Laws 1967, Chapter 62, Section 7, as amended) is amended to read:

"61-14-10. LICENSE BY ENDORSEMENT.--

A. Pursuant to its regulations, the board may issue a license without written examination, except an examination on state laws and other state and federal regulations related to the practice of veterinary medicine, to any qualified applicant who furnishes satisfactory evidence that he is a veterinarian and has for the five years next prior to filing his application, been a practicing veterinarian and licensed in a state, territory or district of the United States having license requirements at the time the applicant was first licensed that were substantially equivalent to the requirements of the Veterinary Practice Act.

B. Pursuant to its regulations, the board may issue, with examination, a limited practice license in veterinary medicine, which limited practice license shall describe adequately that area of veterinary medicine that the licensee is entitled to practice.

C. At its discretion, the board may examine, orally or practically, any person qualifying for a license under this section.

D. The board may issue without examination a temporary permit to practice veterinary medicine to:

(1) a qualified applicant for a license pending examination, provided the applicant is a graduate veterinarian and employed by and working under the direct supervision of a licensed veterinarian provided:

(a) the temporary permit shall expire the day after the notice of results of the first examination given after the permit is issued;

(b) a qualified applicant for a license pending examination may, at the board's discretion, be exempted from the requirement of working under the direct supervision of a licensed veterinarian, provided the applicant submits a written request for such exemption; and

(c) no additional temporary permit shall be issued to an applicant who has failed the required components of the New Mexico examination in this or any other state or any other territory, district or commonwealth of the United States; or

(2) a nonresident veterinarian validly licensed and in good standing with the licensing authority in another state, territory, district or commonwealth of the United States; provided that the temporary permit shall be issued for a period lasting no more than sixty days and that not more than one permit shall be issued to such a person during each calendar year. No more than two temporary permits shall be issued to any one individual.

E. A temporary permit to practice veterinary medicine may be summarily revoked by a majority vote of the board without a hearing."

Section 4

Section 4. Section 61-14-12 NMSA 1978 (being Laws 1967, Chapter 62, Section 8, as amended) is amended to read:

"61-14-12. LICENSE, PERMIT AND REGISTRATION RENEWAL.--

A. All licenses, permits and registrations may be renewed by payment of the renewal fee and submission of proof of completion of continuing education requirements as established by regulation of the board. Not later than thirty days prior to expiration, the board shall mail a notice to each licensed veterinarian, registered veterinary technician and holder of an artificial insemination or pregnancy diagnosis permit that the license, registration or permit will expire and provide a renewal application form.

B. Except as provided in Subsections C and D of this section, any person may reinstate an expired license, registration or permit within five years of its expiration by making application to the board for renewal and paying the current renewal fee along with all delinquent renewal fees and late fees. After five years have elapsed since the

date of expiration, a license, registration or permit may not be renewed and the holder shall apply for a new license, registration or permit and take the required examination.

C. A person shall not have his license reinstated in New Mexico if, during the time period his license to practice in New Mexico was lapsed, his license in another state or jurisdiction was suspended or revoked for reasons for which the license would have been subject to suspension or revocation in New Mexico.

D. A person who, during the time period his license to practice in New Mexico was lapsed, was subject to any disciplinary proceedings resulting in action less than suspension or revocation in another state or jurisdiction, may, at the discretion of the board, have his license to practice in New Mexico reinstated on a probationary status for up to two years. Upon request by the applicant for reinstatement, the board shall determine under what circumstances the probationary status shall be continued or removed or the application for reinstatement denied.

E. The board may provide by regulation for waiver of payment of any renewal fee of a licensed veterinarian during any period when he is on active duty with any branch of the armed services of the United States for the duration of a national emergency."

Section 5

Section 5. Section 61-14-13 NMSA 1978 (being Laws 1967, Chapter 62, Section 9, as amended) is amended to read:

"61-14-13. DENIAL, SUSPENSION OR REVOCATION OF LICENSE.--

A. Upon written complaint by any person and after notice and hearing as prescribed in the Uniform Licensing Act, the board may place a licensee on probation; impose on a licensee an administrative penalty in an amount not to exceed two thousand five hundred dollars (\$2,500); reprimand, deny, suspend for a definite period or revoke the license, certificate or permit; or take any other reasonable action as established by the board. This applies to any person whose activities are covered by the Veterinary Practice Act for:

(1) fraud, misrepresentation or deception in obtaining a license or permit;

(2) adjudication of insanity or manifest incapacity;

(3) use of advertising or solicitation that is false, misleading or is otherwise deemed unprofessional under regulations promulgated by the board;

(4) conviction of a felony or other crime involving moral turpitude;

(5) dishonesty, incompetence, gross negligence or other malpractice in the practice of veterinary medicine;

(6) having professional association with or employing any person practicing veterinary medicine unlawfully;

(7) fraud or dishonesty in the application or reporting of any test for disease in animals;

(8) failure to maintain professional premises and equipment in a clean and sanitary condition in compliance with facility permit regulations promulgated by the board;

(9) habitual or excessive use of intoxicants or drugs;

(10) cruelty to animals;

(11) revocation of a license to practice veterinary medicine by another state, territory or district of the United States on grounds other than nonpayment of license or permit fees;

(12) unprofessional conduct by violation of a regulation promulgated by the board pursuant to provisions of the Veterinary Practice Act;

(13) failure to perform as a veterinary technician under the direct supervision of a licensed veterinarian;

(14) failure of a licensed veterinarian to reasonably exercise direct supervision with respect to a veterinary technician;

(15) aiding or abetting the practice of veterinary medicine by a person not licensed, certified or permitted by the board;

(16) using any controlled drug or substance on any animal for the purpose of illegally influencing the outcome of a competitive event;

(17) willfully or negligently administering a drug or substance that will adulterate meat, milk, poultry, fish or eggs;

(18) failure to maintain required logs and records;

(19) the use of prescription or sale of any prescription drug or the prescription of extra-label use of any over-the-counter drug in the absence of a valid veterinarian-client-patient relationship;

(20) failure to report, as required by law, or making false report of any contagious or infectious disease; or

(21) unfair or deceptive practices.

B. Any person whose license, certificate or permit is suspended or revoked by the board pursuant to provisions of this section may, at the discretion of the board, be relicensed or reinstated by the board at any time without examination upon written application to the board showing cause to justify relicensing or reinstatement."

Section 6

Section 6. Section 61-14-16 NMSA 1978 (being Laws 1975, Chapter 96, Section 11) is amended to read:

"61-14-16. RESPONSIBILITY.--Every veterinarian using, supervising or employing a registered veterinary technician shall be individually responsible and liable for the performance of the acts and omissions delegated to the veterinary technician. Nothing in this section shall be construed to relieve the veterinary technician of any responsibility and liability for any of his own acts and omissions."

Section 7

Section 7. A new Section 61-14-17 NMSA 1978 is enacted to read:

"61-14-17. INOCULATION RECORDS--CONFIDENTIALITY.--Animal inoculation records maintained by any state or local public agency may be used only in protecting the public health and welfare or by any other government agency and are not public records open to inspection or duplication. Upon request, the agency shall verify, or deny, as the case may be, that the records reflect that a particular animal has received inoculations within the next preceding twelve months."

SENATE BILL 599

CHAPTER 155

RELATING TO GAMING; ESTABLISHING THE NEW MEXICO STATE LOTTERY TO RAISE REVENUES TO PROVIDE PUBLIC SCHOOL CAPITAL OUTLAY FUNDS AND TO PROVIDE TUITION ASSISTANCE TO RESIDENT UNDERGRADUATES AT NEW MEXICO POST-SECONDARY EDUCATIONAL INSTITUTIONS; CREATING THE NEW MEXICO STATE LOTTERY AUTHORITY; PROVIDING POWERS AND DUTIES; AUTHORIZING THE ISSUANCE OF LOTTERY REVENUE BONDS; PROVIDING A DEDUCTION IN THE GROSS RECEIPTS AND COMPENSATING TAX ACT FOR RECEIPTS OF LOTTERY RETAILERS FROM SALES OF LOTTERY TICKETS; PROVIDING PENALTIES; MAKING AN APPROPRIATION; AMENDING AND

ENACTING SECTIONS OF THE NMSA 1978 AND PROVIDING FOR DELAYED REPEAL OF CERTAIN DISTRIBUTION PROVISIONS.

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

Section 1

Section 1. SHORT TITLE.--Sections 1 through 34 of this act may be cited as the "New Mexico Lottery Act".

Section 2

Section 2. LEGISLATIVE FINDINGS.--The legislature finds that:

A. lotteries have been enacted in many states and the revenues generated from those lotteries have contributed to the benefit of the residents of those states;

B. many New Mexicans already participate in other state lotteries and support the establishment of a state lottery in New Mexico; and

C. the most desirable, efficient and effective mechanism for operation of a state lottery is an independent lottery authority organized as a business enterprise separate from state government, without need for state revenues or resources and subject to oversight, audit and accountability by public officials and agencies.

Section 3

Section 3. PURPOSES.--The purposes of the New Mexico Lottery Act are to:

A. establish and provide for the conduct of a fair and honest lottery for the entertainment of the public; and

B. provide the maximum amount of revenues, without imposing additional taxes or using other state revenues, for the purposes of:

(1) funding critical capital outlay needs of the public schools; and

(2) providing tuition assistance to resident undergraduates at New Mexico post-secondary educational institutions.

Section 4

Section 4. DEFINITIONS.--As used in the New Mexico Lottery Act:

A. "authority" means the New Mexico lottery authority;

B. "board" means the board of directors of the authority;

C. "chief executive officer" means the chief executive officer of the authority appointed by the board pursuant to the New Mexico Lottery Act;

D. "lottery" means the New Mexico state lottery established and operated by the authority pursuant to the New Mexico Lottery Act;

E. "lottery contractor" means a person with whom the authority has contracted for the purpose of providing goods or services for the lottery;

F. "lottery game" means any variation of the following types of games, but does not include any video lottery game:

(1) an instant win game in which disposable tickets contain certain preprinted winners that are determined by rubbing or scraping an area or areas on the tickets to match numbers, letters, symbols or configurations, or any combination thereof, as provided by the rules of the game; provided, an instant-win game may also provide for preliminary and grand prize drawings conducted pursuant to the rules of the game; and

(2) an on-line lottery game in which a lottery game is hooked up to a central computer via a telecommunications system through which a player selects a specified group of numbers or symbols out of a predetermined range of numbers or symbols and purchases a ticket bearing the player-selected numbers or symbols for eligibility in a drawing regularly scheduled in accordance with game rules;

G. "lottery retailer" means a person with whom the authority has contracted for the purpose of selling tickets in lottery games to the public;

H. "lottery vendor" means any person who submits a bid, proposal or offer as part of a major procurement contract and any person who is awarded a major procurement contract;

I. "major procurement contract" means a contract for the procurement of any lottery game product or service costing in excess of seventy-five thousand dollars (\$75,000), including, but not limited to, major advertising contracts, annuity contracts, prize payment agreements, consulting services, equipment, tickets and other products and services unique to the lottery, but not including materials, supplies, equipment and services common to the ordinary operations of a corporation;

J. "net revenues" means all lottery and nonlottery revenues received by the authority less payments for lottery prizes and operating expenses as provided in the New Mexico Lottery Act; and

K. "person" means an individual or any other legal entity.

Section 5

Section 5. NEW MEXICO LOTTERY AUTHORITY CREATED.--

A. There is created a public body, politic and corporate, separate and apart from the state, constituting a governmental instrumentality to be known as the "New Mexico lottery authority". The authority is created and organized for the purpose of establishing and conducting the New Mexico state lottery to provide revenues for the public purposes designated by the New Mexico Lottery Act.

B. The authority shall be governed by a board of directors composed of seven members who are residents of New Mexico appointed by the governor with the advice and consent of the senate. The members of the board of directors shall be prominent persons in their businesses or professions and shall be appointed so as to provide equitable geographical representation. No more than four members of the board shall be from any one political party. The governor shall consider appointing at least one member who has at least five years experience as a law enforcement officer, at least one member who is an attorney admitted to practice in New Mexico and at least one member who is a certified public accountant certified in New Mexico.

C. Board members shall be appointed for five-year terms. To provide for staggered terms, four of the initially appointed members shall be appointed for terms of five years and three members for terms of three years. Thereafter, all members shall be appointed for five-year terms. A vacancy shall be filled by appointment by the governor for the remainder of the unexpired term. A member shall serve until his replacement is confirmed by the senate. Board members shall be eligible for reappointment.

D. The board shall select one of its members as chairman annually. A chairman may be selected for successive years. Members of the board may be removed by the governor for malfeasance, misfeasance or willful neglect of duty after reasonable notice and a public hearing unless the notice and hearing are expressly waived in writing by the member.

E. The board shall hold regular meetings at the call of the chairman, but not less often than once each calendar quarter. A board meeting may also be called upon the request in writing of three or more board members. A majority of members then in office constitutes a quorum for the transaction of any business and for the exercise of any power or function of the authority.

F. Board members shall receive no compensation for their services but shall be paid expenses incurred in the conduct of authority business as allowed and approved by the authority in accordance with policies adopted by the board.

G. A board member shall be subject to a background check and investigation to determine his fitness for office. The results of that background check shall be made available to the governor and the senate.

Section 6

Section 6. POWERS OF THE AUTHORITY.--

A. The authority shall have any and all powers necessary or convenient to carry out and effectuate the purposes and provisions of the New Mexico Lottery Act that are not in conflict with the constitution of New Mexico and that are generally exercised by corporations engaged in entrepreneurial pursuits, including, but without limiting the generality of the foregoing, the power to:

- (1) sue and be sued;
- (2) adopt and alter a seal;
- (3) adopt, amend and repeal bylaws, rules, policies and procedures for the conduct of its affairs and its business;
- (4) procure or provide insurance;
- (5) hold copyrights, trademarks and service marks and enforce its rights with respect thereto;
- (6) initiate, supervise and administer the operation of the lottery in accordance with the provisions of the New Mexico Lottery Act and rules, policies and procedures adopted pursuant to that act;
- (7) enter into written agreements with one or more other states for the operation, participation in or marketing or promotion of a joint lottery or joint lottery games;
- (8) acquire or lease real property and make improvements thereon and acquire by lease or by purchase personal property, including, but not limited to, computers, mechanical, electronic and on-line equipment and terminals, and intangible property, including, but not limited to, computer programs, systems and software;
- (9) enter into contracts to incur debt and borrow money in its own name and enter into financing agreements with the state, agencies or instrumentalities of the state, or with any commercial bank or credit provider;
- (10) receive and expend, in accordance with the provisions of the New Mexico Lottery Act, all money received from any lottery or nonlottery source, for effectuating the purposes of the New Mexico Lottery Act;

(11) administer oaths, take depositions, issue subpoenas and compel the attendance of witnesses and the production of books, papers, documents and other evidence relative to any investigation or proceeding conducted by the authority;

(12) appoint and prescribe the duties of officers, agents and employees of the authority, including professional and administrative staff and personnel, and to fix their compensation, pay their expenses and provide a benefit program, including, but not limited to, a retirement plan and a group insurance plan;

(13) select and contract with lottery vendors and lottery retailers;

(14) enter into contracts or agreements with state, local or federal law enforcement agencies or private investigators or other persons for the performance of law enforcement, background investigations and security checks;

(15) enter into contracts of any and all types on such terms and conditions as the authority may determine;

(16) establish and maintain banking relationships, including, but not limited to, establishment of checking and savings accounts and lines of credit;

(17) advertise and promote the lottery and lottery games;

(18) act as a lottery retailer, conduct promotions that involve the dispensing of lottery tickets and establish and operate a sales facility to sell lottery tickets and any related merchandise; and

(19) adopt, repeal and amend such rules, policies and procedures as necessary to carry out and implement its powers and duties, organize and operate the authority, conduct lottery games and any other matters necessary or desirable for the efficient and effective operation of the lottery and the convenience of the public.

B. The powers enumerated in this section are cumulative of and in addition to those powers enumerated elsewhere in the New Mexico Lottery Act, and no such powers limit or restrict any other powers of the authority.

Section 7

Section 7. BOARD OF DIRECTORS--DUTIES.--The board shall provide the authority with the private-sector perspective of a large marketing enterprise and shall make every effort to exercise sound and prudent business judgment in its management and promotion of the lottery. It is the duty of the board to:

A. adopt all rules, policies and procedures necessary for the establishment and operation of the lottery;

B. maximize the net revenue for the public purposes of the New Mexico Lottery Act and to that end assure that all rules, policies and procedures adopted further revenue maximization;

C. appoint a chief executive officer, prescribe his qualifications, duties and salary and set the salaries of the other officers and employees of the authority;

D. approve, disapprove, amend or modify the annual budget recommended by the chief executive officer for the operation of the authority;

E. approve all major procurements and approve, disapprove, amend or modify the terms of such procurements recommended by the chief executive officer;

F. supervise the chief executive officer and the other officers and employees of the authority and meet with the chief executive officer at least once every three months to make and consider recommendations, set policies, determine types and forms of lottery games to be operated by the lottery and transact other necessary business;

G. conduct, with the chief executive officer, a continuing study of the lottery and other state lotteries to improve the efficiency, profitability and security of the authority and the lottery;

H. prepare quarterly and annual reports and maintain records as required under the New Mexico Lottery Act; and

I. pursue any and all other matters necessary, desirable or convenient for the efficient and effective operation of lottery games, the continued entertainment and convenience of the public and the integrity of the lottery.

Section 8

Section 8. LOTTERY GAMES--ADOPTION OF RULES, POLICIES AND PROCEDURES BY BOARD.--The board may adopt rules, policies and procedures for the conduct of lottery games in general, including, but not limited to the following matters:

A. the type of games to be conducted, which may include any type of lottery game not prohibited by the New Mexico Lottery Act;

B. the percentage of lottery revenues that shall be returned to the public in the form of lottery prizes;

C. the method and location of selecting or validating winning tickets;

D. the manner and time of payment of prizes, which may include lump-sum payments or installments over a period of years;

E. the manner of payments of prizes to the holders of winning tickets;

F. the frequency of games and drawings or selection of winning tickets;

G. the method to be used in selling tickets, which may include the use of electronic or mechanical devices;

H. the price of each ticket and the number and size of prizes;

I. the conduct of drawings and determination of winners of lottery games;

J. requirements governing lottery tickets, including, but not limited to, requirements that all instant-win tickets be recyclable; and

K. any and all other matters necessary, desirable or convenient toward ensuring the efficient and effective operation of lottery games.

Section 9

Section 9. LOTTERY OVERSIGHT COMMITTEE-- BIPARTISAN--DUTIES.--

A. There is created a joint interim legislative committee, which shall be known as the "lottery oversight committee".

B. The lottery oversight committee shall be composed of four members. Two members of the house of representatives shall be appointed by the speaker of the house of representatives and two members of the senate shall be appointed by the committees' committee of the senate or, if the senate appointments are made in the interim, by the president pro tempore of the senate after consultation with and agreement of a majority of the members of the committees' committee. Members shall be appointed so that there is a member from each of the major political parties from each house. No member who has a financial interest in any lottery contractor, lottery retailer or lottery vendor shall be appointed to the committee.

C. The lottery oversight committee shall oversee the operations of the authority, as well as periodically review and evaluate the success with which the authority is accomplishing its duties and operating the lottery pursuant to the New Mexico Lottery Act. The committee may conduct any independent audit or investigation of the lottery or the authority it deems necessary.

D. The lottery oversight committee shall report annually its findings and recommendations on the lottery and the operation of the authority to each regular session of the legislature.

Section 10

Section 10. CHIEF EXECUTIVE OFFICER--COMPENSATION --APPOINTMENT --DUTIES.--

A. The board shall appoint and set the compensation of a "chief executive officer", who shall serve at the pleasure of the board.

B. The chief executive officer, who shall be an employee of the authority, shall:

(1) manage and direct the operation of the lottery and all administrative and technical activities of the authority in accordance with the provisions of the New Mexico Lottery Act and pursuant to rules, policies and procedures adopted by the board pursuant to that act;

(2) employ and supervise such personnel as deemed necessary;

(3) with the approval of the board and pursuant to rules, policies and procedures adopted by the board, enter into contracts for materials, equipment and supplies to be used in the operation of the lottery, for the design and installation of lottery games, for consultant services and for promotion of the lottery;

(4) contract with lottery retailers pursuant to the New Mexico Lottery Act and board rules;

(5) promote or provide for promotion of the lottery and any functions related to the authority;

(6) hire an executive vice president for security and an internal auditor and take all necessary measures to provide for the security and integrity of the lottery;

(7) prepare an annual budget for the approval of the board;

(8) provide quarterly to the board, the governor, the lottery oversight committee and the legislative finance committee a full and complete report of lottery revenues and expenses for the preceding quarter; and

(9) perform such other duties as are necessary to implement and administer the lottery.

C. The chief executive officer may refuse to renew any lottery contract in accordance with the provisions of the New Mexico Lottery Act or the rules, policies and procedures of the board.

D. The chief executive officer or his designee may conduct hearings and administer oaths to persons for the purpose of assuring the security or integrity of lottery operations or to determine the qualifications of or compliance by lottery vendors and lottery retailers.

Section 11

Section 11. EMPLOYEES--CONFLICT OF INTEREST--INVESTIGATIONS --BONDS.--

A. No employee of the authority shall participate in any decision involving a lottery retailer with whom the employee has a financial interest.

B. No employee of the authority who leaves the employment of the authority may represent any lottery vendor or lottery retailer before the authority for a period of two years following termination of employment with the authority.

C. A background investigation shall be conducted on each applicant who has reached the final selection process prior to employment by the authority. The authority is authorized to pay for the actual cost of such investigations and may contract with the department of public safety for the performance of the investigations.

D. The authority shall bond authority employees with access to authority funds or lottery revenue in an amount determined by the board and may bond other employees as deemed necessary.

Section 12

Section 12. EXECUTIVE VICE PRESIDENT FOR SECURITY-- QUALIFICATIONS-- DUTIES.--

A. The chief executive officer shall hire an executive vice president for security, who shall be qualified by training and experience, including at least five years of law enforcement experience, and be knowledgeable and experienced in computer security. The executive vice president for security shall take direction as needed from the chief executive officer and shall be accountable to the board.

B. The executive vice president for security shall:

(1) be the chief administrative officer of the security division of the authority, which is designated as a law enforcement agency for the purposes of administering the security provisions of the New Mexico Lottery Act;

(2) be responsible for assuring the security, honesty, fairness and integrity of the operation and administration of the lottery and to that end shall institute all necessary security measures, including, but not limited to, an examination of the

background of all prospective employees, lottery retailers, lottery vendors and lottery contractors;

(3) in conjunction with the chief executive officer, confer with the attorney general or his designee to promote and ensure the security, honesty, fairness and integrity of the operation and administration of the lottery; and

(4) in conjunction with the chief executive officer, report any alleged violation of law to the attorney general or any other appropriate law enforcement authority for further investigation and action.

Section 13

Section 13. DETERMINATION OF CONFIDENTIAL INFORMATION --APPLICABILITY OF OPEN MEETINGS ACT--CRIMINAL INVESTIGATIONS.--

A. The authority is specifically authorized to determine which information relating to the operation of the lottery is confidential. Such information is limited to trade secrets and proprietary information; security measures, systems or procedures; security reports; information concerning bids or other contract data during the negotiation process, the disclosure of which would impair the efforts of the authority to contract for goods or services on favorable terms; and information obtained pursuant to investigations that would be protected from public disclosure under the Inspection of Public Records Act.

B. The authority is subject to the provisions of the Open Meetings Act; provided that meetings or portions of meetings devoted to discussing information deemed to be confidential pursuant to Subsection A of this section are exempt from the provisions of that act.

C. The authority or its authorized agent shall:

(1) conduct criminal background investigations and credit investigations on all potential lottery retailers and all lottery vendors prior to the execution of any contract with a lottery retailer or a lottery vendor;

(2) supervise ticket validation and lottery drawings;

(3) inspect at times determined solely by the authority the facilities of any lottery vendor or lottery retailer in order to determine the integrity of the lottery vendor's product or the operations of the lottery retailer in order to determine whether the lottery vendor or the lottery retailer is in compliance with its contract;

(4) report any suspected violations of the New Mexico Lottery Act to the appropriate district attorney, the attorney general or to any law enforcement agency having jurisdiction over the violation; and

(5) upon request, provide assistance to any district attorney, the attorney general or a law enforcement agency investigating a violation of the New Mexico Lottery Act.

Section 14

Section 14. LOTTERY RETAILERS--CONTRACTS--SALES COMMISSION --BONDS.--

A. Lottery tickets shall be sold only by a lottery retailer who, pursuant to a contract with the authority, has been issued a certificate of authority signed by the chief executive officer. The lottery retailer shall display the certificate conspicuously at each authorized location. No lottery retailer shall sell a lottery ticket except from the locations listed in his contract and as evidenced by his certificate of authority unless the authority authorizes in writing any temporary location not listed in his contract.

B. Before entering into a contract with a lottery retailer applicant, the chief executive officer shall consider:

(1) the financial responsibility and security of the applicant and his business or activity;

(2) the accessibility of his place of business or activity to the public;
and

(3) the sufficiency of existing licenses to serve the public convenience and the volume of the expected sales.

C. No person shall be a lottery retailer who:

(1) is under eighteen years of age;

(2) is engaged exclusively in the business of selling lottery tickets;

(3) is a lottery vendor or an employee or agent of any lottery vendor doing business in New Mexico;

(4) has been found to have violated any provisions of the New Mexico Lottery Act or any rule adopted by the board pursuant to that act; or

(5) fails to certify to the chief executive officer that his premises are in compliance with the federal Americans with Disabilities Act of 1990.

D. All lottery retailer contracts may be renewable annually in the discretion of the authority unless sooner terminated.

E. The authority to act as a lottery retailer is not assignable or transferable.

F. Lottery retailer applicants shall pay an application fee established by the board to cover the cost of investigating and processing the application.

G. The board shall determine the commission to be paid lottery retailers for their sales of lottery tickets.

H. Each lottery retailer shall keep a complete and current set of records accounting for all of his sales of lottery tickets and shall provide it for inspection upon request of the board, the chief executive officer, the legislative finance committee or the attorney general.

I. Lottery retailers shall make payments to the lottery only by check, bankdraft, electronic fund transfer or other recorded, noncash financial transfer method as determined by the chief executive officer.

J. No lottery retailer shall contract with any person for lottery goods or services except with the approval of the board.

Section 15

Section 15. LOTTERY TICKETS--SALES.--

A. The price of each lottery ticket shall be clearly stated on the ticket. No person shall sell a ticket at a price other than at the price established by the authority unless authorized in writing by the chief executive officer. No person other than a lottery retailer shall sell lottery tickets, but this subsection shall not be construed to prevent a person who may lawfully purchase tickets from making a gift of lottery tickets. Transactions between individuals on a nonprofit basis are permissible. Nothing in the New Mexico Lottery Act shall be construed to prohibit the authority from designating certain of its agents or employees to sell or give lottery tickets directly to the public.

B. Lottery tickets may be given by merchants as a means of promoting goods or services to customers or prospective customers.

C. Tickets shall not be sold to or purchased by individuals under eighteen years of age. Persons under eighteen years of age may receive lottery tickets as gifts.

D. Tickets may be purchased only with cash or a check and shall not be purchased on credit.

E. The names of elected officials shall not appear on any lottery ticket.

Section 16

Section 16. TERMINATION OF LOTTERY RETAILER CONTRACTS.--

A. Any lottery retailer contract executed by the authority pursuant to the New Mexico Lottery Act shall specify the reasons for which a contract may be terminated by the authority, which reasons shall include but not be limited to:

(1) a violation of the New Mexico Lottery Act or any rule, policy or procedure of the board adopted pursuant to that act;

(2) failure to accurately or timely account for lottery tickets, lottery games, revenues or prizes as required by the authority;

(3) commission of any fraud, deceit or misrepresentation;

(4) failure to achieve sales goals established by the lottery;

(5) conduct prejudicial to public confidence in the lottery;

(6) the lottery retailer's filing for or being placed in bankruptcy or receivership;

(7) any material change as determined in the sole discretion of the authority in any matter considered by the authority in executing the contract with the lottery retailer; and

(8) failure to meet any of the objective criteria established by the authority pursuant to the New Mexico Lottery Act.

B. The chief executive officer may terminate a contract with a lottery retailer for violations or actions that according to the terms of the contract, pursuant to Subsection A of this section, require termination.

Section 17

Section 17. DISCLOSURE OF ODDS.--The authority shall make adequate disclosure of the odds with respect to each lottery game by stating the odds in lottery game advertisements or by posting the odds at each place in which lottery tickets are sold.

Section 18

Section 18. FELONY AND GAMBLING-RELATED CONVICTIONS --INELIGIBILITY FOR LOTTERY POSITIONS.--No person who has been convicted of a felony or a gambling-related offense under federal law or the law of any state may be a board member, chief executive officer, officer or employee of the authority, lottery vendor or lottery retailer. Prior to appointment as a board member, chief executive officer or other officer or employee, a person shall submit to the board a full set of fingerprints made at

a law enforcement agency by an agent or officer of such agency on forms supplied by the authority. The executive vice president for security may require a lottery retailer to submit fingerprints prior to completing a contract.

Section 19

Section 19. MAJOR PROCUREMENT--COMPETITIVE PROPOSALS.--

A. The authority shall enter into a contract for a major procurement after evaluating competitive proposals, and shall not design requests for proposals to provide only for sole source contracts. The authority shall design requests for proposals in such a manner as to encourage competitive proposals. The board shall adopt procedures and standards designed to allow the selection of proposals that provide the greatest long-term benefit to the state, the greatest integrity for the authority and the best service and products for the public.

B. In any request for proposal process, the authority shall conduct its own procurement, but the authority shall conduct all major procurement in keeping with the general principles of the Procurement Code.

C. The authority may make procurements that integrate functions such as lottery game design and production, lottery ticket distribution to retailers, marketing support, supply of goods and services and advertising. In all procurement decisions, the authority shall take into account the particularly sensitive nature of the lottery and shall act to promote and ensure security, honesty, fairness and integrity in the operation and administration of the lottery and the objectives of raising net revenues for the public purposes of the New Mexico Lottery Act.

D. Procurements shall not be artificially divided to reduce the cost of the procurement below the major procurement threshold.

Section 20

Section 20. DISCLOSURES BY LOTTERY VENDOR.--

A. Any lottery vendor that submits a bid or proposal for a contract to supply lottery equipment, tickets or other material or services for use in the operation of the lottery shall disclose at the time of such bid or proposal:

(1) the lottery vendor's business name and address and the names and addresses of the following:

(a) if the lottery vendor is a partnership, all of the general and limited partners;

(b) if the lottery vendor is a trust, the trustee and all persons entitled to receive income or benefit from the trust;

(c) if the lottery vendor is an association, the members, officers and directors;

(d) if the lottery vendor is a corporation, the officers, directors and each owner or holder, directly or indirectly, of any equity security or other evidence of ownership of any interest in the corporation; except that, in the case of owners or holders of publicly held equity securities of a publicly traded corporation, only the names and addresses of those owning or holding five percent or more of the publicly held securities must be disclosed; and

(e) if the lottery vendor is a subsidiary company, each intermediary company, holding company or parent company involved therewith and the officers, directors and stockholders of each; except that, in the case of owners or holders of publicly held securities of an intermediary company, holding company, or parent company that is a publicly traded corporation, only the names and addresses of those owning or holding five percent or more of the publicly held securities must be disclosed;

(2) if the lottery vendor is a corporation, all the states in which the lottery vendor is authorized to do business and the nature of that business;

(3) other jurisdictions in which the lottery vendor has contracts to supply gaming materials, equipment or services;

(4) the details of any conviction by a federal or any state court of the lottery vendor or any person whose name and address is required under this section for a criminal offense punishable by imprisonment for more than one year and shall submit to the board a full set of fingerprints of such person made at a law enforcement agency by an agent or officer of such agency on forms supplied by the authority;

(5) the details of any disciplinary action taken by any state against the lottery vendor or any person whose name and address are required by this section regarding any matter related to gaming services or the selling, leasing, offering for sale or lease, buying or servicing of gaming materials or equipment;

(6) audited annual financial statements of the lottery vendor for the preceding five years;

(7) a statement of the lottery vendor's gross receipts realized in the preceding year from gaming services and the sale, lease or distribution of gaming materials or equipment to states operating lotteries and to private persons licensed to conduct gambling, differentiating that portion of the gross receipts attributable to

transactions with states operating lotteries from that portion of the gross receipts attributable to transactions with private persons licensed to conduct gambling;

(8) the name and address of any source of gaming materials or equipment for the lottery vendor;

(9) the number of years the lottery vendor has been in the business of supplying gaming services or gaming materials or equipment; and

(10) any other information, accompanied by any documents the board by rule may reasonably require as being necessary or appropriate in the public interest to accomplish the purposes of the New Mexico Lottery Act.

B. No contract for supplying goods or services for use in the operation of the lottery is enforceable against the authority unless the requirements of this section have been fulfilled.

Section 21

Section 21. DRAWINGS FOR AND PAYMENT OF PRIZES-- UNCLAIMED PRIZES-- APPLICABILITY OF TAXATION.--

A. All lottery prize drawings shall be held in public. The selection of winning entries shall not be performed by an employee of the lottery or by a member of the board. All drawings shall be witnessed by the internal auditor of the authority or his designee. All lottery drawing equipment used in public drawings to select winning numbers or entries or participants for prizes shall be examined by the chief executive officer's staff and the internal auditor of the authority or his designee prior to and after each public drawing.

B. Any lottery prize is subject to applicable state taxes. The authority shall report to the state and federal taxing authorities any lottery prize exceeding six hundred dollars (\$600).

C. The authority shall adopt rules, policies and procedures to conduct fair and equitable drawings and establish a system of verifying the validity of tickets claimed to win prizes and to effect payment of such prizes, provided:

(1) no prize shall be paid upon a ticket purchased or sold in violation of the New Mexico Lottery Act. Any such prize shall constitute an unclaimed prize for purposes of this section;

(2) the authority is discharged from all liability upon payment of a prize;

(3) the board may by rule provide for the payment of prizes by lottery retailers, whether or not the lottery retailer sold the winning ticket, whenever the amount of the prize is less than an amount set by board rule. Payment shall not be made directly to a player by a machine or a mechanical or electronic device;

(4) prizes not claimed within the time period established by the authority are forfeited and shall be paid into the prize fund. No interest is due on a prize when a claim is delayed; and

(5) the right to a prize is not assignable, but prizes may be paid to a deceased winner's estate or to a person designated by judicial order.

Section 22

Section 22. LIEN ON LOTTERY WINNINGS FOR DEBT COLLECTED BY HUMAN SERVICES DEPARTMENT--PAYMENT TO DEPARTMENT --PROCEDURE.--

A. The human services department, acting as the state's child support enforcement agency pursuant to Title IV-D of the Social Security Act, shall periodically certify to the authority the names and social security numbers of persons owing a debt to or collected by the human services department.

B. Prior to the payment of a lottery prize in excess of six hundred dollars (\$600), the lottery shall check the name of the winner against the list of names and social security numbers of persons owing a debt to or collected by the human services department.

C. If the prize winner is on the list of persons owing a debt to or collected by the agency, the lottery shall make a good-faith attempt to notify the human services department, and the department then has a lien against the lottery prize in the amount of the debt owed to or collected by the agency. The lottery has no liability to the human services department or the person on whose behalf the department is collecting the debt if the lottery fails to match a winner's name to a name on the list or is unable to notify the department of a match. The department shall provide the lottery with written notice of a support lien promptly within five working days after the lottery notifies the department of a match.

D. If the lottery prize is to be paid directly by the authority, the amount of the debt owed to or collected by the human services department shall be held by the lottery for a period of thirty days from the lottery's confirmation of the amount of the debt to allow the department to institute any necessary garnishment or wage withholding proceedings. If a garnishment or withholding proceeding is not initiated within the thirty-day period, the authority shall release the lottery prize payment to the winner.

E. The human services department, in its discretion, may release or partially release the support lien upon written notice to the authority.

F. A support lien under this section is in addition to any other lien created by law.

Section 23

Section 23. LOTTERY TUITION FUND CREATED--PURPOSE.--

A. The "lottery tuition fund" is created in the state treasury. The fund shall be administered by the commission on higher education. Earnings from investment of the fund shall accrue to the credit of the fund. Any balance in the fund at the end of any fiscal year shall remain in the fund for appropriation by the legislature as provided in this section.

B. Money in the lottery tuition fund shall be available for appropriation by the legislature to New Mexico's public post-secondary educational institutions to provide tuition assistance for New Mexico resident undergraduates as provided by law.

Section 24

Section 24. DISPOSITION OF REVENUE.--

A. As nearly as practical, an amount equal to at least fifty percent of the gross annual revenues from the sale of lottery tickets shall be returned to the public in the form of lottery prizes.

B. The authority shall transmit all net revenues to the state treasurer who shall deposit sixty percent of the revenues in the public school capital outlay fund for expenditure pursuant to the provisions of the Public School Capital Outlay Act and forty percent in the lottery tuition fund. Estimated net revenues shall be transmitted monthly to the state treasurer for deposit in the funds, provided the total amount of annual net revenues for the fiscal year shall be transmitted no later than August 1 each year.

C. In determining net revenues, operating expenses of the lottery include all costs incurred in the operation and administration of the lottery and all costs resulting from any contracts entered into for the purchase or lease of goods or services required by the lottery, including but not limited to the costs of supplies, materials, tickets, independent audit services, independent studies, data transmission, advertising, promotion, incentives, public relations, communications, commissions paid to lottery retailers, printing, distribution of tickets, purchases of annuities or investments to be used to pay future installments of winning lottery tickets, debt service and payment of any revenue bonds issued, contingency reserves, transfers to the reserve fund and any other necessary costs incurred in carrying out the provisions of the New Mexico Lottery Act.

D. An amount up to two percent of the gross annual revenues shall be set aside as a reserve fund to cover bonuses and incentive plans for lottery retailers,

special promotions for retailers, purchasing special promotional giveaways, sponsoring special promotional events, compulsive gambling rehabilitation and such other purposes as the board deems necessary to maintain the integrity and meet the revenue goals of the lottery. The board shall report annually to the governor and each regular session of the legislature on the use of the money in the reserve fund. Any balance in excess of fifty thousand dollars (\$50,000) at the end of any fiscal year shall be transferred to the lottery tuition fund.

Section 25

Section 25. PROHIBITION ON USE OF STATE FUNDS.--The authority shall be self-sustaining and self-funded. No appropriations, loans or other transfer of state funds shall be made to the authority or used or obligated to pay the expenses of the authority or lottery prizes. No claim for the payment of any lottery expense or lottery prize shall be made against any money other than money credited to the authority.

Section 26

Section 26. AUTHORIZATION TO ISSUE REVENUE BONDS.--

A. In order to provide funds for the initial development and operation of the lottery, the board is authorized to issue lottery revenue bonds in an amount not to exceed three million dollars (\$3,000,000) payable solely from revenues of the authority generated from operation of the lottery.

B. The board may issue bonds to refund other bonds issued pursuant to this section.

C. The bonds shall have a maturity of no more than five years from the date of issuance. The board shall determine all other terms, covenants and conditions of the bonds; provided, however, that the bonds may provide for prepayment in part or in full of the balance due at any time without penalty.

D. The bonds shall be executed with the manual or facsimile signature of the chief executive officer or the chairman of the board and attested by another member of the board. The bonds may bear the seal, if any, of the authority.

E. The proceeds of the bonds and the earnings on those proceeds are appropriated to the authority for the initial development and operation of the lottery, to pay expenses incurred in the preparation, issuance and sale of the bonds, to pay any obligations relating to the bonds and the proceeds of the bonds under the Internal Revenue Code of 1986 and for any other lawful purpose.

F. The bonds may be sold either at a public sale or at a private sale to the state investment officer or to the state treasurer. If the bonds are sold at a public sale,

the notice of sale and other procedures for the sale shall be determined by the chief executive officer or the board.

G. This section is full authority for the issuance and sale of the bonds, and the bonds shall not be invalid for any irregularity or defect in the proceedings for their issuance and sale and shall be incontestable in the hands of bona fide purchasers or holders of the bonds for value.

H. An amount of money from the sources specified in Subsection A of this section sufficient to pay the principal of and interest on the bonds as they become due in each year shall be set aside, and is hereby pledged, for the payment of the principal and interest on the bonds.

I. The bonds shall be legal investments for any person or board charged with the investment of public funds and may be accepted as security for any deposit of public money, and the bonds and interest thereon are exempt from taxation by the state and any political subdivision or agency of the state.

J. The bonds shall be payable by the authority, which shall keep a complete record relating to the payment of the bonds.

Section 27

Section 27. REVENUE AND BUDGET REPORTS--RECORDS--INDEPENDENT AUDITS.--

A. The board shall:

(1) submit quarterly and annual reports to the governor, legislative finance committee and lottery oversight committee disclosing the total lottery revenue, prizes, commissions, ticket costs, operating expenses and net revenues of the authority during the reporting period, and, in the annual report, describe the organizational structure of the authority and summarize the functions performed by each organizational division within the authority;

(2) maintain weekly or more frequent records of lottery transactions, including the distribution of lottery tickets to retailers, revenue received, claims for prizes, prizes paid, prizes forfeited and other financial transactions of the authority; and

(3) use the state government fiscal year.

B. The board shall provide, for informational purposes, to the department of finance and administration and the legislative finance committee, by December 1 of each year, a copy of the annual proposed operating budget for the authority for the succeeding fiscal year. This budget proposal shall also be accompanied by an estimate

of the net revenues to be deposited in the public school capital outlay fund and the lottery tuition fund for the current and succeeding fiscal years.

C. The board shall contract with an independent certified public accountant or firm for an annual financial audit of the authority. The certified public accountant or firm shall have no financial interest in any lottery contractor. The certified public accountant or firm shall present an audit report no later than March 1 for the prior fiscal year. The certified public accountant or firm shall evaluate the internal auditing controls in effect during the audit period. The cost of this financial audit shall be an operating expense of the authority. The legislative finance committee may, at any time, order an audit of any phase of the operations of the authority, at the expense of the authority and shall receive a copy of the annual independent financial audit. A copy of any audit performed by the certified public accountant or ordered by the legislative finance committee shall be transmitted to the governor, the speaker of the house of representatives, the president pro tempore of the senate, the legislative finance committee and the lottery oversight committee.

Section 28

Section 28. INTERNAL AUDITOR--APPOINTMENT--DUTIES.--

A. The board, with the recommendation and assistance of the chief executive officer, shall employ an internal auditor. The internal auditor, who shall be an employee of the authority, shall be qualified by training and experience as an auditor and management analyst and have at least five years of auditing experience. The internal auditor shall take direction as needed from the chief executive officer and be accountable to the board.

B. The internal auditor shall conduct and coordinate comprehensive audits for all aspects of the lottery, provide management analysis expertise and carry out any other duties specified by the board and by law. The internal auditor shall specifically:

- (1) conduct, or provide for through a competitive bid process, an annual financial audit and observation audits of drawings;
- (2) create an annual audit plan to be approved by the board;
- (3) search for means of better efficiency and cost savings and waste prevention;
- (4) examine the policy and procedure needs of the lottery and determine compliance;
- (5) ensure that proper internal controls exist;

(6) perform audits that meet or exceed governmental audit standards; and

(7) submit audit reports on a quarterly basis to the board, the chief executive officer, the state auditor, the lottery oversight committee and the legislative finance committee.

C. The internal auditor shall conduct audits as needed in the areas of:

- (1) personnel security;
- (2) lottery retailer security;
- (3) lottery contractor security;
- (4) security of manufacturing operations of lottery contractors;
- (5) security against lottery ticket counterfeiting and alteration and other means of fraudulently winning;
- (6) security of drawings among entries or finalists;
- (7) computer security;
- (8) data communications security;
- (9) database security;
- (10) systems security;
- (11) lottery premises and warehouse security;
- (12) security in distribution;
- (13) security involving validation and payment procedures;
- (14) security involving unclaimed prizes;
- (15) security aspects applicable to each particular lottery game;
- (16) security of drawings in games whenever winners are determined by drawings;
- (17) the completeness of security against locating winners in lottery games with preprinted winners by persons involved in their production, storage, distribution, administration or sales; and

(18) any other aspects of security applicable to any particular lottery game and to the lottery and its operations.

D. Specific audit findings related to security invasion techniques are confidential and may be reported only to the chief executive officer or his designee, the board, the governor and the attorney general.

Section 29

Section 29. UNLAWFULLY INFLUENCING AND FRAUD--PENALTIES.--

A. It is unlawful to knowingly:

(1) influence the winning of a prize through the use of coercion, fraud, deception or tampering with lottery equipment or materials; or

(2) make a material false statement in any application for selection as a lottery retailer or any lottery vendor proposal or other proposal to conduct lottery activities or to make a material false entry in any book or record that is compiled or maintained or submitted pursuant to the provisions of the New Mexico Lottery Act.

B. Any person who violates any provision of Subsection A of this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

Section 30

Section 30. CONFLICTS OF INTEREST--PENALTIES.--

A. It is unlawful for the chief executive officer, a board member or any employee of the authority or any person residing in the household thereof to:

(1) have, directly or indirectly, an interest in a business, knowing that such business contracts with the lottery for a major procurement, whether such interest is as a natural person, partner, member of an association, stockholder or director or officer of a corporation; or

(2) accept or agree to accept any economic opportunity, gift, loan, gratuity, special discount, favor, service or hospitality, other than food and beverages, having an aggregate value of twenty dollars (\$20.00) or less in any calendar year from a person, knowing that such person:

(a) contracts or seeks to contract with the state to supply gaming equipment, materials, lottery tickets or consulting services for use in the lottery; or

(b) is a lottery retailer.

B. It is unlawful for a lottery retailer or a lottery vendor to offer, pay, give or make any economic opportunity, gift, loan, gratuity, special discount, favor, service or hospitality, other than food and beverages, having an aggregate value of more than twenty dollars (\$20.00) in any calendar year to a person, knowing such person is the chief executive officer, a board member or an employee of the authority, or a person residing in the household thereof.

C. Any person who violates any provision of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

D. If a board member, the chief executive officer or an employee of the authority, or any person residing in the household thereof, is convicted of a violation of this section, that board member, chief executive officer or employee shall be removed from office or employment with the authority.

Section 31

Section 31. FORGERY OF LOTTERY TICKET--PENALTY.--

A. It is unlawful to falsely make, alter, forge, pass, present or counterfeit, with intent to defraud, a lottery ticket, or receipt for the purchase thereof, issued or purported to have been issued by the lottery under the New Mexico Lottery Act.

B. Any person who violates the provisions of Subsection A of this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

Section 32

Section 32. UNLAWFUL SALE OF LOTTERY TICKET--PENALTY.--

A. It is unlawful for:

(1) any person to sell a lottery ticket at a price other than that fixed by the authority pursuant to the New Mexico Lottery Act;

(2) any person other than the authority or a lottery retailer to sell or resell any lottery ticket; and

(3) any person to sell a lottery ticket to any person under eighteen years of age.

B. Notwithstanding the provisions of Subsection A of this section, any person may make a gift of lottery tickets, and the authority or a lottery retailer may make a gift of lottery tickets for promotional purposes.

C. Any person who violates any provision of this section for the first time is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

D. Any person who violates any provision of this section for a second or subsequent time is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

Section 33

Section 33. UNLAWFUL PURCHASE OF LOTTERY TICKET--PENALTY.--

A. It is unlawful for the following persons to purchase a lottery ticket or to share knowingly in the lottery winnings of another person:

(1) the chief executive officer, a board member, a member of the lottery oversight committee or an employee of the authority; or

(2) an owner, officer or employee of a lottery vendor or, in the case of a corporation, an owner of five percent or more of the corporate stock of a lottery vendor.

B. Notwithstanding the provisions of Subsection A of this section, the chief executive officer may authorize in writing any employee of the authority and any employee of a lottery contractor to purchase a lottery ticket for the purposes of verifying the proper operation of the lottery with respect to security, systems operation and lottery retailer contract compliance. Any prize awarded as a result of such ticket purchase shall become the property of the authority and shall be added to the prize pools of subsequent lottery games.

C. Nothing in this section shall prohibit lottery retailers or their employees from purchasing lottery tickets or from being paid a prize for a winning ticket.

D. Certain classes of persons who, because of the unique nature of the supplies or services they provide for use directly in the operation of the lottery, may be prohibited, in accordance with rules adopted by the board, from participating in any lottery in which such supplies or services are used.

E. Any person who violates any provision of this section for the first time is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

F. Any person who violates any provision of this section for a second or subsequent time is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

Section 34

Section 34. CRIMINAL PROVISIONS OF ACT IN ADDITION TO ANY EXISTING CRIMINAL CODE PROVISIONS.--The criminal provisions of the New Mexico Lottery Act are not intended to and do not replace or preempt prosecution for Criminal Code violations based on identical or similar conduct.

Section 35

Section 35. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"DEDUCTION--GROSS RECEIPTS TAX--LOTTERY RETAILER RECEIPTS.--Receipts of a lottery game retailer from selling lottery tickets pursuant to the New Mexico Lottery Act may be deducted from gross receipts."

Section 36

Section 36. A new section of Chapter 7, Article 27 NMSA 1978 is enacted to read:

"NEW MEXICO LOTTERY REVENUE BONDS.--The severance tax permanent fund may be invested in revenue bonds issued by the New Mexico lottery authority pursuant to the provisions of the New Mexico Lottery Act. The amount invested shall not exceed three million dollars (\$3,000,000)."

Section 37

Section 37. Section 30-19-1 NMSA 1978 (being Laws 1963, Chapter 303, Section 19-1, as amended) is amended to read:

"30-19-1. DEFINITIONS RELATING TO GAMBLING.--As used in Chapter 30, Article 19 NMSA 1978:

A. "antique gambling device" means a gambling device twenty-five years of age or older and substantially in original condition that is not used for gambling or commercial gambling or located in a gambling place;

B. "bet" means a bargain in which the parties agree that, dependent upon chance, even though accompanied by some skill, one stands to win or lose anything of value specified in the agreement. A bet does not include:

(1) bona fide business transactions that are valid under the law of contracts, including, without limitation:

(a) contracts for the purchase or sale, at a future date, of securities or other commodities; and

(b) agreements to compensate for loss caused by the happening of the chance, including, without limitation, contracts for indemnity or guaranty and life or health and accident insurance;

(2) offers of purses, prizes or premiums to the actual contestants in any bona fide contest for the determination of skill, speed, strength or endurance or to the bona fide owners of animals or vehicles entered in such contest;

(3) a lottery as defined in this section; or

(4) betting otherwise permitted by law;

C. "lottery" means an enterprise other than the New Mexico state lottery established and operated pursuant to the New Mexico Lottery Act wherein, for a consideration, the participants are given an opportunity to win a prize, the award of which is determined by chance, even though accompanied by some skill. As used in this subsection, "consideration" means anything of pecuniary value required to be paid to the promoter in order to participate in such enterprise;

D. "gambling device" means a contrivance other than an antique gambling device that, for a consideration, affords the player an opportunity to obtain anything of value, the award of which is determined by chance, even though accompanied by some skill and whether or not the prize is automatically paid by the device; and

E. "gambling place" means any building or tent, any vehicle, whether self-propelled or not, or any room within any of them, one of whose principal uses is:

(1) making and settling of bets;

(2) receiving, holding, recording or forwarding bets or offers to bet;

(3) conducting lotteries; or

(4) playing gambling devices."

Section 38

Section 38. REPEAL.--Sections 23 and 24 of the New Mexico Lottery Act are repealed effective July 1, 1999.

Section 39

Section 39. EFFECTIVE DATE.--

A. The effective date of the provisions of this act is July 1, 1995.

B. The New Mexico state lottery shall begin public sale of instant-win lottery game tickets within one hundred eighty days after the date the board of directors of the New Mexico lottery authority hires its chief executive officer.

SENATE BILL 853

CHAPTER 156

EXTENDING THE EXPENDITURE PERIOD OF AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1

Section 1. APPROPRIATION--EXTENDING EXPENDITURE PERIOD.--The period of time in which the appropriation of one hundred thousand dollars (\$100,000) pursuant to Subsection DDDD of Section 6 of Chapter 147 of Laws 1994 to the office of cultural affairs to conduct a comprehensive statewide study of the economic, educational and quality of life impact of New Mexico's museums, historic sites, visual and performing arts, arts organizations, community celebrations and other cultural assets shall be extended through fiscal year 1996.

Section 2

Section 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE BILL 892 WITH EMERGENCY CLAUSE
SIGNED APRIL 5, 1995

CHAPTER 157

RELATING TO AGRICULTURE; ENACTING THE PRODUCER'S LIEN ACT.

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

Section 1

Section 1. SHORT TITLE.--Sections 1 through 15 of this act may be cited as the "Producer's Lien Act".

Section 2

Section 2. DEFINITIONS.--As used in the Producer's Lien Act:

A. "department" means the department of agriculture;

B. "farm product" means an agricultural commodity, as species of livestock used or produced in farming operations, or a product of such crop or livestock in its unmanufactured state, that is in the possession of a person engaged in farming operations and includes a list of farm products that are covered by this general definition as prepared by the secretary of state;

C. "processor" means any person, firm or corporation that treats, processes or refines or in any other way prepares for sale, use, transportation or marketing farm products;

D. "producer" means any person, firm or corporation that is engaged in the business of growing or producing any farm product; and

E. "director" means the director of the New Mexico department of agriculture.

Section 3

Section 3. EXTENT OF LIEN--PROPERTY SUBJECT TO LIEN--ATTACHMENT AND COMPLETION.--

A. In addition to all other rights and remedies that are provided for by law, every producer of a farm product that sells a farm product grown by him to a processor under contract, express or implied, has a lien upon the farm product and upon all processed or manufactured forms of the farm product for his labor, care and expense in growing and harvesting the farm product.

B. The lien shall be to the extent of the agreed price for the farm product sold. If there is no agreed price or method for determining it, the extent of the lien is the value of the farm product as of the date of delivery. Any portion of the farm product or the processed or manufactured forms of the farm product in excess of the amount necessary to satisfy the total amount owed under contract to a producer shall be free and clear of the lien.

C. Every lien that is provided for in the Producer's Lien Act is on every farm product and any processed form of the farm product that is in the possession of the processor without segregation of the product. For purposes of the Producer's Lien

Act, any farm product or processed form of a farm product deposited by a processor with a warehouse, whether or not warehouse receipts are given as security to a lender, shall be considered as being in the possession of the processor and subject to the lien.

D. The producer's lien attaches on all of the delivered product from the date of delivery of the farm product or any portion of it by a producer to any processor.

E. Unless the lien is released by payment or by security given for the payment as provided in Section 6 of the Producer's Lien Act, the producer's lien is complete from the date of delivery of the farm product or from the date of the last delivery if there is a series of deliveries.

F. Nothing in the Producer's Lien Act shall operate to interfere with the operation of or shall relieve financial institutions, producers or processors of their rights and responsibilities under the Farm Products Secured Interest Act.

Section 4

Section 4. EFFECT OF SUIT TO ENFORCE LIEN.--If a suit is brought by a producer to enforce a lien, the lien shall remain in effect until:

A. the producer receives payment of the agreed price or the value of the farm product;

B. the clerk of the court in which any action is pending receives a deposit in the amount of the lien or claims; or

C. a court issues a judgment.

Section 5

Section 5. METHODS FOR RELEASE.--

A. A lien on a farm product or processed farm product may be released by:

(1) payment being made to the producer for the agreed or reasonable value of the product that is sold and delivered;

(2) a surety bond, a cash deposit or other security given as provided in Subsection B of this section, if the value of the claim upon the farm product is secured; or

(3) arrangements being made for payment that are satisfactory to the producer.

B. A processor may obtain a release of a lien on any farm product or processed farm product by:

(1) paying the agreed or actual value of any farm product that is purchased by the processor within twenty days from the date of delivery of the farm product unless the date of payment is otherwise agreed upon in writing or the payment is secured other than by lien;

(2) depositing with the director a surety bond that is executed by the processor as principal and by a surety company that is qualified and authorized to do business as a surety in New Mexico. The bond shall be in an amount that equals the current market value of the farm product or processed farm product that is intended by the processor to be sold or otherwise disposed of, as the value may appear by the sworn statement of the processor in accordance with quotations from the federal and state market news service or other evidence that is satisfactory to the director. The bond shall be conditioned so that if the processor fails to pay up to the amount of the bond, the lawful claims of all producers whose liens have been released by the bond within thirty-five days after the date of the bond, the surety shall be liable to and shall pay to New Mexico on behalf of the claimants all lawful claims as may be covered by the amount of the bond, together with costs of a suit if an action is filed on the bond;

(3) depositing with the director a cash sum that is expressly set apart by an instrument in writing. The instrument shall be signed by the processor and shall guarantee up to the amount of the cash sum, payment of existing producer's claims whose liens are released by the deposit within thirty-five days from the date of the deposit. The director shall be named in the instrument as trustee to carry out the purpose and intent of the instrument;

(4) designating, setting apart and depositing in a public warehouse a quantity of a processed farm product. The processor shall then endorse and deliver the warehouse receipt for the farm products to the director. All existing claims of producers and labor claimants whose liens are released by it shall be guaranteed to the extent of the value of the deposit, payment within thirty-five days from the date of the deposit; or

(5) securing a release from the director after payment in full for the farm product.

C. If a bond, cash deposit or security is given to the director by any processor as provided in Subsection B of this section, the processor may sell, transport or otherwise dispose of the farm product or processed farm product to the value that is represented by the security as the value may appear by the sworn statement of the processor. The value shall be determined in accordance with quotations from the federal and state market news service or other evidence satisfactory to the director.

Section 6

Section 6. REMOVAL--SALE--PROCEEDS USED TO SATISFY OBLIGATIONS.--No processor shall remove any farm product or any processed form of the farm product from New Mexico or from beyond his ownership or control if it is delivered to him with a producer's lien attached. However, any of the farm product or processed farm product that is in excess of a quantity on hand that is of a value sufficient to satisfy all existing liens may be removed by the processor. Any farm product or processed form of the farm product to which a lien has attached may be sold, provided that the total proceeds of the sale are used to satisfy obligations to producers that are secured by a lien established pursuant to the Producer's Lien Act.

Section 7

Section 7. ACCEPTANCE OF SECURITY--PAYMENT OF CLAIMS--ACTION TO ENFORCE PAYMENT UNDER BOND.--

A. The director may accept a bond or other security, as provided in Section 6 of the Producer's Lien Act. If a claim is not paid in accordance with the condition of the security, the director may, on proof being made to his satisfaction of the amounts that are due to the claimants, pay all the unpaid claims insofar as possible out of the deposit money or proceeds from any sale made by him of any securities or processed farm products that are given as security.

B. If a bond has been given as security, the director shall notify the principal and surety of any default on the part of the principal under the bond and make demand for payment on behalf of the unpaid claimants. If payment is not made, the director may take any legal action he deems necessary to enforce payment under the bond.

C. If the director has received warehouse receipts for any processed farm product as security, and the processor giving them has failed to pay the claims in accordance with the terms of the security, the director may sell the security with or without notice and in the manner he determines.

Section 8

Section 8. PRORATION OF PAYMENTS--RELEASE BY DIRECTOR --CERTIFICATE--FEE.--

A. All claims in relation to payment shall have equal standing and payment shall be prorated if necessary among multiple claimants.

B. If the director reasonably believes that the rights of a claimant, as provided in the Producer's Lien Act, are fully protected, the director may issue and sign a certificate on behalf of the department. The certificate shall release any specific lot or quantity of any farm product or processed farm product from all of a claimant's liens. However, no security that is held by the director shall be released by him to any

processor unless the director is satisfied that all claims have been fully paid or that the claimant's rights are fully protected.

C. A five-dollar (\$5.00) fee shall be paid to the director for issuing a certificate or release that is provided for in Subsection B of this section.

Section 9

Section 9. RIGHT OF ACTION AGAINST PROCESSOR--EFFECT OF PERSONAL JUDGMENT ON LIEN RIGHTS.--

A. The Producer's Lien Act does not impair or affect the right of a claimant who possesses a lien from maintaining a personal action to recover the debt against a processor, either in an action to foreclose his lien or in a separate action. The claimant is not required to state in his affidavit that his demand is not secured by a lien in order to procure an attachment.

B. A judgment obtained by a claimant in the personal action, or personal judgment obtained in the lien action, does not impair or merge any lien right or claim held by the claimant. However, any money collected on the judgment shall be credited on the amount of the lien or claims in any action that is brought to enforce the lien or in any action that is filed pursuant to the Producer's Lien Act by the director.

Section 10

Section 10. PROCESSOR'S BOND FOR RELEASE OF LIEN--EVIDENCE OF SECURITY DEPOSITED WITH DIRECTOR.--

A. In an action that is filed by a lien claimant, the processor may file with the presiding court a surety bond in an amount sufficient to cover the demand of the claimant's complaint, including costs. The court may then order the release of a portion or the whole of any farm product or processed farm product that the producer's lien has attached.

B. The processor may introduce evidence to the presiding court that shows he has sufficient security or money on deposit with the director to protect the lien or the claimant's other rights. Upon that showing, the court may order the release of a portion or the whole of the farm product upon which the claimant's lien is attached and deny the producer any recovery in that action. However, the claimant's other rights or remedies shall not be prejudiced by that order of the court.

Section 11

Section 11. INJUNCTION.--In a foreclosure action on a lien provided for in the Producer's Lien Act, a claimant may secure an injunction against the processor in accordance with the rules of civil procedure. Upon issuance of an injunction, the

processor shall be restrained from removing a farm product or a processed farm product in his possession or under his control and upon which a valid lien exists that is not authorized by the court.

Section 12

Section 12. JUDGMENT OF FORECLOSURE.--In a foreclosure action having no cash, bond or other deposit placed with the director as security for the payment of a lien claim, the judgment shall:

A. be against a quantity of the farm product or processed farm product in the processor's possession or control to satisfy the claim; or

B. forfeit any bond deposited with the court by the processor to satisfy the producer's claim.

Section 13

Section 13. CONSOLIDATION OF ACTIONS.--All foreclosure actions brought against a processor for a lien provided in the Producer's Lien Act may be consolidated by the court and all necessary persons may be made parties to the action. The judgment shall determine the amount of each claim.

Section 14

Section 14. DEPARTMENT DUTIES.--The department shall promulgate rules and regulations necessary to carry out the provisions of the Producer's Lien Act, including procedures for inspecting processor's records regarding the farm product.

Section 15

Section 15. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE BILL 955

CHAPTER 158

RELATING TO THANATOPRACTICE; REVISING PROVISIONS AFFECTING DIRECT DISPOSERS; AMENDING CERTAIN SECTIONS OF THE THANATOPRACTICE ACT; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 61-32-3 NMSA 1978 (being Laws 1993, Chapter 204, Section 3) is amended to read:

"61-32-3. DEFINITIONS.--As used in the Thanatopractice Act:

A. "assistant funeral service practitioner" means a person licensed to engage in practice as an assistant funeral service practitioner as provided in the Thanatopractice Act;

B. "associate funeral service practitioner" means a person licensed to engage in practice as an associate funeral service practitioner as provided in the Thanatopractice Act;

C. "board" means the board of thanatopractice;

D. "cremains" means cremated remains;

E. "cremation" means the reduction of a dead human body by direct flame to a residue, which may include bone fragments;

F. "crematory" means every place or premises that is devoted to or used for cremation and pulverization of the cremains;

G. "crematory authority" means the individual who is ultimately responsible for the operation of a crematory;

H. "department" means the regulation and licensing department;

I. "direct disposer" means a person licensed to engage solely in providing direct disposition as provided in the Thanatopractice Act;

J. "direct disposition" means only the disposition of a dead human body as quickly as possible, without a funeral, graveside service, committal service or memorial service, whether public or private, and without embalming of the body unless embalming is required by the place of disposition;

K. "direct supervision" means the supervisor is physically present with and in control of the person being supervised;

L. "disposition" means the final disposal of a dead human body, whether it be by earth interment, above-ground interment or entombment, cremation, burial at sea or delivery to a medical school, when the medical school assumes complete responsibility for the disposal of the body following medical study, or release of custody of the body to the family or personal representative or other legal representative;

M. "embalming" means the disinfection, preservation and restoration, when possible, of a dead human body by a licensed funeral service practitioner, a licensed associate funeral service practitioner, a licensed assistant funeral service practitioner or a licensed funeral service intern under the supervision of a licensed funeral service practitioner;

N. "establishment" means every office, premises or place of business where the practice of funeral service or direct disposition is conducted or advertised as being conducted and includes commercial establishments that provide for the practice of funeral service or direct disposition services exclusively to licensed funeral or direct disposition establishments, or a school of medicine;

O. "funeral" means a period following death in which there is an organized, purposeful, time-limited, group-centered ceremony or rite, whether religious or not, with the body of the deceased present;

P. "funeral merchandise" means that personal property offered for sale in connection with the transportation, funeralization or disposition of a dead human body, including the enclosure into which a dead human body is directly placed, and excluding mausoleum crypts and interment enclosures preset in a cemetery and columbarium niches;

Q. "funeral service intern" means a person licensed pursuant to the Thanatopractice Act who is in training for the practice of funeral service under the supervision and instruction of a funeral service practitioner;

R. "funeral service practitioner" means a person licensed by the board to engage in the practice of funeral service who may provide shelter, care and custody of human dead; prepare human dead by embalming or other methods for disposition; transport human dead, bereaved relatives and friends; make arrangements, financial or otherwise, to provide for a funeral or the sale of funeral merchandise; and perform other funeral directing or embalming practices;

S. "general supervision" means the supervisor is not necessarily physically present with the person being supervised, but is available for advice and assistance;

T. "graveside service" means a funeral held at the graveside only, excluding a committal service that follows a funeral conducted at another location;

U. "jurisprudence examination" means an examination prescribed and graded by the board on the statutes, rules and regulations pertaining to the practice of funeral service or direct disposition, including the Thanatopractice Act, the rules of the board, state health regulations governing human remains and the Vital Statistics Act;

V. "licensee in charge" means a funeral service practitioner who is ultimately responsible for the conduct of a funeral or commercial establishment and its employees or a direct disposer who is ultimately responsible for the conduct of a direct disposition establishment and its employees;

W. "make arrangements" means advising or counseling about specific details for a funeral, graveside service, committal service, memorial service, disposition or direct disposition;

X. "memorial service" means a gathering of persons for recognition of a death without the presence of the body of the deceased;

Y. "practice of funeral service" means those activities allowed under the Thanatopractice Act by a funeral service practitioner, associate funeral service practitioner, assistant funeral service practitioner or a funeral service intern;

Z. "pulverization" means the process that reduces cremains to a granular substance; and

AA. "thanatopractice" means those immediate post-dead activities related to the dead human body, its care and disposition, whether with or without rites or ceremonies, but not including disposition of the body by a school of medicine following medical study."

Section 2

Section 2. Section 61-32-17 NMSA 1978 (being Laws 1993, Chapter 204, Section 17) is amended to read:

"61-32-17. DIRECT DISPOSER--SCOPE OF PRACTICE-- LIMITATIONS.--A direct disposer may only provide direct disposition of a dead human body as quickly as possible. In doing so, the direct disposer shall not conduct, direct or provide facilities for a funeral, graveside service, committal service or memorial service, whether public or private, and the body shall not be embalmed prior to disposition unless embalming is required by the place of disposition."

Section 3

Section 3. Section 61-32-24 NMSA 1978 (being Laws 1993, Chapter 204, Section 24) is amended to read:

"61-32-24. DISCIPLINARY PROCEEDINGS--JUDICIAL REVIEW.--

A. The board, in accordance with the provisions of the Uniform Licensing Act, may refuse to issue or renew or may suspend, revoke or impose a fine or place on probation any license of a funeral service practitioner, associate funeral service

practitioner, assistant funeral service practitioner, funeral service intern, direct disposer, establishment or crematory upon a finding by the board that the applicant or licensee is guilty of any of the following acts of commission or omission:

(1) conviction of an offense punishable by incarceration in a state penitentiary or federal prison, provided the board receives a copy of the record of conviction, certified to by the clerk of the court entering the conviction, which shall be conclusive evidence of the conviction;

(2) fraud or deceit in procuring or attempting to procure a license;

(3) gross negligence or incompetence;

(4) unprofessional or dishonorable conduct, which includes:

(a) misrepresentation or fraud;

(b) false or misleading advertising;

(c) solicitation of dead human bodies by the licensee, his agents, assistants or employees, whether the solicitation occurs after death or while death is impending, provided that this shall not be deemed to prohibit general advertising;

(d) solicitation or acceptance by a licensee of any commission, bonus or rebate in consideration of recommending or causing a dead human body to be disposed of in any cemetery, mausoleum or crematory;

(e) using any funeral merchandise previously purchased, in whole or in part, except for transportation purposes, without prior written permission of the person selecting or paying for the use of the merchandise; and

(f) failing to make disposition of a dead human body in the enclosure or container that was purchased for that purpose by the arrangers;

(5) violation of any of the provisions of the Thanatopractice Act or any rule or regulation of the board;

(6) violation of any local, state or federal ordinance, law or regulation affecting the practice of funeral service, direct disposition or cremation, including the Prearranged Funeral Plan Regulatory Law or any regulations ordered by the superintendent of insurance;

(7) willful or negligent practice beyond the scope of the license issued by the board;

(8) refusing to release properly a dead human body to the custody of the person or entity who has the legal right to effect the release, when the authorized cost has been paid;

(9) failure to secure a necessary permit required by law for removal from this state or cremation of a dead human body;

(10) knowingly making any false statement on a certificate of death;

(11) failure to give full cooperation to the board or one of its committees, staff, inspectors, agents or an attorney for the board in the performance of official duties;

(12) has had a license, certificate or registration to practice revoked, suspended or denied in any jurisdiction, territory or possession of the United States or another country for actions of the licensee or applicant similar to acts described in this subsection. A certified copy of the record of the jurisdiction taking the disciplinary action is conclusive evidence of the violation;

(13) failure to supervise adequately subordinate personnel; or

(14) conduct unbecoming a licensee or detrimental to the safety or welfare of the public.

B. In addition to the offenses listed in Subsection A of this section, the board, in accordance with the provisions of the Uniform Licensing Act, may refuse to issue or renew or may suspend, revoke, impose a fine or place on probation any funeral service practitioner, associate funeral service practitioner, assistant funeral service practitioner or funeral service intern upon finding the applicant or licensee guilty of any of the following acts of commission or omission:

(1) practicing funeral service without a license or aiding or abetting an unlicensed person to practice funeral service; or

(2) permitting an associate funeral service practitioner, assistant funeral service practitioner or a funeral service intern to exceed the limitations set forth in the provisions of the Thanatopractice Act or the regulations of the board.

C. In addition to the offenses listed in Subsection A of this section, the board, in accordance with the provisions of the Uniform Licensing Act, may refuse to issue or renew or may suspend, revoke, impose a fine or place on probation any direct disposer or direct disposition establishment upon finding the applicant or licensee guilty of any of the following acts of commission or omission:

(1) embalming, restoring, acting as a cosmetician or in any way altering the condition of a dead human body, except for washing and dressing;

(2) causing a body to be embalmed when embalming is not required by a place of disposition;

(3) conducting, directing or providing facilities for any rites or ceremonies in association with the dead human body, before or after the direct disposition;

(4) reclaiming, transporting or causing to be transported a dead human body after written release for disposition; or

(5) practicing direct disposition without a license or aiding or abetting an unlicensed person to practice direct disposition.

D. In addition to the offenses listed in Subsection A of this section, the board, in accordance with the provisions of the Uniform Licensing Act, may refuse to issue or renew or may suspend, revoke, impose a fine or place on probation a crematory applicant or crematory authority upon finding the applicant or crematory authority guilty of any of the following acts of commission or omission:

(1) engaging or holding oneself out as engaging in the practice of funeral service or direct disposition, unless the applicant or crematory authority has a license to practice funeral service or direct disposition;

(2) operating a crematory without a license or aiding and abetting a crematory to operate without a license; or

(3) engaging in conduct or activities for which a license to engage in the practice of funeral service or direct disposition is required or aiding and abetting an unlicensed person to engage in conduct or activities for which a license to practice funeral service or direct disposition is required.

E. Unless exonerated by the board, persons who have been subjected to formal disciplinary sanctions by the board shall be responsible for the payment of costs of the disciplinary proceedings, which include costs for:

(1) court reporters;

(2) transcripts;

(3) certification or notarization;

(4) photocopies;

(5) witness attendance and mileage fees;

(6) postage for mailings required by law;

(7) expert witnesses; and

(8) depositions.

F. All fees, fines and costs imposed on an applicant, licensee, establishment or crematory shall be paid in full to the board before an initial or renewal license may be issued."

Section 4

Section 4. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 1000 WITH EMERGENCY CLAUSE
SIGNED APRIL 5, 1995

CHAPTER 159

RELATING TO CRIMINAL LAW; AMENDING A SECTION OF THE CRIMINAL CODE REGARDING CRIMINAL SEXUAL PENETRATION.

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

Section 1

Section 1. Section 30-9-11 NMSA 1978 (being Laws 1975, Chapter 109, Section 2, as amended) is amended to read:

"30-9-11. CRIMINAL SEXUAL PENETRATION.--

A. Criminal sexual penetration is the unlawful and intentional causing of a person to engage in sexual intercourse, cunnilingus, fellatio or anal intercourse or the causing of penetration, to any extent and with any object, of the genital or anal openings of another, whether or not there is any emission.

B. Criminal sexual penetration does not include medically indicated procedures.

C. Criminal sexual penetration in the first degree consists of all sexual penetration perpetrated:

(1) on a child under thirteen years of age; or

(2) by the use of force or coercion that results in great bodily harm or great mental anguish to the victim.

Whoever commits criminal sexual penetration in the first degree is guilty of a first degree felony.

D. Criminal sexual penetration in the second degree consists of all criminal sexual penetration perpetrated:

(1) on a child thirteen to sixteen years of age when the perpetrator is in a position of authority over the child and uses this authority to coerce the child to submit;

(2) on an inmate confined in a correctional facility or jail when the perpetrator is in a position of authority over the inmate;

(3) by the use of force or coercion that results in personal injury to the victim;

(4) by the use of force or coercion when the perpetrator is aided or abetted by one or more persons;

(5) in the commission of any other felony; or

(6) when the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual penetration in the second degree is guilty of a second degree felony.

E. Criminal sexual penetration in the third degree consists of all criminal sexual penetration perpetrated through the use of force or coercion.

Whoever commits criminal sexual penetration in the third degree is guilty of a third degree felony.

F. Criminal sexual penetration in the fourth degree consists of all criminal sexual penetration not defined in Subsections C through E of this section perpetrated on a child thirteen to sixteen years of age when the perpetrator is at least eighteen years of age and is at least four years older than and not the spouse of that child.

Whoever commits criminal sexual penetration in the fourth degree is guilty of a fourth degree felony."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE BILL 1004

CHAPTER 160

RELATING TO ALTERNATIVE FUEL; AMENDING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 13-1B-2 NMSA 1978 (being Laws 1992, Chapter 58, Section 2, as amended) is amended to read:

"13-1B-2. DEFINITIONS.--As used in the Alternative Fuel Conversion Act:

A. "alternative fuel" means natural gas, liquefied petroleum gas, electricity, hydrogen or a fuel mixture containing not less than eighty-five percent ethanol or methanol;

B. "conventional fuel" means gasoline or diesel fuel;

C. "department" means the general services department;

D. "fund" means the alternative fuel conversion loan fund;

E. "political subdivision" means a county, municipality or school district;

F. "post-secondary institution" means two- and four-year public post-secondary institutions; and

G. "vehicle" means a passenger car or light, medium or heavy duty truck."

Section 2

Section 2. Section 13-1B-3 NMSA 1978 (being Laws 1992, Chapter 58, Section 3, as amended) is amended to read:

"13-1B-3. CONVERSION OF VEHICLES--EXEMPTIONS.--

A. The agencies and departments of state government and the post-secondary institutions shall convert vehicles that are purchased or leased after May 20, 1992 from gasoline to alternative fuel according to the following schedule:

(1) if three or more vehicles are purchased in the eighty-second fiscal year or leased in the eighty-second fiscal year by a lease initiated in that year, thirty percent of these vehicles shall be converted;

(2) if three or more vehicles are purchased in the eighty-third fiscal year or leased in the eighty-third fiscal year by a lease initiated in that year, sixty percent of these vehicles shall be converted; and

(3) one hundred percent of the vehicles that are purchased in the eighty-fourth fiscal year or leased in the eighty-fourth fiscal year by a lease initiated in that year, and in each of the following fiscal years, shall be converted.

B. The agencies and departments of state government and the post-secondary institutions may convert their vehicles to bi-fuel capability or to dedicated engine configurations.

C. Certified law enforcement pursuit vehicles and emergency vehicles are exempt from the provisions of the Alternative Fuel Conversion Act. The department may exempt additional vehicles from the requirements of Subsection A of this section upon demonstration by the purchasing entity that:

(1) alternative fuels are unavailable at a cost approximately equivalent to the cost of conventional fuel within the normal driving range of these vehicles;

(2) the conversion payback period for these vehicles is too long to be economically feasible; or

(3) the conversion of a vehicle will hamper or interfere with the intended use of the vehicle.

D. Equipment and installation procedures shall conform to all applicable state and federal safety and environmental regulations and standards.

E. The agencies and departments of state government, political subdivisions and the post-secondary institutions may submit loan applications to the department to acquire loans to facilitate the conversion of their vehicles."

HOUSE BILL 1014

CHAPTER 161

RELATING TO MOTOR VEHICLES; AMENDING SECTIONS OF THE NMSA 1978 TO CHANGE THE NAME OF THE MOTOR POOL DIVISION TO THE TRANSPORTATION SERVICES DIVISION.

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

Section 1

Section 1. Section 9-17-3 NMSA 1978 (being Laws 1983, Chapter 301, Section 3, as amended) is amended to read:

"9-17-3. GENERAL SERVICES DEPARTMENT--CREATION-- TRANSFER AND MERGER OF DIVISION FUNCTIONS--MERGER AND CREATION OF DIVISIONS.--

A. The "general services department" is created. The department shall consist of those divisions created by law or executive order, as modified by executive order pursuant to Subsection C of this section, including:

- (1) the administrative services division;
- (2) the building services division;
- (3) the information systems division;
- (4) the property control division;
- (5) the purchasing division;
- (6) the risk management division; and
- (7) the transportation services division.

B. The secretary of general services is empowered to organize the department and the divisions specified in Subsection A of this section and may transfer or merge functions between divisions in the interest of efficiency and economy.

C. The governor is empowered to merge divisions of the department or to create additional divisions by executive order in the interest of efficiency or economy."

Section 2

Section 2. Section 9-17-7 NMSA 1978 (being Laws 1992, Chapter 58, Section 8, as amended) is amended to read:

"9-17-7. STATE ALTERNATIVE FUEL PROGRAM MANAGER-- CREATION-- DUTIES.--A "state alternative fuel program manager" is created in the transportation services division of the general services department, and his duties shall include:

A. promoting, coordinating and monitoring the implementation of state clean alternative fuel transportation programs, including a mass transit demonstration project and other demonstration projects that place New Mexico on the leading edge of new clean fuel technologies;

B. coordinating and directing the provisions of the Alternative Fuel Conversion Act; and

C. mobilizing and coordinating necessary resources and expertise from government, education and the private sector to assist in clean alternative fuel transportation programs and projects."

Section 3

Section 3. Section 15-8-1 NMSA 1978 (being Laws 1994, Chapter 119, Section 1) is amended to read:

"15-8-1. SHORT TITLE.--Chapter 15, Article 8 NMSA 1978 may be cited as the "Transportation Services Act".

Section 4

Section 4. Section 15-8-2 NMSA 1978 (being Laws 1994, Chapter 119, Section 2) is amended to read:

"15-8-2. FINDINGS AND PURPOSE.--The legislature finds that centralized control of state vehicles is in the best interest of the state because it permits the state to use its transportation resources in the most efficient and effective manner. The primary purposes of the Transportation Services Act are:

A. to provide a centralized agency to purchase state vehicles and to control their use;

B. to implement and administer the State Aircraft Act;

C. to supervise and monitor the alternative fuel conversion program; and

D. to supervise and administer a state travel coordination program, including coordinating and monitoring the in-state and out-of-state travel of official state business."

Section 5

Section 5. Section 15-8-3 NMSA 1978 (being Laws 1994, Chapter 119, Section 3) is amended to read:

"15-8-3. DEFINITIONS.--As used in the Transportation Services Act:

A. "department" means the general services department;

B. "director" means the director of the division;

C. "division" means the transportation services division of the department;

D. "secretary" means the secretary of general services;

E. "state agency" means a state department, agency, board or commission except the legislative and judicial branches, public schools and institutions of higher education; and

F. "state vehicle" means an automobile, van, sport-utility truck, pickup truck or other vehicle used by a state agency to transport passengers or property."

Section 6

Section 6. Section 15-8-4 NMSA 1978 (being Laws 1994, Chapter 119, Section 4) is amended to read:

"15-8-4. DIVISION CREATED.--The "transportation services division" is created in the department. The director shall be appointed by the secretary with the consent of the governor. Staff of the division shall be covered by the provisions of the Personnel Act."

Section 7

Section 7. Section 15-8-10 NMSA 1978 (being Laws 1994, Chapter 119, Section 10) is amended to read:

"15-8-10. RULES AND REGULATIONS.--The division shall adopt and file in accordance with the State Rules Act rules and regulations to carry out the provisions of the Transportation Services Act."

Section 8

Section 8. Section 66-3-28 NMSA 1978 (being Laws 1994, Chapter 119, Section 14) is amended to read:

"66-3-28. STATE GOVERNMENT REGISTRATION PLATES-- ISSUANCE APPROVED.--No state government registration plates shall be provided to a state agency unless approved by the transportation services division of the general services department. As used in this section, "state agency" means a state department, agency, board or commission except the legislative and judicial branches, public schools and institutions of higher education."

HOUSE BILL 1016

CHAPTER 162

RELATING TO THE ENVIRONMENT; AMENDING A CERTAIN SECTION OF THE NMSA 1978 PERTAINING TO CRIMINAL PENALTIES FOR VIOLATION OF THE AIR QUALITY CONTROL ACT.

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

Section 1

Section 1. Section 74-2-14 NMSA 1978 (being Laws 1967, Chapter 277, Section 12, as amended) is amended to read:

"74-2-14. CRIMINAL PENALTIES.--

A. Notwithstanding any other provision of the Air Quality Control Act, a local authority may prescribe penalties for violations of an ordinance:

(1) regulating open-fire burning or residential incineration; or

(2) prohibiting the removal of motor vehicle emission control devices installed as required by law and requiring the maintenance of such devices in operating condition.

B. Notwithstanding any other provision of the Air Quality Control Act, it is a petty misdemeanor to violate any regulations of the environmental improvement board:

(1) regulating open-fire burning or residential incineration; or

(2) prohibiting the removal of motor vehicle emission control devices installed as required by law or requiring the maintenance of such devices in operating condition.

C. Except as provided in Subsection D of this section, any person who knowingly commits any of the following acts is guilty of a fourth degree felony and shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978:

(1) violation of any regulation relating to commercial or industrial incineration;

(2) violation of any regulation adopting any federal standard of performance;

(3) violation of any regulation relating to control of hazardous air pollutants; or

(4) violation of any regulation relating to control of toxic air pollutants.

D. At any source required to have an operating permit pursuant to Section 502 of the federal act, any person who knowingly commits any violation of any applicable standard, regulation or requirement under the Air Quality Control Act or the federal act, any term or condition of an operating permit or any emission fee or filing requirement in any operating permit regulation of the environmental improvement board or the local board is guilty of a fourth degree felony and shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000) per day per violation or by imprisonment of not more than eighteen months, or both.

E. Any person who knowingly commits any violation of a regulation of the environmental improvement board or the local board not listed in Subsection B, C or D of this section is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

F. Any person who knowingly:

(1) makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under the Air Quality Control Act, any permit issued pursuant to the Air Quality Control Act or any regulation adopted pursuant to that Act; or

(2) falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under the Air Quality Control Act, any permit issued pursuant to the Air Quality Control Act or any ordinance or regulation adopted pursuant to that act is guilty of a misdemeanor and shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000) per day per violation or by imprisonment for not more than twelve months, or by both.

G. Any person who knowingly releases into the ambient air any hazardous air pollutant or extremely hazardous substance listed pursuant to Section 302(a)(2) of the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 1102(a)(2) that is not listed in Section 112 of the federal act and who knows at the time of the release that he creates a substantial danger of death or serious bodily injury to another person is guilty of a second degree felony and, upon conviction, shall be sentenced to a term of imprisonment not to exceed nine years or a fine not to exceed one hundred thousand dollars (\$100,000), or both. Any person, other than an individual or a governmental entity, who commits such violation is guilty of a second degree felony and shall be fined in an amount not to exceed two hundred fifty thousand dollars (\$250,000). If a conviction of any person under this subsection is for a second or subsequent violation, the maximum punishment shall be doubled with respect to both the fine and the imprisonment."

HOUSE BILL 1034

CHAPTER 163

RELATING TO EXECUTIVE REORGANIZATION; AMENDING SECTIONS OF THE NMSA 1978 TO ESTABLISH AN ADMINISTRATIVE SERVICES DIVISION IN THE TOURISM DEPARTMENT.

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

Section 1

Section 1. Section 9-15-14 NMSA 1978 (being Laws 1983, Chapter 297, Section 14, as amended) is amended to read:

"9-15-14. ADMINISTRATIVE SERVICES DIVISION--DUTIES.--

A. The administrative services division of the department shall provide administrative services to the department, including:

(1) keeping all official records of the department;

(2) providing personnel administration, financial management, procurement and budget preparation services; and

(3) providing clerical, record-keeping and administrative support to agencies administratively attached to the department.

B. The division shall, in addition to its other duties, administer programs and grants that have been assigned generally to the department by the governor or the commission or by statute."

Section 2

Section 2. Section 9-15A-3 NMSA 1978 (being Laws 1991, Chapter 21, Section 3) is amended to read:

"9-15A-3. DEPARTMENT ESTABLISHED.--There is created in the executive branch the "tourism department". The department shall be a cabinet department and shall consist of, but not be limited to, three divisions as follows:

A. the travel and marketing division;

B. the New Mexico magazine division; and

C. the administrative services division."

Section 3

Section 3. TEMPORARY PROVISION--TRANSFER OF ASSETS.--On the effective date of this act:

A. thirty percent of all appropriations and funds attributable to the administrative services division of the economic development department are transferred to the tourism department; and

B. that portion of the personnel, property and assets of the administrative services division of the economic development department determined by mutual agreement of the economic development department and the tourism department shall be transferred to the tourism department.

Section 4

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE BILL 1035

CHAPTER 164

RELATING TO CRIMINAL OFFENSES; AMENDING CRIMINAL TRESPASS PROVISIONS; AMENDING A CERTAIN SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 30-14-1 NMSA 1978 (being Laws 1963, Chapter 303, Section 30-14-1, as amended) is amended to read:

"30-14-1. CRIMINAL TRESPASS.--

A. Criminal trespass consists of knowingly entering or remaining upon posted private property without possessing written permission from the owner or person in control of the land. The provisions of this subsection do not apply if:

(1) the owner or person in control of the land has entered into an agreement with the department of game and fish granting access to the land to the general public for the purpose of taking any game animals, birds or fish by hunting or fishing; or

(2) a person is in possession of a landowner license given to him by the owner or person in control of the land that grants access to that particular private land for the purpose of taking any game animals, birds or fish by hunting or fishing.

B. Criminal trespass also consists of knowingly entering or remaining upon the unposted lands of another knowing that such consent to enter or remain is denied or withdrawn by the owner or occupant thereof. Notice of no consent to enter shall be deemed sufficient notice to the public and evidence to the courts, by the posting of the property at all vehicular access entry ways.

C. Criminal trespass also consists of knowingly entering or remaining upon lands owned, operated or controlled by the state or any of its political subdivisions knowing that consent to enter or remain is denied or withdrawn by the custodian thereof.

D. Any person who enters upon the lands of another without prior permission and injures, damages or destroys any part of the realty or its improvements, including buildings, structures, trees, shrubs or other natural features, is guilty of a misdemeanor, and he shall be liable to the owner, lessee or person in lawful possession for civil damages in an amount equal to double the value of the damage to the property injured or destroyed.

E. Whoever commits criminal trespass is guilty of a misdemeanor. Additionally, any person who violates the provisions of Subsection A, B or C of this section, when in connection with hunting, fishing or trapping activity, shall have his hunting or fishing license revoked by the state game commission for a period of not less than three years, pursuant to the provisions of Section 17-3-34 NMSA 1978.

F. Whoever knowingly removes, tampers with or destroys any "no trespass" sign is guilty of a petty misdemeanor; except when the damage to the sign amounts to more than one thousand dollars (\$1,000), he or she is guilty of a misdemeanor and shall be subject to imprisonment in the county jail for a definite term less than one year or a fine not more than one thousand dollars (\$1,000) or to both such imprisonment and fine in the discretion of the judge.

G. This section, as amended, shall be published in all issues of "Big Game Hunt Proclamation" as published by the department of game and fish."

HOUSE BILL 1067

CHAPTER 165

RELATING TO ELECTIONS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978 RELATED TO ABSENTEE-EARLY VOTING.

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

Section 1

Section 1. Section 1-6A-4 NMSA 1978 (being Laws 1993, Chapter 37, Section 4) is amended to read:

"1-6A-4. ABSENTEE-EARLY APPLICATION.--Application by a voter for absentee-early voting shall be made on a form prescribed and furnished by the secretary of state to the county clerk of the county in which he resides. The form shall identify the applicant and contain such information as is necessary for voting under the Absentee-Early Voting Act."

Section 2

Section 2. Section 1-6A-5 NMSA 1978 (being Laws 1993, Chapter 37, Section 5) is amended to read:

"1-6A-5. PROCESSING APPLICATION.--

A. The county clerk shall mark each completed absentee-early application with the date and time of receipt in the clerk's office and enter the required information in the absentee ballot register.

B. If the applicant has no valid affidavit of registration on file in the county and he is not a federal qualified elector, he shall not be allowed to vote. The county clerk shall mark the application "rejected" and file the application in a separate file from those accepted.

C. If the applicant presents proof of identification and is determined to be a voter or a federal qualified elector, the county clerk shall mark the application "accepted" and deliver a marksense ballot or allow the voter to vote on the direct-recording electronic machine. Upon acceptance of the application, an appropriate designation shall be made on the absentee register.

D. Absentee-early voting may be done in person during the regular hours of business at the county clerk's office or other locations specified by the county clerk; provided that in class A counties, the county clerk shall establish not less than four alternative locations as satellite polling places. Absentee-early voting may be done from 8:00 a.m. on the twentieth day preceding the election up until 5:00 p.m. on the Saturday immediately prior to the date of the election. In voting absentee-early, the voter may be assisted by one person of the voter's own choice.

E. The secretary of state and county clerk shall make reasonable efforts to publicize and inform voters of the times and locations for absentee-early voting."

Section 3

Section 3. Section 1-6A-7 NMSA 1978 (being Laws 1993, Chapter 37, Section 7) is amended to read:

"1-6A-7. MANNER OF VOTING.--

A. Any person voting an absentee-early paper ballot shall:

- (1) receive a ballot issued by the county clerk;
- (2) take the ballot to a voting booth and, with the marking instrument provided, mark it by completing the arrow to the right of the candidate's name or question on which he desires to vote. Only those ballots marked in accordance with instructions for marksense ballots shall be counted; and
- (3) make all selections and feed the ballot into the machine to record his vote.

B. Any person voting absentee-early on the direct-recording electronic voting machine shall:

- (1) enter the machine;
- (2) press the square to the right of the candidate's name or question on which he desires to vote; and
- (3) make all selections and press the vote button in the lower right hand corner of the voting machine to record his vote.

C. Any person voting absentee-early in a county utilizing a central vote counting system shall receive and complete an absentee-early ballot and, upon completion, shall place the marked ballot into a locked ballot box."

Section 4

Section 4. A new section of the Absentee-Early Voting Act is enacted to read:

"ABSENTEE-EARLY VOTING PRECINCT BOARD.--

A. The county clerk shall appoint absentee-early voting election officials who shall receive compensation at an hourly rate set by the county clerk.

B. A minimum of three board members shall be appointed to the absentee-early voting precinct board with not more than two members belonging to the same political party."

Section 5

Section 5. A new section of the Absentee-Early Voting Act is enacted to read:

"CHALLENGERS AND WATCHERS.--Challengers and watchers may be appointed in the absentee-early precinct in the same manner as the appointment of watchers, challengers and alternate challengers pursuant to the Election Code."

Section 6

Section 6. A new section of the Absentee-Early Voting Act is to read:

"COUNTING AND CANVASSING.--The secretary of state shall adopt rules and regulations regarding absentee-early ballots and voting practices, separation of absentee-early ballots from absentee ballots, use of ballots rejected from voting machines, handling of, counting and canvassing of absentee-early ballots and distribution of ballots by representative district for canvassing purposes."

HOUSE BILL 1075

CHAPTER 166

RELATING TO ELECTIONS; AMENDING SECTIONS OF THE ELECTION CODE PERTAINING TO AUTOMATED VOTER SYSTEMS.

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

Section 1

Section 1. Section 1-5-2 NMSA 1978 (being Laws 1969, Chapter 240, Section 104, as amended by Laws 1993, Chapter 314, Section 32 and by Laws 1993, Chapter 316, Section 32 and also by Laws 1993, Chapter 363, Section 1) is amended to read:

"1-5-2. DEFINITIONS.--As used in the Election Code:

A. "county" means any county in this state;

B. "county register" means an official file of original certificates of registration of the county or any precinct thereof, arranged in alphabetical order by voter surname and, if for more than one precinct, without regard to precincts;

C. "voter list" means any machine-prepared list of voters;

D. "signature roster" means a copy of a voter list with space provided opposite each voter's name for the voter's signature or witnessed mark;

E. "active data processing media" means punched cards, punched tape, magnetic cards, magnetic discs, magnetic tape or functionally similar devices containing

data capable of being read and processed by suitable machinery for the eventual machine preparation of voter lists;

F. "intermediate records" means records on active data processing media;

G. "voter file" means all voter registration information required by law and by the secretary of state that has been extracted from the certificate of registration of each voter in the county, stored on active data processing media and certified by the county clerk as the source of all information required by the Automated Voter Records System Act;

H. "program records" means the necessary detailed program and instructions for carrying out and controlling machine processing of information derived from the voter file. Program records shall exist in written English or coded form and they may exist on active data processing media;

I. "mailing labels" means machine-prepared mailing labels of selected voters arranged in the order in which requested and providing only the name and address of the voter;

J. "special voter lists" means machine-prepared lists of selected voters arranged in the order in which requested;

K. "statistical data" means information derived from the voter file;

L. "voter data" means selected information derived from the voter file;

M. "data processor" means a data processing facility and associated employees and agents thereof contracted to provide data processing services required by the Automated Voter Records System Act;

N. "file maintenance list" means any machine-prepared listing that reflects additions, deletions or changes to the voter file;

O. "precinct voter list" means a voter list arranged in alphabetical order of voter surname within and for each precinct;

P. "county voter list" means a voter list arranged in alphabetical order of voter surname within and for each county;

Q. "unofficial election canvassing file" means the compilation by the county clerk of the results of any election prior to official certification of the election results; and

R. "unofficial election canvassing system" means the automated data processing computer program used to create the unofficial election canvassing file."

Section 2

Section 2. Section 1-5-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 110, as amended by Laws 1993, Chapter 314, Section 36 and also by Laws 1993, Chapter 316, Section 36) is amended to read:

"1-5-8. VOTER LISTS--SIGNATURE ROSTERS--NUMBER-- DISTRIBUTION.--

A. One copy of the signature roster shall be prepared for each precinct. On the cover of such signature roster shall be printed the words, "Copy for the County Clerk. Upon its preparation and certification as to its accuracy and completeness, the county clerk shall deliver the copy of the signature roster to the precinct board in lieu of the poll book.

B. The county clerk shall prepare three copies of the voter list for each precinct. Of the three copies prepared, one copy shall not include voter social security numbers. He shall deliver two of the copies to each precinct board in lieu of bound certificates of registration. One copy of the voter list shall be retained by the county clerk for verification purposes on election day and one copy for the secretary of state shall be marked to verify those voters on the list who voted.

C. Two copies of the county voter list, arranged in alphabetical order, shall be prepared for election day for verification purposes only."

Section 3

Section 3. Section 1-5-10 NMSA 1978 (being Laws 1969, Chapter 240, Section 112, as amended) is amended to read:

"1-5-10. VOTER LISTS--SIGNATURE ROSTERS--USE DURING ELECTION.--

A. Each precinct board using voter lists shall post securely at or near the entrance of the polling place one copy of the voter list for use of the voters prior to voting. The posted copy shall not contain a listing of voter social security numbers.

B. The presiding judge of the precinct board shall assign one judge of the board to be in charge of one copy of the voter list which shall be used to confirm the registration and voting of each person offering to vote.

C. The presiding judge of the precinct board shall assign one election clerk to be in charge of the signature roster.

D. The judge assigned to the voter list used for confirmation of registration and voting shall determine that each person offering to vote is registered and, in the case of a primary election, that such voter is registered in a party designated on the primary election ballot. If the person's registration is confirmed by the presence of his

name on the voter list or if the person presents a certificate under the seal and signature of the county clerk showing that he is entitled to vote in the election and to vote in that precinct, then the judge shall announce to the election clerks the list number and the name of the voter as shown on the voter list.

E. The election clerk shall locate that list number and name on the signature roster and shall require the voter to sign his usual signature or, if unable to write, to make his mark opposite his printed-name. If the voter makes his mark, it shall be witnessed by one of the judges of the precinct board.

F. No voter shall be permitted to vote until he has properly signed his usual signature or made his mark in the signature roster.

G. After the poll is closed, the election clerk in charge of a signature roster shall draw a single horizontal line in ink through each signature space in the signature roster where no signature or mark appears."

Section 4

Section 4. Section 1-5-14 NMSA 1978 (being Laws 1969, Chapter 240, Section 118, as amended) is amended to read:

"1-5-14. FILE MAINTENANCE LISTS.--

A. At least once a month the county clerk shall have made from the voter file a machine-prepared file maintenance list of additions, deletions and changes, if any, to the county register.

B. The county clerk shall be furnished with two copies of the machine-prepared file maintenance lists.

C. One copy of the list shall be stored by the county clerk for at least six years.

D. The county clerk shall also be furnished with copies of the list to give to the county chairman of each of the major political parties in the county. The copy of the chairman's list shall indicate whether each item is an addition, deletion or change. The file maintenance list shall not include the voter's social security number, codes used to identify the agency where the voter registered, voter's day and month of birth or voter's telephone number, if prohibited by the voter.

E. Beginning the first Monday of February of an election year and every month thereafter, the county clerks shall furnish the secretary of state with a copy of the magnetic voter file, except that during the months of April and September of an election year, the county clerks shall furnish a copy of the magnetic voter file to the secretary of

state at least one time each week. The final copy shall be furnished to the secretary of state by the county clerks within seven days of the close of registration."

Section 5

Section 5. Section 1-5-19 NMSA 1978 (being Laws 1969, Chapter 240, Section 125, as amended by Laws 1993, Chapter 314, Section 39 and also by Laws 1993, Chapter 316, Section 39) is amended to read:

"1-5-19. REGISTRATION--FORM.--

A. The secretary of state shall prescribe the form and assure that the certificate of registration to be used in any county is compatible with the machine data processing systems.

B. The certificate of registration form shall require the following elements of information concerning the applicant for registration: name, gender, residence, municipality, post office, county of former registration, social security number, date of birth, political party affiliation, zip code, telephone number at the applicant's option and statement of qualification for voting.

C. Provision shall be made for the usual signature or mark of the applicant, for the signature of the county clerk and for the dates of such signatures.

D. The certificate form may be multipurpose by providing for an indication of whether the certificate of registration is for a new registration, a change in the existing registration or a cancellation of an existing registration. Provision shall be made on any multipurpose form for entry of any existing registered information for which a change may be requested.

E. The certificate of registration forms shall be serially numbered and shall be furnished promptly and in adequate supply by the secretary of state upon application from the county clerk."

Section 6

Section 6. Section 1-5-24 NMSA 1978 (being Laws 1975, Chapter 255, Section 78) is amended to read:

"1-5-24. REQUESTS FOR STATISTICAL DATA, VOTER DATA, MAILING LABELS OR SPECIAL VOTER LISTS.--

A. The county clerk shall authorize the data processor to furnish statistical data, voter data, mailing labels or special voter lists only upon written request to the county clerk and after compliance with the requirements of this section, provided,

however, all requesters shall be treated equally by the data processor in regard to the charges and the furnishing of the materials.

B. In furnishing voter data, mailing labels or special voter lists, the county clerk shall not provide data or lists that include voters' social security numbers, codes used to identify agencies where voters have registered, voter's day and month of birth or voters' telephone numbers if prohibited by voters.

C. Each requester of voter data, mailing labels or special voter lists shall sign an affidavit that the voter data, mailing labels and special voter lists shall be used for governmental or election and election campaign purposes only and shall not be made available or used for unlawful purposes.

D. Each requester of statistical data shall sign an affidavit that such statistical data shall be used for information or research purposes only and shall not be made available or used for unlawful purposes.

E. The secretary of state shall prescribe the form of the affidavit."
HOUSE BILL 717

CHAPTER 167

RELATING TO HIGHER EDUCATION; PROVIDING FOR CERTAIN POWERS AND DUTIES; AMENDING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 21-1-10 NMSA 1978 (being Laws 1889, Chapter 138, Section 58, as amended) is amended to read:

"21-1-10. DELEGATION OF AUTHORITY.--The boards of regents of state educational institutions may delegate authority or functions to officers or subordinate bodies within the state educational institutions as the boards deem proper for the efficient functioning of their respective educational institutions."

Section 2

Section 2. Section 21-7-6 NMSA 1978 (being Laws 1889, Chapter 138, Section 13, as amended) is amended to read:

"21-7-6. PRESIDENT--SECRETARY AND TREASURER--DUTIES AND POWERS.--The president of the board of regents of the university of New Mexico shall preside at all meetings of the board, except that when the president is absent the board

may appoint a president pro tem, and sign all instruments required to be executed by the board. The president shall appoint committees of the board. The secretary shall provide for attesting all instruments required to be signed by the president of the board, shall keep a true record of all the proceedings of the board and generally do all other things required of the secretary by the board."

Section 3

Section 3. Section 21-7-7 NMSA 1978 (being Laws 1889, Chapter 138, Section 14, as amended) is amended to read:

"21-7-7. BOARD OF REGENTS--RULES AND REGULATIONS.-- The board of regents shall have power and it shall be its duty to enact laws, rules and regulations for the government of the university of New Mexico. The board of regents may hire a president for the university of New Mexico as its chief executive officer and shall determine the scope of the president's duties and authority."

HOUSE BILL 1086

CHAPTER 168

RELATING TO DISTRICT ATTORNEYS; INCREASING THE SALARIES OF DISTRICT ATTORNEYS.

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

Section 1

Section 1. Section 36-1-6 NMSA 1978 (being Laws 1976 (S.S.), Chapter 18, Section 1, as amended) is amended to read:

"36-1-6. DISTRICT ATTORNEYS--SALARIES.--

A. Except as provided in Subsection B of this section, district attorneys shall receive an annual salary of seventy thousand two hundred sixty-five dollars (\$70,265).

B. District attorneys who serve in a district that includes a class A county within the district shall receive an annual salary of seventy-three thousand nine hundred sixty-three dollars (\$73,963)."

HOUSE BILL 1140

CHAPTER 169

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
EXTENDING THE EXPENDITURE PERIOD FOR AN APPROPRIATION MADE
PURSUANT TO PARAGRAPH (2) OF SUBSECTION GG OF SECTION 7 OF
CHAPTER 147 OF LAWS 1994.

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

Section 1

Section 1. APPROPRIATION--EXTENDING EXPENDITURE PERIOD.--The period of time for expenditure of a general fund appropriation of five hundred thousand dollars (\$500,000), which was made to the children, youth and families department to provide matching funds for operation of nonsecure alternatives to detention for juveniles on a statewide basis pursuant to Paragraph (2) of Subsection GG of Section 7 of Chapter 147 of Laws 1994, shall be extended through fiscal year 1996. Any unexpended or unencumbered balance remaining at the end of fiscal year 1996 shall revert to the general fund.

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 1154

CHAPTER 170

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
RESTRICTING ANNEXATION; ENABLING DESIGNATION OF TRADITIONAL
HISTORIC COMMUNITIES; AMENDING AND ENACTING CERTAIN SECTIONS OF
THE NMSA 1978; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 3-2-3 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-2-3, as amended) is amended to read:

"3-2-3. URBANIZED TERRITORY--INCORPORATION LIMITED WITHIN
URBANIZED TERRITORY.--

A. Urbanized territory is that territory within the same county and within five miles of the boundary of any municipality having a population of five thousand or more persons and that territory within the same county and within three miles of a municipality having a population of less than five thousand persons, except that territory in a class B county with a population between ninety-five thousand and ninety-nine thousand five hundred, based on the 1990 federal decennial census, declared by an

ordinance of the board of county commissioners to be a traditional historic community shall not be considered urbanized territory and shall not be annexed by a municipality unless it is considered for annexation pursuant to a petition requesting annexation signed by a majority of the registered qualified electors within the traditional historic community.

B. No territory within an urbanized territory shall be incorporated as a municipality unless the:

(1) municipality or municipalities causing the urbanized territory approve, by resolution, the incorporation of the territory as a municipality;

(2) residents of the territory proposed to be incorporated have filed with the municipality a valid petition to annex the territory proposed to be incorporated and the municipality fails, within one hundred twenty days after the filing of the annexation petition, to annex the territory proposed to be incorporated; or

(3) residents of the territory proposed to be annexed conclusively prove that the municipality is unable to provide municipal services within the territory proposed to be incorporated within the same period of time that the proposed municipality could provide municipal service.

C. A traditional historic community may become incorporated even though it is located within what is defined as urbanized territory pursuant to Subsection A of this section, by following the procedures set forth in Sections 3-2-5 through 3-2-9 NMSA 1978."

Section 2

Section 2. Section 3-7-1 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-7-1, as amended) is amended to read:

"3-7-1. METHODS OF ANNEXATION.--

A. There shall be three methods of annexing territory to a municipality:

(1) the arbitration method as provided in Sections 3-7-5 through 3-7-10 NMSA 1978;

(2) the boundary commission method as provided in Sections 3-7-11 through 3-7-16 NMSA 1978; and

(3) the petition method as provided in Section 3-7-17 NMSA 1978.

B. Territory may be annexed to a municipality by any one of the three methods of annexation provided for in Sections 3-7-5 through 3-7-18 NMSA 1978 except

where limitations of annexation are provided by law. The provisions of this section apply to annexations of all municipalities except those that are otherwise specifically provided by law. The arbitration method of annexation may be used for municipal annexation of a traditional historic community only upon petition of a majority of the registered qualified electors of the territory within the traditional historic community."

Section 3

Section 3. Section 3-7-11 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-7-11) is amended to read:

"3-7-11. MUNICIPAL BOUNDARY COMMISSION--PURPOSE.--

A. The purpose of Sections 3-7-11 through 3-7-16 NMSA 1978 is to establish an independent commission known as the "municipal boundary commission" to determine the annexation of territory to a municipality whenever:

(1) the municipality petitions the municipal boundary commission to annex territory to the municipality; or

(2) a majority of the landowners of the territory proposed to be annexed petition the municipal boundary commission to annex the territory to the municipality.

B. The municipal boundary commission shall hear a request for municipal annexation of a traditional historic community only upon petition of a majority of the registered qualified electors of the territory within the traditional historic community."

Section 4

Section 4. Section 3-21-1 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-20-1, as amended) is amended to read:

"3-21-1. ZONING--AUTHORITY OF COUNTY OR MUNICIPALITY.--

A. For the purpose of promoting health, safety, morals or the general welfare, a county or municipality is a zoning authority and may regulate and restrict within its jurisdiction the:

(1) height, number of stories and size of buildings and other structures;

(2) percentage of a lot that may be occupied;

(3) size of yards, courts and other open space;

(4) density of population; and

(5) location and use of buildings, structures and land for trade, industry, residence or other purposes.

B. The county or municipal zoning authority may:

(1) divide the territory under its jurisdiction into districts of such number, shape, area and form as is necessary to carry out the purposes of Sections 3-21-1 through 3-21-14 NMSA 1978; and

(2) regulate or restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land in each district. All such regulations shall be uniform for each class or kind of buildings within each district, but regulation in one district may differ from regulation in another district.

C. All state-licensed or state-operated community residences for the mentally ill or developmentally disabled serving ten or fewer persons may be considered a residential use of property for purposes of zoning and may be permitted use in all districts in which residential uses are permitted generally, including particularly residential zones for single-family dwellings.

D. A board of county commissioners of the county in which the greatest amount of the territory of the petitioning village, community, neighborhood or district lies may declare by ordinance that a village, community, neighborhood or district is a "traditional historic community" upon petition by twenty-five percent or more of the registered qualified electors of the territory within the village, community, neighborhood or district requesting the designation. The number of registered qualified electors shall be based on county records as of the date of the last general election.

E. Any village, community, neighborhood or district that is declared a traditional historic community shall be excluded from the extraterritorial zone and extraterritorial zoning authority of any municipality whose extraterritorial zoning authority extends to include all or a portion of the traditional historic community and shall be subject to the zoning jurisdiction of the county in which the greatest portion of the traditional historic community lies."

Section 5

Section 5. A new section of Chapter 3, Article 7 NMSA 1978 is enacted to read:

"TRADITIONAL HISTORIC COMMUNITY--QUALIFICATIONS-- ANNEXATION RESTRICTIONS.--

A. To qualify as a traditional historic community, an area shall:

(1) be an unincorporated area of a class B county with a population between ninety-five thousand and ninety-nine thousand five hundred, based on the 1990 federal decennial census;

(2) be an identifiable village, community, neighborhood or district that can be documented as having existed for more than one hundred years;

(3) include structures or landmarks that are associated with the identity of the specific village, community, neighborhood or district seeking designation as a traditional historic community;

(4) have a distinctive character or traditional quality that can be distinguished from surrounding areas or new developments in the vicinity; and

(5) be declared a traditional historic community by an ordinance of the board of county commissioners of the county in which the petitioning village, community, neighborhood or district is located.

B. A traditional historic community may be annexed by a municipality only by petition of a majority of the registered qualified electors of the territory within the traditional historic community proposed to be annexed by the municipality or by the arbitration method of annexation only upon petition of a majority of the registered qualified electors of the territory within the traditional historic community."

Section 6

Section 6. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 1171 WITH EMERGENCY CLAUSE
SIGNED APRIL 5, 1995

CHAPTER 171

RELATING TO TAXATION; PROVIDING A CREDIT AGAINST THE OIL AND GAS SEVERANCE TAX AND CERTAIN OTHER TAXES WITH RESPECT TO OIL AND GAS PRODUCTION; ENACTING A NEW SECTION OF THE NMSA 1978.

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

Section 1

Section 1. INTERGOVERNMENTAL TAX CREDITS.--

A. Any person who is liable for the payment of the oil and gas severance tax, the oil and gas conservation tax, the oil and gas emergency school tax or the oil and gas ad valorem production tax imposed on products severed from Indian tribal land or imposed on the privilege of severing products from Indian tribal land shall be entitled to a credit to be computed under this section and to be deducted from the payment of the indicated taxes with respect to products from qualifying wells. The credit provided by this subsection may be referred to as the "intergovernmental production tax credit".

B. Any person who is liable for the payment of the oil and gas production equipment ad valorem tax imposed on equipment located on Indian tribal land shall be entitled to a credit to be computed under this section and to be deducted from the payment of the indicated taxes with respect to equipment at qualifying wells. The credit provided by this subsection may be referred to as the "intergovernmental production equipment tax credit".

C. For the purposes of this section:

(1) "equipment" means wells and nonmobile equipment used at a well in connection with severance, treatment or storage of well products;

(2) "Indian tribal land" means all land that on March 1, 1995 was within the exterior boundaries of an Indian reservation or pueblo grant or held in trust by the United States for an Indian nation, tribe or pueblo;

(3) "product" means oil, natural gas or liquid hydrocarbon, individually or in combination, or carbon dioxide; and

(4) "qualifying well" means a well on Indian tribal land, the actual drilling of which commenced on or after July 1, 1995.

D. The intergovernmental production tax credit shall be determined separately for each calendar month and shall be equal to seventy-five percent of the lesser of:

(1) the aggregate amount of severance, privilege, ad valorem or similar tax in effect on March 1, 1995 that is imposed by the Indian nation, tribe or pueblo upon the products severed from qualifying wells or upon the privilege of severing products from qualifying wells; or

(2) the aggregate amount of the oil and gas severance tax, the oil and gas conservation tax, the oil and gas emergency school tax and the oil and gas ad valorem production tax imposed by this state upon the products severed from qualifying wells or upon the privilege of severing products from qualifying wells.

E. The intergovernmental production equipment tax credit shall be determined annually for the equipment at qualifying wells and shall be equal to seventy-five percent of the lesser of:

(1) the amount of ad valorem or similar tax in effect on March 1, 1995 that is imposed by the Indian nation, tribe or pueblo upon the equipment for the calendar year; or

(2) the amount of the oil and gas production equipment ad valorem tax imposed by this state upon the equipment for the calendar year.

F. If, after March 1, 1995, an Indian nation, tribe or pueblo increases any severance, privilege, ad valorem or similar tax applicable to products or equipment to which the tax credits provided by this section apply, the amount of the intergovernmental production tax credit for any month to which the increase applies shall be reduced by the difference between the aggregate amount of tax due to the Indian nation, tribe or pueblo for the production month and the aggregate amount of tax that would have been imposed by the terms of the tax or taxes in effect on March 1, 1995, and the intergovernmental production equipment tax credit shall be reduced by the difference between the aggregate amount of tax due to the Indian nation, tribe or pueblo for the year and the aggregate amount of tax that would have been imposed for the year by the terms of the tax or taxes in effect on March 1, 1995.

G. Notwithstanding any other provision of law to the contrary, the amount of credit taken and allowed shall be applied proportionately against the amount of oil and gas severance tax, oil and gas conservation tax, oil and gas emergency school tax, oil and gas ad valorem production tax and oil and gas production equipment ad valorem tax due with respect to the products, severance of products or equipment taxed.

H. The taxation and revenue department shall administer and interpret the provisions of this section in accordance with the provisions of the Tax Administration Act.

I. The burden of showing entitlement to a credit authorized by this section is on the taxpayer claiming it, and he shall furnish to the appropriate tax collecting agency, in the manner determined by the taxation and revenue department, proof of payment of any tribal tax on which the credit is based.

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE TAXATION AND REVENUE COMMITTEE SUBSITUTE FOR

SENATE WAYS AND MEANS COMMITTEE SUBSTITUTE FOR

SENATE BILL 489

CHAPTER 172

RELATING TO VEHICLES; AMENDING A SECTION OF THE MOTOR VEHICLE CODE REGARDING THE POWERS OF LOCAL AUTHORITIES TO REGULATE THE OPERATION OF GOLF CARTS ON STREETS UNDER LOCAL JURISDICTION.

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

Section 1

Section 1. Section 66-7-9 NMSA 1978 (being Laws 1978, Chapter 35, Section 379, as amended) is amended to read:

"66-7-9. POWERS OF LOCAL AUTHORITIES.--

A. The provisions of the Motor Vehicle Code shall not be deemed to prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power, from:

- (1) regulating the standing or parking of vehicles;
- (2) regulating traffic by means of police officers or traffic-control signals;
- (3) regulating or prohibiting processions or assemblages on the highways;
- (4) designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction;
- (5) regulating the speed of vehicles in public parks;
- (6) designating any highway as a through highway and requiring that all vehicles stop before entering or crossing it or designating any intersection as a stop intersection or a yield intersection and requiring all vehicles to stop or yield at one or more entrances to the intersection;
- (7) restricting the use of highways as authorized in the Motor Vehicle Code;
- (8) regulating the operation of bicycles and requiring their registration and licensing, including the requirement of a registration fee;
- (9) regulating or prohibiting the turning of vehicles, or specified types of vehicles, at intersections;
- (10) altering the maximum speed limits as authorized in the Motor Vehicle Code;

(11) adopting other traffic regulations as specifically authorized by the Motor Vehicle Code;

(12) regulating the operation of snowmobiles on public lands, waters and property under their jurisdiction and on streets and highways within their boundaries by resolution or ordinance of their governing bodies and by giving appropriate notice, if such regulation is not inconsistent with the provisions of Sections 66-9-1 through 66-9-13 NMSA 1978; or

(13) regulating the operation of golf carts on public lands and property under their jurisdiction and on streets and roads within their boundaries by resolution or ordinance of their governing bodies and requiring their registration and licensing, including the payment of a registration fee; provided, the resolution or ordinance shall:

(a) not permit operation of a golf cart on any state highway;

(b) require that the golf cart be in compliance with Section 66-3-887 NMSA 1978; and

(c) not be inconsistent with the provisions of Sections 66-3-1001 through 66-3-1016 NMSA 1978.

B. No local authority shall erect or maintain any stop sign or traffic-control signal at any location so as to require the traffic on any state highway to stop or yield before entering or crossing any intersecting highway unless approval in writing has first been obtained from the state highway commission.

C. No ordinance or regulation enacted under Paragraph (4), (5), (6), (7) or (10) of Subsection A of this section shall be effective until signs giving notice of the local traffic regulations are posted upon or at the entrances to the highway or part thereof affected as may be most appropriate."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE TRANSPORTATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 104

CHAPTER 173

RELATING TO INSURANCE; REQUIRING THE RISK MANAGEMENT DIVISION OF THE GENERAL SERVICES DEPARTMENT TO INSURE CERTAIN RISKS; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 15-7-3 NMSA 1978 (being Laws 1978, Chapter 166, Section 8, as amended) is amended to read:

"15-7-3. ADDITIONAL POWERS AND DUTIES OF THE RISK MANAGEMENT DIVISION.--

A. The risk management division of the general services department may:

(1) enter into contracts;

(2) procure insurance, reinsurance or employee group benefits; provided that reinsurance or excess coverage insurance may be placed by private negotiation, notwithstanding the provisions of the Procurement Code, if such insurance or reinsurance has a restricted number of interested carriers, the board determines that such coverage is in the interest of the state and cannot otherwise be procured for a reasonable cost and the director seeks the advice and review of the board in such placement and in designing private negotiation procedures;

(3) in the manner prescribed by Subsection E of Section 9-17-5 NMSA 1978, after a notice and a public hearing, prescribe by regulation reasonable and objective underwriting and safety standards for governmental entities and reasonable standards for municipal self-insurance pooling agreements covering liability under the Tort Claims Act and adopt such other regulations as may be deemed necessary;

(4) compromise, adjust, settle and pay claims;

(5) pay expenses and costs;

(6) in the manner prescribed by Subsection E of Section 9-17-5 NMSA 1978, prescribe by rule or regulation the rating bases, assessments, penalties and risks to be covered by the public liability fund, the workers' compensation retention fund and the public property reserve fund and the extent such risks are to be covered;

(7) issue certificates of coverage in accordance with Paragraph (6) of this subsection:

(a) to any governmental entity for any tort liability risk covered by the public liability fund;

(b) to any governmental entity for any personal injury liability risk or for the defense of any errors or act or omission or neglect or breach of duty,

including the risks set forth in Paragraph (2) of Subsection B and Paragraph (2) of Subsection D of Section 41-4-4 NMSA 1978; and

(c) to any governmental entity for any part of risk covered by the workers' compensation retention fund, the surety bond fund or the public property reserve fund;

(8) study the risks of all governmental entities;

(9) initiate the establishment of safety programs and adopt regulations to carry out such programs in the manner prescribed by Subsection E of Section 9-17-5 NMSA 1978;

(10) hire a safety program director who shall coordinate all safety programs of all state agencies;

(11) consult with and advise local public bodies on their risk management problems; and

(12) employ full-time legal counsel who shall be under the exclusive control and supervision of the director and the secretary of general services.

B. The risk management division of the general services department shall provide liability coverage for the following risks:

(1) a claim made pursuant to the provisions of 42 U.S.C. Section 1983 against a nonprofit corporation, members of its board of directors or its employees when the claim is based upon action taken pursuant to the provisions of a contract between the corporation and the department of health under which the corporation provides developmental disability services to clients of the department and the claim is made by or on behalf of a client; and

(2) a claim made pursuant to the provisions of 42 U.S.C. Section 1983 against a nonprofit corporation, members of its board of directors or its employees when the corporation operates a facility licensed by the department of health as an intermediate care facility for the mentally retarded and the claim is based upon action taken pursuant to the provisions of the license and is made by or on behalf of a resident of the licensed facility.

C. The director shall report his findings and recommendations, if any, for the consideration of each legislature. The report shall include the amount and name of any person receiving payment from the public liability fund of any claim paid during the previous fiscal year exceeding one thousand dollars (\$1,000). The report shall be made available to the legislature on or before December 15 preceding each regular legislative session."

Section 2

Section 2. Section 41-4-3 NMSA 1978 (being Laws 1976, Chapter 58, Section 3, as amended) is amended to read:

"41-4-3. DEFINITIONS.--As used in the Tort Claims Act:

A. "board" means the risk management advisory board;

B. "governmental entity" means the state or any local public body as defined in Subsections C and H of this section;

C. "local public body" means all political subdivisions of the state and their agencies, instrumentalities and institutions and all water and natural gas associations organized pursuant to Chapter 3, Article 28 NMSA 1978;

D. "law enforcement officer" means any full-time salaried public employee of a governmental entity whose principal duties under law are to hold in custody any person accused of a criminal offense, to maintain public order or to make arrests for crimes, or members of the national guard when called to active duty by the governor;

E. "maintenance" does not include:

(1) conduct involved in the issuance of a permit, driver's license or other official authorization to use the roads or highways of the state in a particular manner; or

(2) an activity or event relating to a public building or public housing project that was not foreseeable;

F. "public employee" means any officer, employee or servant of a governmental entity, excluding independent contractors except for individuals defined in Paragraphs (7), (8), (10) and (14) of this subsection, or of a corporation organized pursuant to the Educational Assistance Act or the Mortgage Finance Authority Act and including:

(1) elected or appointed officials;

(2) law enforcement officers;

(3) persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation;

(4) licensed foster parents providing care for children in the custody of the human services department, corrections department or department of health, but not including foster parents certified by a licensed child placement agency;

(5) members of state or local selection panels established pursuant to the Adult Community Corrections Act;

(6) members of state or local selection panels established pursuant to the Juvenile Community Corrections Act;

(7) licensed medical, psychological or dental arts practitioners providing services to the corrections department pursuant to contract;

(8) members of the board of directors of the New Mexico comprehensive health insurance pool;

(9) individuals who are members of medical review boards, committees or panels established by the educational retirement board or the retirement board of the public employees retirement association;

(10) licensed medical, psychological or dental arts practitioners providing services to the children, youth and families department pursuant to contract;

(11) members of the board of directors of the New Mexico educational assistance foundation;

(12) members of the board of directors of the New Mexico student loan corporation;

(13) members of the New Mexico mortgage finance authority; and

(14) volunteers, employees and board members of court-appointed special advocate programs;

G. "scope of duties" means performing any duties that a public employee is requested, required or authorized to perform by the governmental entity, regardless of the time and place of performance; and

H. "state" or "state agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions."

SENATE BILL 294

CHAPTER 174

RELATING TO EDUCATION; AMENDING A PROVISION OF THE PUBLIC SCHOOL CODE PERTAINING TO GRADUATION REQUIREMENTS; REQUIRING STUDENTS TO PASS A STATE COMPETENCY EXAM ON THE UNITED STATES CONSTITUTION AND THE CONSTITUTION OF NEW MEXICO.

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

Section 1

Section 1. Section 22-2-8.4 NMSA 1978 (being Laws 1986, Chapter 33, Section 5, as amended by Laws 1993, Chapter 68, Section 3 and by Laws 1993, Chapter 92, Section 1 and by Laws 1993, Chapter 226, Section 7 and also by Laws 1993, Chapter 230, Section 1) is amended to read:

"22-2-8.4. GRADUATION REQUIREMENTS.--

A. At the end of the eighth grade or during the ninth grade, each student shall prepare an individual program of study for grades nine through twelve. The program of study shall be signed by a student's parent or guardian.

B. Beginning with students entering the ninth grade in the 1986-87 school year, successful completion of a minimum of twenty-three units shall be required for graduation. These units shall be as follows:

(1) four units in English, with major emphasis on grammar and literature;

(2) three units in mathematics;

(3) two units in science, one of which shall have a laboratory component;

(4) three units in social science, which shall include United States history and geography, world history and geography, and government and economics;

(5) one unit in physical fitness;

(6) one unit in communication skills, with major emphasis on writing and speaking, which may include a language other than English; and

(7) nine elective units. Only the following elective units shall be counted toward meeting the requirements for graduation: fine arts, i.e., music, band, chorus and art; practical arts; physical education; languages other than English; speech; drama; vocational education; mathematics; science; English; R.O.T.C.; social science; computer science; health education; and other electives approved by the state board.

C. Final examinations shall be administered to all students in all classes offered for credit.

D. Beginning with students entering the ninth grade in the 1986-87 school year, no student shall receive a high school diploma who has not passed a state

competency examination in the subject areas of reading, English, math, science and social science. Beginning with the 1996-97 school year, the state competency examinations on social science shall include a section on the United States constitution and the constitution of New Mexico. If a student exits from the school system at the end of grade twelve without having passed a state competency examination, he shall receive an appropriate state certificate indicating the number of credits earned and the grade completed. If within five years after a student exits from the school system he takes and passes the state competency examination, he may receive a high school diploma.

E. The state board may establish a policy to provide for administrative interpretations to clarify curricular and testing provisions of the Public School Code."

SENATE BILL 511

CHAPTER 175

RELATING TO TELECOMMUNICATIONS; PROVIDING FOR IMPOSITION OF ADMINISTRATIVE FINES ON TELECOMMUNICATIONS PROVIDERS FOR CERTAIN VIOLATIONS OF LAW OR RULES OR ORDERS OF THE STATE CORPORATION COMMISSION; REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. TELECOMMUNICATIONS--ADMINISTRATIVE FINES.--

A. For purposes of this section:

(1) "commission" means the state corporation commission; and

(2) "telecommunications provider" means any telegraph company, telephone company, transmission company, telecommunications common carrier, telecommunications company, cellular service company or pay telephone provider regulated in whole or in part by the commission under law, including but not limited to Article 11 of the constitution of New Mexico, the Telephone and Telegraph Company Certification Act, the New Mexico Telecommunications Act, the Cellular Telephone Services Act and Sections 63-9E-1 and 63-9E-3 NMSA 1978.

B. The commission may impose an administrative fine on a telecommunications provider for any act or omission that the provider knew or should have known was a violation of any applicable law or rule or order of the commission.

C. An administrative fine of not more than one thousand dollars (\$1,000) may be imposed for each violation or each of multiple violations arising out of the same

facts, up to a maximum of twenty-five thousand dollars (\$25,000); or an administrative fine of not more than one thousand dollars (\$1,000) may be imposed for each day of a continuing violation or violations arising out of the same facts, up to a maximum of twenty-five thousand dollars (\$25,000). Notwithstanding any other provision of this subsection, the commission may impose an administrative fine not to exceed twenty-five thousand dollars (\$25,000) for a single violation:

(1) that results in substantial harm to the customers of the telecommunications provider or substantial harm to the public interest; or

(2) for failure to obtain a certificate of public convenience and necessity required by law or for operation outside the scope of any such certificate.

D. The commission shall initiate a proceeding to impose an administrative fine by giving written notice to the provider that the commission has facts as set forth in the notice that, if not rebutted, may lead to the imposition of an administrative fine under this section, and that the telecommunications provider has an opportunity for a hearing. The commission may only impose an administrative fine by written order that, in the case of contested proceedings, shall be supported by a preponderance of the evidence.

E. The commission may initiate a proceeding to impose an administrative fine within two years from the date of the commission's discovery of the violation, but in no event shall a proceeding be initiated more than five years after the date of the violation. This limitation shall not run against any act or omission constituting a violation under this section for any period during which the telecommunications provider has fraudulently concealed the violation.

F. The commission shall consider mitigating and aggravating circumstances in determining the amount of administrative fine imposed.

G. For purposes of establishing a violation, the act or omission of any officer, agent or employee of a telecommunications provider, within the scope of such person's authority, duties or employment, shall be deemed the act or omission of the telecommunications provider.

H. Any telecommunications provider or other person aggrieved by an order assessing an administrative fine may remove the order to the supreme court of New Mexico as authorized by the provisions of Article 11, Section 7 of the constitution of New Mexico. Any telecommunications provider or other person aggrieved by an order assessing an administrative fine that is not removable to the supreme court of New Mexico under the provisions of Article 11, Section 7 of the constitution of New Mexico may file a notice of appeal in the supreme court of New Mexico asking for a review of the commission's order therein. A notice of appeal shall be filed within thirty days after the entry of the commission's order. Notice of appeal shall name the commission as appellee and shall identify the order from which the appeal is taken.

I. The commission shall promulgate procedural rules and regulations for the implementation of this section.

Section 2

Section 2. REPEAL.--Sections 63-9-18, 63-9A-19, 63-9B-13 and 63-9E-2 NMSA 1978 (being Laws 1965, Chapter 292, Section 18, Laws 1985, Chapter 242, Section 19, Laws 1987, Chapter 296, Section 13 and Laws 1989, Chapter 229, Section 2) are repealed.

SENATE BILL 692

CHAPTER 176

RELATING TO DOMESTIC VIOLENCE; PROVIDING THAT AN ALLEGED VICTIM OF DOMESTIC ABUSE NOT BE REQUIRED TO BEAR THE COSTS OF CERTAIN CIVIL AND CRIMINAL PROCESSES ASSOCIATED WITH DOMESTIC ABUSE OFFENSES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. COSTS OF CRIMINAL PROCESSES ASSOCIATED WITH DOMESTIC ABUSE OFFENSES.--An alleged victim of domestic abuse shall not be required to bear the cost of:

- A. filing a criminal charge against an alleged abusing household member;
- B. the issuance or service of a warrant;
- C. the issuance or service of a witness subpoena; or
- D. the issuance or service of a protection order.

Section 2

Section 2. Section 35-6-3 NMSA 1978 (being Laws 1968, Chapter 62, Section 94, as amended) is amended to read:

"35-6-3. MAGISTRATE COSTS--ADVANCE PAYMENT.--

A. Except for parties granted free process because of indigency, any party filing any civil action or requesting services from the magistrate court shall pay in advance the costs required by law to be collected by magistrates.

B. Any person filing a complaint in a criminal action in the magistrate court shall pay in advance the costs required by law to be collected by magistrates, except that no costs shall be collected from a person filing a complaint in a criminal action alleging domestic violence, a campus security officer, a municipal police officer, an Indian tribal or pueblo law enforcement officer or from a full-time, salaried county or state law enforcement officer filing the complaint."

Section 3

Section 3. Section 40-13-6 NMSA 1978 (being Laws 1987, Chapter 286, Section 6, as amended) is amended to read:

"40-13-6. SERVICE OF ORDER--DURATION--PENALTY--REMEDIES NOT EXCLUSIVE.--

A. An order of protection granted under the Family Violence Protection Act shall be filed with the clerk of the court and a copy shall be sent by the clerk to the local law enforcement agency. The order shall be personally served upon the respondent, unless he or his attorney was present at the time the order was issued. The order shall be served without cost to the petitioner.

B. An order of protection granted by the court involving custody or support shall be effective for a fixed period of time not to exceed six months. The order may be extended for good cause upon motion of the petitioner for an additional period of time not to exceed six months. Injunctive orders shall continue until modified or rescinded upon motion by either party or until the court approves a subsequent consent agreement entered into by the petitioner and the respondent.

C. A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order pursuant to this section.

D. State courts shall give full faith and credit to tribal court orders of protection.

E. A person convicted of violating an order of protection granted by a court under the Family Violence Protection Act is guilty of a misdemeanor and shall be sentenced in accordance with Section 31-19-1 NMSA 1978. Upon a second or subsequent conviction, an offender shall be sentenced to a jail term of not less than seventy-two consecutive hours that shall not be suspended, deferred or taken under advisement.

F. In addition to any other punishment provided in the Family Violence Protection Act, the court shall order a person convicted to make full restitution to the party injured by the violation of an order of protection and order the person convicted to

participate in and complete a program of professional counseling, at his own expense, if possible.

G. In addition to charging the person with violating an order of protection, a peace officer shall file all other possible criminal charges arising from an incident of domestic abuse when probable cause exists.

H. The remedies provided in the Family Violence Protection Act are in addition to any other civil or criminal remedy available to the petitioner."

Section 4

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

SENATE BILL 726

CHAPTER 177

RELATING TO GAME AND FISH; PROVIDING FOR A MISDEMEANOR PENALTY ASSESSMENT SYSTEM FOR CERTAIN VIOLATIONS; PROVIDING FOR REVENUE DISPOSITION; PROVIDING FOR LICENSE REVOCATION.

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

Section 1

Section 1. A new section of Chapter 17 NMSA 1978 is enacted to read:

"GAME AND FISH PENALTY ASSESSMENT MISDEMEANORS--DEFINITION--SCHEDULE OF ASSESSMENTS.--

A. As used in Chapter 17 NMSA 1978, "penalty assessment misdemeanor" means a violation of any of the following listed sections of the NMSA 1978 for which the listed penalty assessment is established:

COMMON NAME OF OFFENSE SECTION VIOLATED PENALTY ASSESSMENT

Fishing without a license 17-3-17 \$ 75.00

Hunting small game without a license 17-3-1 \$100.00.

B. When an alleged violator of a penalty assessment misdemeanor elects to accept a notice to appear in lieu of a notice of penalty assessment, no fine

imposed upon later conviction shall exceed the penalty assessment established for the particular penalty assessment misdemeanor.

C. With the assessment collected for each penalty assessment misdemeanor pursuant to this section, there shall be assessed and collected the cost of the appropriate license that the violator failed to produce. Upon presentation of proof of payment of the penalty assessment, the director of the department of game and fish shall issue the appropriate license."

Section 2

Section 2. A new section of Chapter 17 NMSA 1978 is enacted to read:

"GAME AND FISH PENALTY ASSESSMENT--PAYMENT.--

A. Unless a warning notice is given to an alleged violator, at the time the alleged violator is charged with a penalty assessment misdemeanor, the conservation officer shall offer the alleged violator the option of accepting a penalty assessment. The signature of the alleged violator on the penalty assessment notice constitutes an acknowledgment of guilt of the offense stated in the notice. The acknowledgment shall be included in accrual of points toward revocation of licenses as provided for in Section 17-3-34 NMSA 1978 or in regulations adopted to implement that section.

B. Payment of any penalty assessment, including cost of the appropriate license, shall be mailed to the state game commission within thirty days from the date of charge. Payment of penalty assessments are timely if postmarked within thirty days from the date of the charge. The commission may issue a receipt when a penalty assessment is paid by currency, but checks tendered by the violator upon which payment is received are sufficient receipt.

C. No record of any penalty assessment payment is admissible as evidence in court in any civil action."

Section 3

Section 3. A new section of Chapter 17 NMSA 1978 is enacted to read:

"GAME AND FISH PENALTY ASSESSMENT--LICENSE REVOCATION.--

A. The state game commission is authorized to revoke the hunting or fishing license, or both, of a person who fails to pay a penalty assessment or who fails to appear, after proper notice, for hearings as required by law or regulation.

B. The state game commission may revoke the hunting or fishing license, or both, of any person, resident or nonresident, who is convicted in another state of

any single offense that, if committed in New Mexico, would be grounds for revocation of license."

Section 4

Section 4. A new section of Chapter 17 NMSA 1978 is enacted to read:

"GAME AND FISH PENALTY ASSESSMENT REVENUE--DISPOSITION.--The department of game and fish shall remit all penalty assessment receipts to the state treasurer to be credited to the game protection fund in accordance with the provisions of Section 17-1-14 NMSA 1978."

SENATE BILL 1044

CHAPTER 178

RELATING TO COURTS; PROVIDING FOR ADDITIONAL JUDGES IN THE THIRD JUDICIAL DISTRICT, THE SEVENTH JUDICIAL DISTRICT, THE ELEVENTH JUDICIAL DISTRICT AND THE BERNALILLO COUNTY METROPOLITAN COURT; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 34-6-6 NMSA 1978 (being Laws 1968, Chapter 69, Section 9, as amended) is amended to read:

"34-6-6. JUDGES--THIRD JUDICIAL DISTRICT.--There shall be six district judges in the third judicial district."

Section 2

Section 2. Section 34-6-10 NMSA 1978 (being Laws 1968, Chapter 69, Section 13, as amended) is amended to read:

"34-6-10. JUDGES--SEVENTH JUDICIAL DISTRICT.--There shall be three district judges in the seventh judicial district."

Section 3

Section 3. Section 34-6-14 NMSA 1978 (being Laws 1968, Chapter 69, Section 17, as amended) is amended to read:

"34-6-14. JUDGES--ELEVENTH JUDICIAL DISTRICT.--There shall be five district judges in the eleventh judicial district. The judges of divisions one, three and four shall reside and maintain their principal offices in San Juan county. The judges of divisions two and five shall reside and maintain their principal offices in McKinley county."

Section 4

Section 4. TEMPORARY PROVISION--APPOINTMENT.--The additional judgeships provided for in Sections 1, 2 and 3 of this act shall be filled by appointment by the governor pursuant to Article 6, Section 36 of the constitution of New Mexico.

Section 5

Section 5. TEMPORARY PROVISION.--The additional judge provided for in Section 1 of this act shall be appointed for the purpose of handling domestic relations cases in the third judicial district.

Section 6

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 1996.

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILLS 264, 500 & 655

CHAPTER 179

RELATING TO COURTS; PROVIDING FOR TWO ADDITIONAL JUDGES IN THE ELEVENTH JUDICIAL DISTRICT; AMENDING A SECTION OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

Section 1

Section 1. Section 34-6-14 NMSA 1978 (being Laws 1968, Chapter 69, Section 17, as amended) is amended to read:

"34-6-14. JUDGES--ELEVENTH JUDICIAL DISTRICT.--There shall be six district judges in the eleventh judicial district. The judges of divisions one, three, four and six shall reside and maintain their principal offices in San Juan county. The judges of divisions two and five shall reside and maintain their principal offices in McKinley county."

Section 2

Section 2. TEMPORARY PROVISION--APPOINTMENT.--The additional judgeships provided for in Section 1 of this act shall be filled by appointment by the governor pursuant to Article 6, Section 36 of the constitution of New Mexico.

Section 3

Section 3. APPROPRIATION.--Seventy-eight thousand six hundred dollars (\$78,600) is appropriated from the general fund to the eleventh judicial district for expenditure in fiscal year 1996 for the purpose of paying the additional amount required for salaries and benefits for two judges and support staff for one-half year of operation. Any unexpended or unencumbered balance remaining at the end of fiscal year 1996 shall revert to the general fund.

Section 4

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 1996.

HOUSE BILL 17

CHAPTER 180

RELATING TO EDUCATION; AMENDING A SECTION OF THE PUBLIC SCHOOL CODE PERTAINING TO GRADUATION REQUIREMENTS.

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

Section 1

Section 1. Section 22-2-8.4 NMSA 1978 (being Laws 1986, Chapter 33, Section 5, as amended by Laws 1993, Chapter 68, Section 3 and by Laws 1993, Chapter 92, Section 1 and by Laws 1993, Chapter 226, Section 7 and also by Laws 1993, Chapter 230, Section 1) is amended to read:

"22-2-8.4. GRADUATION REQUIREMENTS.--

A. At the end of the eighth grade or during the ninth grade, each student shall prepare an individual program of study for grades nine through twelve. The program of study shall be signed by a student's parent or guardian.

B. Beginning with students entering the ninth grade in the 1986-87 school year, successful completion of a minimum of twenty-three units shall be required for graduation. These units shall be as follows:

(1) four units in English, with major emphasis on grammar and literature;

(2) three units in mathematics;

(3) two units in science, one of which shall have a laboratory component;

(4) three units in social science, which shall include United States history and geography, world history and geography, and government and economics;

(5) one unit in physical fitness;

(6) one unit in communication skills, with major emphasis on writing and speaking, which may include a language other than English; and

(7) nine elective units. Only the following elective units shall be counted toward meeting the requirements for graduation: fine arts, i.e., music, band, chorus and art; practical arts; physical education; languages other than English; speech; drama; vocational education; mathematics; science; English; R.O.T.C.; social science; computer science; health education; and other electives approved by the state board.

With the approval of the local school board, participation on an athletic team or in an athletic sport during the school day may count toward fulfillment of the physical education required unit.

C. Final examinations shall be administered to all students in all classes offered for credit.

D. Beginning with students entering the ninth grade in the 1986-87 school year, no student shall receive a high school diploma who has not passed a state competency examination in the subject areas of reading, English, math, science and social science. If a student exits from the school system at the end of grade twelve without having passed a state competency examination, he shall receive an appropriate state certificate indicating the number of credits earned and the grade completed. If within five years after a student exits from the school system he takes and passes the state competency examination, he may receive a high school diploma.

E. The state board may establish a policy to provide for administrative interpretations to clarify curricular and testing provisions of the Public School Code."

HOUSE BILL 977

CHAPTER 181

RELATING TO PUBLIC PURCHASES; AMENDING A SECTION OF THE NMSA 1978 PERTAINING TO THE DISPOSITION OF OBSOLETE, WORN-OUT AND UNUSABLE PROPERTY.

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

Section 1

Section 1. Section 13-6-1 NMSA 1978 (being Laws 1961, Chapter 100, Section 1, as amended) is amended to read:

"13-6-1. DISPOSITION OF OBSOLETE, WORN-OUT AND UNUSABLE PERSONAL PROPERTY.--

A. The governing authority of each state agency, local public body, school district and state educational institution may dispose of any item of personal property belonging to that authority and delete the item from its public inventory upon a specific finding by the authority that the item of property is:

(1) of a current resale value of five thousand dollars (\$5,000) or less; and

(2) worn-out, unusable or obsolete to the extent that the item is no longer economical or safe for continued use by the body.

B. The governing authority shall, as a prerequisite to the disposition of any items of personal property, give notification at least thirty days prior to its action making such deletion by sending a copy of its official finding and the proposed disposition of the property to the state auditor, duly sworn and subscribed under oath by each member of the authority approving the action.

C. A copy of the official finding and proposed disposition of the property sought to be disposed of shall be made a permanent part of the official minutes of the governing authority.

D. The governing authority shall dispose of the item by negotiated sale or donation to other state agencies, local public bodies, school districts, state educational institutions or municipalities or through the central purchasing office by means of competitive sealed bid or public auction or through the federal property assistance bureau of the general services department.

E. This section shall not apply to any property acquired by a museum through abandonment procedures pursuant to the Abandoned Cultural Properties Act."

HOUSE BILL 1125

CHAPTER 182

RELATING TO HEALTH; ENACTING THE UNIFORM HEALTH-CARE DECISIONS ACT; PROVIDING FOR AN INDIVIDUAL'S RIGHT TO MAKE HEALTH-CARE DECISIONS; PROVIDING GUIDELINES FOR ADVANCE HEALTH-CARE DIRECTIVES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. DEFINITIONS.--As used in the Uniform Health-Care Decisions Act:

A. "advance health-care directive" means an individual instruction or a power of attorney for health care made, in either case, while the individual has capacity;

B. "agent" means an individual designated in a power of attorney for health care to make a health-care decision for the individual granting the power;

C. "capacity" means an individual's ability to understand and appreciate the nature and consequences of proposed health care, including its significant benefits, risks and alternatives to proposed health care and to make and communicate an informed health-care decision. A determination of lack of capacity shall be made only according to the provisions of Section 11 of the Uniform Health-Care Decisions Act;

D. "guardian" means a judicially appointed guardian or conservator having authority to make a health-care decision for an individual;

E. "health care" means any care, treatment, service or procedure to maintain, diagnose or otherwise affect an individual's physical or mental condition;

F. "health-care decision" means a decision made by an individual or the individual's agent, guardian or surrogate, regarding the individual's health care, including:

(1) selection and discharge of health-care providers and institutions;

(2) approval or disapproval of diagnostic tests, surgical procedures, programs of medication and orders not to resuscitate; and

(3) directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care;

G. "health-care institution" means an institution, facility or agency licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business;

H. "health-care provider" means an individual licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession;

I. "individual instruction" means an individual's direction concerning a health-care decision for the individual, made while the individual has capacity;

J. "person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency or instrumentality or any other legal or commercial entity;

K. "physician" means an individual authorized to practice medicine or osteopathy;

L. "power of attorney for health care" means the designation of an agent to make health-care decisions for the individual granting the power, made while the individual has capacity;

M. "primary physician" means a physician designated by an individual or the individual's agent, guardian or surrogate to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility;

N. "qualified health-care professional" means a health-care provider who is a physician, physician assistant, nurse practitioner, nurse, psychologist or social worker;

O. "reasonably available" means readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health-care needs;

P. "state" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico or a territory or insular possession subject to the jurisdiction of the United States;

Q. "supervising health-care provider" means the primary physician or, if there is no primary physician or the primary physician is not reasonably available, the health-care provider who has undertaken primary responsibility for an individual's health care; and

R. "surrogate" means an individual, other than a patient's agent or guardian, authorized under the Uniform Health-Care Decisions Act to make a health-care decision for the patient.

Section 2

Section 2. ADVANCE HEALTH-CARE DIRECTIVES.--

A. An adult or emancipated minor, while having capacity, has the right to make his or her own health-care decisions and may give an individual instruction. The instruction may be oral or written; if oral, it must be made by personally informing a health-care provider. The instruction may be limited to take effect only if a specified condition arises.

B. An adult or emancipated minor, while having capacity, may execute a power of attorney for health care, which may authorize the agent to make any health-care decision the principal could have made while having capacity. The power must be in writing and signed by the principal. The power remains in effect notwithstanding the principal's later incapacity under the Uniform Health-Care Decisions Act or Article 5 of the Uniform Probate code. The power may include individual instructions. Unless related to the principal by blood, marriage or adoption, an agent may not be an owner, operator or employee of a health-care institution at which the principal is receiving care.

C. Unless otherwise specified in a power of attorney for health care, the authority of an agent becomes effective only upon a determination that the principal lacks capacity, and ceases to be effective upon a determination that the principal has recovered capacity.

D. Unless otherwise specified in a written advance health-care directive, a determination that an individual lacks or has recovered capacity or that another condition exists that affects an individual instruction or the authority of an agent, shall be made according to the provisions of Section 11 of the Uniform Health-Care Decisions Act.

E. An agent shall make a health-care decision in accordance with the principal's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the agent's determination of the principal's best interest. In determining the principal's best interest, the agent shall consider the principal's personal values to the extent known to the agent.

F. A health-care decision made by an agent for a principal is effective without judicial approval.

G. A written advance health-care directive may include the individual's nomination of a guardian of the person.

Section 3

Section 3. REVOCATION OF ADVANCE HEALTH-CARE DIRECTIVE.--

A. An individual, while having capacity, may revoke the designation of an agent only by a signed writing or by personally informing the supervising health-care provider.

B. An individual, while having capacity, may revoke all or part of an advance health-care directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.

C. A health-care provider, agent, guardian or surrogate who is informed of a revocation shall promptly communicate the fact of the revocation to the supervising health-care provider and to any health-care institution at which the patient is receiving care.

D. The filing of a petition for or a decree of annulment, divorce, dissolution of marriage or legal separation revokes a previous designation of a spouse as agent unless otherwise specified in the decree or in a power of attorney for health care. A designation revoked solely by this subsection is revived by the individual's remarriage to the former spouse, by a nullification of the divorce, annulment or legal separation or by the dismissal or withdrawal, with the individual's consent, of a petition seeking annulment, divorce, dissolution of marriage or legal separation.

E. An advance health-care directive that conflicts with an earlier advance health-care directive revokes the earlier directive to the extent of the conflict.

Section 4

Section 4. OPTIONAL FORM.--The following form may, but need not, be used to create an advance health-care directive. The other sections of the Uniform Health-Care Decisions Act govern the effect of this or any other writing used to create an advance health-care directive. An individual may complete or modify all or any part of the following form:

"OPTIONAL ADVANCE HEALTH-CARE DIRECTIVE

Explanation

You have the right to give instructions about your own health care. You also have the right to name someone else to make health-care decisions for you. This form lets you do either or both of these things. It also lets you express your wishes regarding the designation of your primary physician.

THIS FORM IS OPTIONAL. Each paragraph and word of this form is also optional. If you use this form, you may strike, complete or modify all or any part of it. You are free to use a different form. You do not have to sign any form.

PART 1 of this form is a power of attorney for health care. Part 1 lets you name another individual as agent to make health-care decisions for you if you become incapable of making your own decisions or if you want someone else to make those decisions for you now even though you are still capable. You may also name an alternate agent to act for you if your first choice is not willing, able or reasonably available to make decisions for you. Unless related to you, your agent may not be an owner, operator or employee of a health-care institution at which you are receiving care.

Unless the form you sign limits the authority of your agent, your agent may make all health-care decisions for you. This form has a place for you to limit the authority of your agent. You need not limit the authority of your agent if you wish to rely on your agent for all health-care decisions that may have to be made. If you choose not to limit the authority of your agent, your agent will have the right to:

- (a) consent or refuse consent to any care, treatment, service or procedure to maintain, diagnose or otherwise affect a physical or mental condition;
- (b) select or discharge health-care providers and institutions;
- (c) approve or disapprove diagnostic tests, surgical procedures, programs of medication and orders not to resuscitate; and
- (d) direct the provision, withholding or withdrawal of artificial nutrition and hydration and all other forms of health care.

PART 2 of this form lets you give specific instructions about any aspect of your health care. Choices are provided for you to express your wishes regarding the provision, withholding or withdrawal of treatment to keep you alive, including the provision of artificial nutrition and hydration, as well as the provision of pain relief. Space is also provided for you to add to the choices you have made or for you to write out any additional wishes.

PART 3 of this form lets you designate a physician to have primary responsibility for your health care.

After completing this form, sign and date the form at the end. It is recommended but not required that you request two other individuals to sign as witnesses. Give a copy of the signed and completed form to your physician, to any other health-care providers you may have, to any health-care institution at which you are receiving care and to any health-care agents you have named. You should talk to the person you have named as

agent to make sure that he or she understands your wishes and is willing to take the responsibility.

You have the right to revoke this advance health-care directive or replace this form at any time.

PART 1

POWER OF ATTORNEY FOR HEALTH CARE

(1) DESIGNATION OF AGENT: I designate the following individual as my agent to make health-care decisions for me:

(name of individual you choose as agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

If I revoke my agent's authority or if my agent is not willing, able or reasonably available to make a health-care decision for me, I designate as my first alternate agent:

(name of individual you choose as first alternate agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

If I revoke the authority of my agent and first alternate agent or if neither is willing, able or reasonably available to make a health-care decision for me, I designate as my second alternate agent:

(name of individual you choose as second alternate agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

(2) AGENT'S AUTHORITY: My agent is authorized to obtain and review medical records, reports and information about me and to make all health-care decisions for me, including decisions to provide, withhold or withdraw artificial nutrition, hydration and all other forms of health care to keep me alive, except as I state here:

(Add additional sheets if needed.)

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician and one other qualified health-care professional determine that I am unable to make my own health-care decisions, unless I mark the following box. If I mark this box [], my agent's authority to make health-care decisions for me takes effect immediately.

(4) AGENT'S OBLIGATION: My agent shall make health-care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health-care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN: If a guardian of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able or reasonably available to act as guardian, I nominate the alternate agents whom I have named, in the order designated.

PART 2

INSTRUCTIONS FOR HEALTH CARE

If you are satisfied to allow your agent to determine what is best for you in making end-of-life decisions, you need not fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

(6) END-OF-LIFE DECISIONS: I direct that my health-care providers and others involved in my care provide, withhold or withdraw treatment in accordance with the choice I have marked below:

☐ (a) Choice Not To Prolong Life

I do not want my life to be prolonged if (i) I have an incurable and irreversible condition that will result in my death within a relatively short time, (ii) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness or (iii) the likely risks and burdens of treatment would outweigh the expected benefits, OR

☐ (b) Choice To Prolong Life

I want my life to be prolonged as long as possible within the limits of generally accepted health-care standards.

(7) ARTIFICIAL NUTRITION AND HYDRATION: If I have selected the above choice NOT to prolong life under specified conditions, I also specify that I do not want artificial nutrition and hydration provided to me.

(8) RELIEF FROM PAIN: Except as I state in the following space, I direct that treatment for easing pain or discomfort be provided at all times, even if it hastens my death:

(9) OTHER WISHES: (If you wish to write your own instructions, or if you wish to add to the instructions you have given above, you may do so here.) I direct that:

(Add additional sheets if needed.)

PART 3

PRIMARY PHYSICIAN

(10) I designate the following physician as my primary physician:

(name of physician)

(address) (city) (state) (zip code)

(phone)

If the physician I have designated above is not willing, able or reasonably available to act as my primary physician, I designate the following physician as my primary physician:

(name of physician)

(address) (city) (state) (zip code)

(phone)

* * * * *

(11) EFFECT OF COPY: A copy of this form has the same effect as the original.

(12) REVOCATION: I understand that I may revoke this OPTIONAL ADVANCE HEALTH-CARE DIRECTIVE at any time, and that if I revoke it, I should promptly notify my supervising health-care provider and any health-care institution where I am receiving care and any others to whom I have given copies of this power of attorney. I understand that I may revoke the designation of an agent only by a signed writing or by personally informing the supervising health-care provider.

(13) SIGNATURES: Sign and date the form here:

(date) (sign your name)

(address) (print your name)

(city) (state) (your social security number)

(Optional) SIGNATURES OF WITNESSES:

First witness Second witness

(print name) (print name)

(address) (address)

(city) (state) (city) (state)

(signature of witness) (signature of witness)

(date) (date)".

Section 5

Section 5. DECISIONS BY SURROGATE.--

A. A surrogate may make a health-care decision for a patient who is an adult or emancipated minor if the patient has been determined according to the provisions of Section 11 of the Uniform Health-Care Decisions Act to lack capacity and no agent or guardian has been appointed or the agent or guardian is not reasonably available.

B. An adult or emancipated minor, while having capacity, may designate any individual to act as surrogate by personally informing the supervising health-care provider. In the absence of a designation, or if the designee is not reasonably available, any member of the following classes of the patient's family who is reasonably available, in descending order of priority, may act as surrogate:

(1) the spouse, unless legally separated or unless there is a pending petition for annulment, divorce, dissolution of marriage or legal separation;

(2) an individual in a long-term relationship of indefinite duration with the patient in which the individual has demonstrated an actual commitment to the patient similar to the commitment of a spouse and in which the individual and the patient consider themselves to be responsible for each other's well-being;

(3) an adult child;

(4) a parent;

(5) an adult brother or sister; or

(6) a grandparent.

C. If none of the individuals eligible to act as surrogate under Subsection B of this section is reasonably available, an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values and who is reasonably available may act as surrogate.

D. A surrogate shall communicate his or her assumption of authority as promptly as practicable to the patient and to members of the patient's family specified in Subsection B of this section who can be readily contacted.

E. If more than one member of a class assumes authority to act as surrogate, and they do not agree on a health-care decision and the supervising health-care provider is so informed, the supervising health-care provider shall comply with the decision of a majority of the members of that class who have communicated their views to the provider. If the class is evenly divided concerning the health-care decision and the supervising health-care provider is so informed, that class and all individuals having lower priority are disqualified from making the decision.

F. A surrogate shall make a health-care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest. In determining the patient's best interest, the surrogate shall consider the patient's personal values to the extent known to the surrogate.

G. A health-care decision made by a surrogate for a patient is effective without judicial approval.

H. A patient, at any time, may disqualify another, including a member of the patient's family, from acting as the patient's surrogate by a signed writing or by personally informing a health-care provider of the disqualification. A health-care provider who is informed by the patient of a disqualification shall promptly communicate the fact of disqualification to the supervising health-care provider and to any health-care institution at which the patient is receiving care.

I. Unless related to the patient by blood, marriage or adoption, a surrogate may not be an owner, operator or employee of a residential long-term health-care institution at which the patient is receiving care.

J. A supervising health-care provider may require an individual claiming the right to act as surrogate for a patient to provide a written declaration under penalty of perjury stating facts and circumstances reasonably sufficient to establish the claimed authority.

Section 6

Section 6. DECISIONS BY GUARDIAN.--

A. A guardian shall comply with the ward's individual instructions and may not revoke the ward's advance health-care directive unless the appointing court expressly so authorizes after notice to the agent and the ward.

B. A health-care decision of an agent appointed by an individual having capacity takes precedence over that of a guardian, unless the appointing court expressly directs otherwise after notice to the agent and the ward.

C. Subject to the provisions of Subsections A and B of this section, a health-care decision made by a guardian for the ward is effective without judicial approval, if the appointing court has expressly authorized the guardian to make health-care decisions for the ward, in accordance with the provisions of Section 45-5-312 NMSA 1978, after notice to the ward and any agent.

Section 7

Section 7. OBLIGATIONS OF HEALTH-CARE PROVIDER.--

A. Before implementing a health-care decision made for a patient, a supervising health-care provider shall promptly communicate to the patient the decision made and the identity of the person making the decision.

B. A supervising health-care provider who knows of the existence of an advance health-care directive, a revocation of an advance health-care directive, a challenge to a determination of lack of capacity or a designation or disqualification of a surrogate, shall promptly record its existence in the patient's health-care record and, if it is in writing, shall request a copy and if one is furnished shall arrange for its maintenance in the health-care record.

C. A primary physician who makes or is informed of a determination that a patient lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of an agent, guardian or surrogate, shall promptly record the determination in the patient's health-care record and communicate the determination to the patient and to any person then authorized to make health-care decisions for the patient.

D. Except as provided in Subsections E and F of this section, a health-care provider or institution providing care to a patient shall:

(1) comply, before and after the patient is determined to lack capacity, with an individual instruction of the patient made while the patient had capacity;

(2) comply with a reasonable interpretation of that instruction made by a person then authorized to make health-care decisions for the patient; and

(3) comply with a health-care decision for the patient which is not contrary to an individual instruction of the patient and is made by a person then authorized to make health-care decisions for the patient, to the same extent as if the decision had been made by the patient while having capacity.

E. A health-care provider may decline to comply with an individual instruction or health-care decision for reasons of conscience. A health-care institution may decline to comply with an individual instruction or health-care decision if the instruction or decision is contrary to a policy of the institution which is expressly based on reasons of conscience and if the policy was timely communicated to the patient or to a person then authorized to make health-care decisions for the patient.

F. A health-care provider or institution may decline to comply with an individual instruction or health-care decision that requires medically ineffective health care or health care contrary to generally accepted health-care standards applicable to the health-care provider or institution. "Medically ineffective health care" means treatment that would not offer the patient any significant benefit, as determined by a physician.

G. A health-care provider or institution that declines to comply with an individual instruction or health-care decision shall:

(1) promptly so inform the patient, if possible, and any person then authorized to make health-care decisions for the patient;

(2) provide continuing care to the patient until a transfer can be effected; and

(3) unless the patient or person then authorized to make health-care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health-care provider or institution that is willing to comply with the instruction or decision.

H. A health-care provider or institution may not require or prohibit the execution or revocation of an advance health-care directive as a condition for providing health care.

I. The Uniform Health-Care Decisions Act does not require or permit a health-care institution or health-care provider to provide any type of health care for which the health-care institution or health-care provider is not licensed, certified or otherwise authorized or permitted by law to provide.

Section 8

Section 8. HEALTH-CARE INFORMATION.--Unless otherwise specified in an advance health-care directive, a person then authorized to make health-care decisions for a patient has the same rights as the patient to request, receive, examine, copy and consent to the disclosure of medical or any other health-care information.

Section 9

Section 9. IMMUNITIES.--

A. A health-care provider or institution acting in good faith and in accordance with generally accepted health-care standards applicable to the health-care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

(1) complying or attempting to comply with a health-care decision of a person apparently having authority to make a health-care decision for a patient, including a decision to withhold or withdraw health care;

(2) declining to comply with a health-care decision of a person based on a belief that the person then lacked authority;

(3) complying or attempting to comply with an advance health-care directive and assuming that the directive was valid when made and has not been revoked or terminated;

(4) declining to comply with a health-care directive as permitted by Subsection E or F of Section 7 of the Uniform Health-Care Decisions Act; or

(5) complying or attempting to comply with any other provision of the Uniform Health-Care Decisions Act.

B. An individual acting as agent, guardian or surrogate under the Uniform Health-Care Decisions Act is not subject to civil or criminal liability or to discipline for unprofessional conduct for health-care decisions made in good faith.

Section 10

Section 10. STATUTORY DAMAGES.--

A. A health-care provider or institution that intentionally violates the Uniform Health-Care Decisions Act is subject to liability to the aggrieved individual for damages of two thousand five hundred dollars (\$2,500) or actual damages resulting from the violation, whichever is greater, plus reasonable attorneys' fees.

B. A person who intentionally falsifies, forges, conceals, defaces or obliterates an individual's advance health-care directive or a revocation of an advance health-care directive without the individual's consent or a person who coerces or fraudulently induces an individual to give, revoke or not to give or revoke an advance health-care directive is subject to liability to that individual for damages of two thousand five hundred dollars (\$2,500) or actual damages resulting from the action, whichever is greater, plus reasonable attorneys' fees.

C. The damages provided in this section are in addition to other types of relief available under other law, including civil and criminal law and law providing for disciplinary procedures.

Section 11

Section 11. CAPACITY.--

A. The Uniform Health-Care Decisions Act does not affect the right of an individual to make health-care decisions while having capacity to do so.

B. An individual is presumed to have capacity to make a health-care decision, to give or revoke an advance health-care directive and to designate or disqualify a surrogate.

C. Unless otherwise specified in a written advance health-care directive, a determination that an individual lacks or has recovered capacity, or that another condition exists that affects an individual instruction, or the authority of an agent, shall be made by two qualified health-care professionals, one of whom shall be the primary

physician. If the lack of capacity is determined to exist because of mental illness or developmental disability, one of the qualified health-care professionals shall be a person whose training and expertise aid in the assessment of functional impairment.

D. An individual shall not be determined to lack capacity solely on the basis that the individual chooses not to accept the treatment recommended by a health-care provider.

E. An individual, at any time, may challenge a determination that the individual lacks capacity by a signed writing or by personally informing a health-care provider of the challenge. A health-care provider who is informed by the individual of a challenge shall promptly communicate the fact of the challenge to the supervising health-care provider and to any health-care institution at which the individual is receiving care. Such a challenge shall prevail unless otherwise ordered by the court in a proceeding brought pursuant to the provisions of Section 14 of the Uniform Health-Care Decisions Act.

F. A determination of lack of capacity under the Uniform Health-Care Decisions Act shall not be evidence of incapacity under the provisions of Article 5 of the Uniform Probate Code.

Section 12

Section 12. EFFECT OF COPY.--A copy of a written advance health-care directive, revocation of an advance health-care directive or designation or disqualification of a surrogate has the same effect as the original.

Section 13

Section 13. EFFECT OF THE UNIFORM HEALTH-CARE DECISIONS ACT.--

A. The Uniform Health-Care Decisions Act does not create a presumption concerning the intention of an individual who has not made or who has revoked an advance health-care directive.

B. Death resulting from the withholding or withdrawal of health care in accordance with the Uniform Health-Care Decisions Act does not for any purpose:

(1) Constitute a suicide, a homicide or other crime; or

(2) Legally impair or invalidate a governing instrument, notwithstanding any term of the governing instrument to the contrary. "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with POD (payment on death designation), security registered in beneficiary form (TOD), pension, profit-sharing, retirement, employment or similar benefit plan, instrument creating or

exercising a power of appointment or a dispositive, appointive or nominative instrument of any similar type.

C. The Uniform Health-Care Decisions Act does not authorize mercy killing, assisted suicide, euthanasia or the provision, withholding or withdrawal of health care, to the extent prohibited by other statutes of this state.

D. The Uniform Health-Care Decisions Act does not authorize or require a health-care provider or institution to provide health care contrary to generally accepted health-care standards applicable to the health-care provider or institution.

E. The Uniform Health-Care Decisions Act does not authorize an agent or surrogate to consent to the admission of an individual to a mental health-care facility. If the individual's written advance health-care directive expressly permits treatment in a mental health-care facility, the agent or surrogate may present the individual to a facility for evaluation for admission.

F. The Uniform Health-Care Decisions Act does not affect other statutes of this state governing treatment for mental illness of an individual involuntarily committed to a mental health-care institution.

Section 14

Section 14. JUDICIAL RELIEF.--On petition of a patient, the patient's agent, guardian or surrogate, a health-care provider or institution involved with the patient's care, an individual described in Subsection B or C of Section 5 of the Uniform Health-Care Decisions Act or another person having an interest in the patient's welfare, the district court may enjoin or direct a health-care decision or order other equitable relief. A proceeding under this section is governed by the Rules of Civil Procedure for the District Courts.

Section 15

Section 15. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--The Uniform Health-Care Decisions Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject matter of that act among states enacting it.

Section 16

Section 16. TRANSITIONAL PROVISIONS.--

A. An advance health-care directive is valid for purposes of the Uniform Health-Care Decisions Act if it complies with the provisions of that act, regardless of when or where executed or communicated.

B. The Uniform Health-Care Decisions Act does not impair a guardianship, living will, durable power of attorney, right-to-die statement or declaration or other advance directive for health-care decisions which is in effect before July 1, 1995.

Section 17

Section 17. SHORT TITLE.--Sections 1 through 17 of this act may be cited as the "Uniform Health-Care Decisions Act".

Section 18

Section 18. SEVERABILITY.--If any provision of the Uniform Health-Care Decisions Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act which can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

Section 19

Section 19. Section 24-7-4 NMSA 1978 (being Laws 1977, Chapter 287, Section 4, as amended) is amended to read:

"24-7-4. EXECUTION OF A DOCUMENT FOR THE BENEFIT OF A TERMINALLY ILL MINOR OR A MINOR IN AN IRREVERSIBLE COMA.--

A. If a minor has been certified under the Right to Die Act as suffering a terminal illness or an irreversible coma, the following individual may execute the document on his behalf directing that maintenance medical treatment shall not be utilized for the prolongation of the minor's life:

(1) the spouse, if he has reached the age of majority; or

(2) if there is no spouse or if the spouse is not available at the time of the certification or is otherwise unable to act, then either the parent or guardian of the minor.

B. An individual named in Subsection A of this section may not execute a document:

(1) if he has actual notice of contrary indications by the minor who is terminally ill or is in an irreversible coma; or

(2) when executing as a parent or guardian, if he has actual notice of opposition by either another parent or guardian or a spouse who has attained the age of majority.

C. A document described in Subsection A of this section is not valid unless it has been executed with the same formalities as required of a valid will under the Uniform Probate Code and has been certified upon its face by a district court judge pursuant to Subsection D of this section.

D. Any person executing a document pursuant to the provisions of this section shall petition the district court of the county in which the minor is domiciled or the county in which the minor is being maintained for certification upon the face of the document. The court shall appoint a guardian ad litem to represent the minor and may hold an evidentiary hearing before certification. All costs shall be charged to the petitioner. If the district court judge is satisfied that all requirements of the Right to Die Act have been satisfied, that the document was executed in good faith and that the certification of the terminal illness or irreversible coma was in good faith, he shall certify the document."

Section 20

Section 20. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE BILL 483

CHAPTER 183

RELATING TO TAXATION; AMENDING THE GROSS RECEIPTS DEDUCTION FOR AEROSPACE SERVICES; PROVIDING A GROSS RECEIPTS DEDUCTION FOR RECEIPTS FROM OPERATING A SPACEPORT IN NEW MEXICO, FROM LAUNCHING OR RECOVERING SPACE LAUNCH VEHICLES AND PAYLOADS AND FROM PREPARING PAYLOADS FOR LAUNCH IN A SPACE LAUNCH VEHICLE; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 7-9-54.1 NMSA 1978 (being Laws 1992, Chapter 40, Section 1, as amended) is amended to read:

"7-9-54.1. DEDUCTION--GROSS RECEIPTS FROM SALE OF AEROSPACE SERVICES TO CERTAIN ORGANIZATIONS.--

A. As used in this section:

(1) "aerospace services" means research and development services sold to or for resale to an organization for resale by the organization to the United States air force; and

(2) "organization" means an organization described in Subsection A of Section 7-9-29 NMSA 1978 other than a prime contractor operating facilities in New Mexico designated as a national laboratory by act of congress.

B. Receipts from performing or selling, on or after October 1, 1995, an aerospace service for resale may be deducted from gross receipts if the sale is made to a buyer who delivers a nontaxable transaction certificate. The buyer delivering the nontaxable transaction certificate shall separately state the value of the aerospace service purchased in the buyer's charge for the aerospace service on its subsequent sale to an organization or, if the buyer is an organization, on the organization's subsequent sale to the United States, and the subsequent sale shall be in the ordinary course of business of selling aerospace services to an organization or to the United States.

C. A percentage of the receipts from selling aerospace services to or for resale to an organization may be deducted from gross receipts in accordance with the following table:

Deductible

Receipts During the Period	Percentage
----------------------------	------------

October 1, 1995 through September 30, 1996	10%
--	-----

October 1, 1996 through September 30, 1997	25%
--	-----

October 1, 1997 through September 30, 1999	50%
--	-----

October 1, 1999 and thereafter	100%."
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Section 2

Section 2. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"GROSS RECEIPTS--DEDUCTION--SPACEPORT OPERATION--LAUNCHING AND RECOVERY OF SPACE LAUNCH VEHICLES--PAYLOAD SERVICES.--

A. Receipts from operating a spaceport in New Mexico may be deducted from gross receipts.

B. Receipts from launching or recovering space launch vehicles or payloads from a spaceport in New Mexico are deductible from gross receipts.

C. Receipts from preparing a payload for launching at a spaceport in New Mexico are deductible from gross receipts.

D. As used in this section "spaceport" means a facility designed and operated primarily for the launching or recovery of space launch vehicles or payloads.

E. Receipts from the sale of tangible personal property that will become an ingredient or component part of a construction project or from performing construction services may not be deducted under this section."

Section 3

Section 3. EFFECTIVE DATE.--The effective date of Section 1 of this act is July 1, 1995. The effective date of Section 2 of this act is July 1, 1996.

HOUSE BILL 582

CHAPTER 184

RELATING TO DOMESTIC AFFAIRS; AMENDING SECTIONS OF THE NMSA 1978 TO CLARIFY PROVISIONS CONCERNING JOINDER IN ENCUMBRANCE OF MARITAL PROPERTY AND SATISFACTION OF SEPARATE AND COMMUNITY DEBTS.

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

Section 1

Section 1. Section 40-3-10 NMSA 1978 (being Laws 1973, Chapter 320, Section 5, as amended) is amended to read:

"40-3-10. PRIORITIES FOR SATISFACTION OF SEPARATE DEBTS.--

A. The separate debt of a spouse shall be satisfied first from the debtor spouse's separate property, excluding that spouse's interest in property in which each of the spouses owns an undivided equal interest as a joint tenant or tenant in common. Should such property be insufficient, then the debt shall be satisfied from the debtor spouse's one-half interest in the community property or in property in which each spouse owns an undivided equal interest as a joint tenant or tenant in common, excluding the residence of the spouses. Should such property be insufficient, then the debt shall be satisfied from the debtor spouse's interest in the residence of the spouses, except as provided in Subsection B of this section or Section 42-10-9 NMSA 1978. Neither spouse's interest in community property or separate property shall be liable for the separate debt of the other spouse.

B. Unless both spouses join in writing in the creation of the underlying debt or obligation incurred after the marriage, a judgment or other process arising out of such post-marital debt against one spouse alone or both spouses shall not create a lien or otherwise be subject to execution against the interest of the nonjoining spouse in the marital residence, whether held by the spouses as community property, joint tenants or tenants in common.

C. The priorities or exemptions established in this section for the satisfaction of a separate debt must be claimed by either spouse under the procedure set forth in Section 42-10-13 NMSA 1978, or the right to claim such priorities or exemptions is waived as between a spouse and the creditor.

D. This section shall apply only while both spouses are living and shall not apply to the satisfaction of debts after the death of one or both spouses."

Section 2

Section 2. Section 40-3-11 NMSA 1978 (being Laws 1973, Chapter 320, Section 6, as amended) is amended to read:

"40-3-11. PRIORITIES FOR SATISFACTION OF COMMUNITY DEBTS.--

A. Community debts shall be satisfied first from all community property and all property in which each spouse owns an undivided equal interest as a joint tenant or tenant in common, excluding the residence of the spouses. Should such property be insufficient, community debts shall then be satisfied from the residence of the spouses, except as provided in Subsection B of this section or Section 42-10-9 NMSA 1978. Should such property be insufficient, only the separate property of the spouse who contracted or incurred the debt shall be liable for its satisfaction. If both spouses contracted or incurred the debt, the separate property of both spouses is jointly and severally liable for its satisfaction.

B. Unless both spouses join in writing in the creation of the underlying debt or obligation incurred after the marriage, a judgment or other process arising out of such post-marital debt against one spouse alone or both spouses shall not create a lien or otherwise be subject to execution against the interest of the nonjoining spouse in the marital residence, whether held by the spouses as community property, joint tenants or tenants in common.

C. The priorities or exemptions established in this section for the satisfaction of community debts must be claimed by either spouse under the procedure set forth in Section 42-10-13 NMSA 1978, or the right to claim such priorities or exemptions is waived as between a spouse and the creditor.

D. This section shall apply only while both spouses are living and shall not apply to the satisfaction of debts after the death of one or both spouses."

Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE BILL 603

CHAPTER 185

RELATING TO PARTNERSHIPS; PROVIDING FOR REGISTERED LIMITED LIABILITY PARTNERSHIPS; AMENDING AND ENACTING SECTIONS OF THE UNIFORM PARTNERSHIP ACT.

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

Section 1

Section 1. Section 54-1-1 NMSA 1978 (being Laws 1947, Chapter 37, Section 1) is amended to read:

"54-1-1. NAME OF ACT.--Chapter 54, Article 1 NMSA 1978 may be cited as the "Uniform Partnership Act"."

Section 2

Section 2. Section 54-1-2 NMSA 1978 (being Laws 1947, Chapter 37, Section 2, as amended) is amended to read:

"54-1-2. DEFINITION OF TERMS.--In the Uniform Partnership Act:

- A. "court" includes every court and judge having jurisdiction in the case;
- B. "business" includes every trade, occupation or profession;
- C. "person" includes individuals, partnerships, limited liability companies, corporations and other associations;
- D. "bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any state insolvent act;
- E. "conveyance" includes every assignment, lease, mortgage or encumbrance;
- F. "real property" includes land and any interest or estate in land;

G. "registered limited liability partnership" includes a partnership formed pursuant to an agreement governed by the laws of this state, registered under Section 54-1-44 NMSA 1978 and complying with Section 54-1-45 NMSA 1978; and

H. "foreign registered limited liability partnership" includes a registered limited liability partnership and a limited liability partnership formed pursuant to an agreement governed by and registered under the laws of such jurisdiction."

Section 3

Section 3. Section 54-1-6 NMSA 1978 (being Laws 1947, Chapter 37, Section 6) is amended to read:

"54-1-6. PARTNERSHIP DEFINED.--

A. A partnership is an association of two or more persons to carry on as co-owners a business for profit, including but not limited to a registered limited liability partnership.

B. But any association formed under any other statute of this state, or any statute adopted by authority other than the authority of this state, is not a partnership under the Uniform Partnership Act, unless such association would have been a partnership in this state prior to the adoption of that act; but that act shall apply to limited partnerships except in so far as the statutes relating to such partnerships are inconsistent with the Uniform Partnership Act."

Section 4

Section 4. Section 54-1-15 NMSA 1978 (being Laws 1947, Chapter 37, Section 15) is amended to read:

"54-1-15. NATURE OF PARTNER'S LIABILITY.--

A. Except as provided otherwise in Subsection B of this section, all partners are liable:

(1) jointly and severally for everything chargeable to the partnership under Sections 54-1-13 and 54-1-14 NMSA 1978; and

(2) jointly for all other debts and obligations of the partnership; but any partner may enter into a separate obligation to perform a partnership contract.

B. Subject to Subsection C of this section, a partner in a registered limited liability partnership is not liable directly or indirectly, by way of indemnification, contribution or otherwise, for debts, obligations and liabilities of or chargeable to the partnership or another partner or partners, whether in tort, contract or otherwise, arising

from omissions, negligence, wrongful acts, misconduct or malpractice committed while the partnership is a registered limited liability partnership and in the course of the partnership business by another partner or an employee, agent or representative of the partnership.

C. Subsection B of this section shall not affect the liability of a partner in a registered limited liability partnership for the partner's own omission, negligence, wrongful act, misconduct or malpractice or that of any person under the partner's direct supervision and control.

D. A partner in a registered limited liability partnership is not a proper party to a proceeding by or against a registered limited liability partnership, the object of which is to recover damages or enforce the obligations arising out of the omissions, negligence, wrongful acts, misconduct or malpractice of the type described in Subsection B of this section, unless such partner is personally liable under Subsection C of this section."

Section 5

Section 5. Section 54-1-18 NMSA 1978 (being Laws 1947, Chapter 37, Section 18) is amended to read:

"54-1-18. RULES DETERMINING RIGHTS AND DUTIES OF PARTNERS.--The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

A. each partner shall be repaid his contributions, whether by way of capital or advances to the partnership property, and share equally in the profits and surplus remaining after all liabilities including those to partners are satisfied; and, except as provided otherwise in Sections 54-1-15 and 54-1-48 NMSA 1978, each partner must contribute towards the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits;

B. the partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business, or for the preservation of its business or property;

C. a partner, who in aid of the partnership makes any payment or advance beyond the amount of capital which he agreed to contribute, shall be paid interest from the date of the payment or advance;

D. a partner shall receive interest on the capital contributed by him only from the date when repayment should be made;

E. all partners have equal rights in the management and conduct of the partnership business;

F. no partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs;

G. no person can become a member of a partnership without the consent of all the partners; and

H. any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners."

Section 6

Section 6. Section 54-1-34 NMSA 1978 (being Laws 1947, Chapter 37, Section 34) is amended to read:

"54-1-34. RIGHT OF PARTNER TO CONTRIBUTION FROM CO-PARTNERS AFTER DISSOLUTION.--Where the dissolution is caused by the act, death or bankruptcy of a partner, each partner is liable to his co-partners for his share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless:

A. the dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution;

B. the dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy; or

C. the liability is for a debt, obligation or liability for which the partner is not liable pursuant to Sections 54-1-15 and 54-1-48 NMSA 1978."

Section 7

Section 7. Section 54-1-36 NMSA 1978 (being Laws 1947, Chapter 37, Section 36) is amended to read:

"54-1-36. EFFECT OF DISSOLUTION ON PARTNER'S EXISTING LIABILITY.--

A. The dissolution of the partnership does not of itself discharge the existing liability of any partner.

B. A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself, the partnership creditor and the person or partnership continuing the business; and such agreement may be inferred

from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

C. Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligations.

D. The individual property of a deceased partner shall be liable for those obligations of the partnership incurred while he was a partner and for which he was liable pursuant to Sections 54-1-15 and 54-1-48 NMSA 1978 but subject to the prior payment of his separate debts."

Section 8

Section 8. Section 54-1-40 NMSA 1978 (being Laws 1947, Chapter 37, Section 40) is amended to read:

"54-1-40. RULES FOR DISTRIBUTION.--In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

A. the assets of the partnership are:

(1) the partnership property; and

(2) the contributions of the partners specified in Subsection D of this section;

B. the liabilities of the partnership shall rank in order of payment, as follows:

(1) those owing to creditors other than partners;

(2) those owing to partners other than for capital and profits;

(3) those owing to partners in respect of capital; and

(4) those owing to partners in respect of profits;

C. the assets shall be applied in the order of their declaration in Subsection A of this section to the satisfaction of the liabilities;

D. except as provided otherwise in Sections 54-1-15 and 54-1-48 NMSA 1978:

(1) the partners shall contribute, as provided by Subsection A of Section 54-1-18 NMSA 1978, the amount necessary to satisfy the liabilities; and

(2) if any, but not all, of the partners are insolvent, or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities, and in the relative proportions in which they share the profits, the additional amount necessary to pay the liabilities;

E. an assignee for the benefit of creditors or any person appointed by the court shall have the right to enforce the contributions specified in Subsection D of this section;

F. any partner or his legal representative shall have the right to enforce the contributions specified in Subsection D of this section, to the extent of the amount which he has paid in excess of his share of the liability;

G. the individual property of a deceased partner shall be liable for the contributions specified in Subsection D of this section;

H. when partnership property and the individual properties of the partners are in possession of a court for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors as heretofore; and

I. where a partner has become bankrupt or his estate is insolvent, the claims against his separate property shall rank in the following order:

- (1) those owing to separate creditors;
- (2) those owing to partnership creditors; and
- (3) those owing to partners by way of contribution."

Section 9

Section 9. A new section of the Uniform Partnership Act, Section 54-1-44 NMSA 1978, is enacted to read:

"54-1-44. REGISTERED LIMITED LIABILITY PARTNERSHIPS.--

A. To become a registered limited liability partnership, a partnership shall file with the secretary of state a registration stating:

- (1) the name of the partnership;
- (2) the address of its principal office;

(3) if the partnership's principal office is not located in this state, the address of a registered office and the name and address of a registered agent for service of process in this state, which the partnership is required to maintain;

(4) a brief statement of the business in which the partnership engages;

(5) any other matters that the partnership determines to include; and

(6) a statement that the partnership elects to register as a registered limited liability partnership.

B. The registration shall be executed by one or more partners authorized to execute a registration.

C. The registration shall be accompanied by a fee of fifty dollars (\$50.00).

D. The secretary of state shall register as registered limited liability partnership any partnership that submits a properly completed registration with the required fee.

E. A partnership registered under this section shall pay, in each year following the year in which its registration is filed, on a date specified by the secretary of state, an annual fee of fifty dollars (\$50.00). The fee must be accompanied by a notice, on a form by the secretary of state, of any material changes in the information contained in the partnership's registration and satisfactory proof of insurance.

F. Registration is effective immediately after the date a registration is filed or at any later date or time specified in the registration, and remains effective until:

(1) it is voluntarily withdrawn by filing with the secretary of state a written withdrawal notice executed by one or more partners authorized to execute a withdrawal notice; or

(2) thirty days after receipt by the partnership of a notice from the secretary of state sent by certified mail, return receipt requested, stating that the partnership has failed to make timely payment of the annual fee specified in Subsection E of this section unless the fee is paid within such thirty-day period.

G. A partnership becomes a registered limited liability partnership at the time of the filing of the initial registration with the secretary of state or at any later date or time specified in the registration if, in either case, there has been substantial compliance with the requirements of the Uniform Partnership Act. A partnership continues as a registered limited liability partnership if there has been substantial compliance with the requirements of that act. The status of a partnership as a registered

limited liability partnership and the liability of a partner of such registered limited liability partnership shall not be adversely affected by errors or subsequent changes in the information stated in a registration made under Subsection A of this section or notice made under Subsection E of this section.

H. The fact that a registration or a notice is on file with the secretary of state is notice that the partnership is a registered limited liability partnership and is notice of all other facts set forth in the registration or notice.

I. A partnership that has registered as a registered limited liability partnership is for all purposes the same entity that existed before the registration and continues to be a partnership under the laws of this state. If a registered limited liability partnership dissolves, a partnership which is a successor to a registered limited liability partnership and which intends to be a registered limited liability partnership shall not be required to file a new registration and shall be deemed to have filed any documents required or permitted under this section which were filed by the predecessor partnership.

J. The secretary of state shall provide forms for a registration under Subsection A of this section or a notice under Subsection E of this section."

Section 10

Section 10. A new section of the Uniform Partnership Act, Section 54-1-45 NMSA 1978, is enacted to read:

"54-1-45. NAME OF REGISTERED LIMITED LIABILITY PARTNERSHIP.--The name of a registered limited liability partnership shall contain the words "Registered Limited Liability Partnership" or the abbreviation "L.L.P." or "LLP" as the last words or letters of its name."

Section 11

Section 11. A new section of the Uniform Partnership Act, Section 54-1-46 NMSA 1978, is enacted to read:

"54-1-46. APPLICABILITY OF ACT TO FOREIGN AND INTERSTATE COMMERCE.--

A. A partnership, including a registered limited liability partnership, formed pursuant to an agreement governed by the Uniform Partnership Act, may conduct its business, carry on its operations and have and exercise the powers granted by that act in any state, territory, commonwealth, district or possession of the United States or in any foreign country.

B. It is the intent of the legislature that the legal existence of registered limited liability partnerships formed pursuant to an agreement governed by this act be recognized outside the boundaries of this state and that the laws of this state governing such registered limited liability partnerships transacting business outside this state be granted the protection of full faith and credit under the United States constitution.

C. It is the policy of this state that the internal affairs of partnerships, including registered limited liability partnerships, formed pursuant to an agreement governed by the Uniform Partnership Act, including the liability of partners for debts, obligations and liabilities of or chargeable to the partnership or another partner or partners, shall be subject to and governed by the laws of this state.

D. Before transacting business in this state, a foreign registered limited liability partnership shall:

(1) comply with any statutory or administrative registration or filing requirements governing the specific type of business in which the partnership is engaged; and

(2) file a notice with the secretary of state, on such forms as the secretary shall provide, stating:

(a) the name of the partnership;

(b) the jurisdiction the laws of which govern its partnership agreement and under which it is registered as a limited liability partnership;

(c) the address of its principal office;

(d) if the partnership's principal office is not located in this state, the address of a registered office and the name and address of a registered agent for service of process in this state, which the partnership is required to maintain;

(e) a brief statement of the business in which the partnership engages;

(f) any other information that the partnership determines to include; and

(g) a statement that the partnership is a registered limited liability partnership. Such notice shall be accompanied by a fee of fifty dollars (\$50.00). Such notice shall be effective for two years from the date of filing, after which time the partnership shall file a new notice.

E. The failure of a foreign registered limited liability partnership to file a notice pursuant to Subsection D of this section or to appoint and maintain a registered

agent in this state shall not adversely affect the liability of the partners or impair the validity of any contract or act of the foreign registered limited liability partnership, and shall not prevent the foreign registered limited liability partnership from defending any action or proceeding in any court of this state, but the foreign registered limited liability partnership shall not maintain any action or proceeding in any court of this state until it has filed a notice. A foreign registered limited liability partnership, by transacting business in this state without filing a notice, appoints the secretary of state as its agent for service of process with respect to causes of action arising out of the transaction of business in this state.

F. The name of a foreign registered limited liability partnership doing business in this state shall contain the words "Registered Limited Liability Partnership" or the abbreviation "L.L.P." or "LLP", or such other similar words or abbreviation as may be required or authorized by the laws of the state where the partnership is registered, as the last words or letters of its name.

G. The internal affairs of foreign registered limited liability partnerships, including the liability of partners for debts, obligations and liabilities of or chargeable to the partnership or another partner or partners, shall be subject to and governed by the laws of the jurisdiction in which the foreign registered limited liability partnership is registered.

H. For purposes of this section, "foreign registered limited liability partnership" includes a registered limited liability partnership and a limited liability partnership formed pursuant to an agreement governed by and registered under the laws of such jurisdiction."

Section 12

Section 12. A new section of the Uniform Partnership Act, Section 54-1-47 NMSA 1978, is enacted to read:

"54-1-47. INSURANCE OR FINANCIAL RESPONSIBILITY OF REGISTERED LIMITED LIABILITY PARTNERSHIPS.--

A. A registered limited liability partnership shall carry at least five hundred thousand dollars (\$500,000) per occurrence of liability insurance, beyond the amount of any applicable deductible, covering the partnership for errors, omissions, negligence, wrongful acts, misconduct and malpractice for which the liability of partners is limited by Section 54-1-15 NMSA 1978. Such an insurance policy may contain reasonable provisions with respect to policy periods, deductibles, territory, claims, conditions, exclusions and other usual matters.

B. If a registered limited liability partnership is in substantial compliance with the requirements of Subsection A of this section, the requirements of this section

shall not be admissible or in any way be made known to a jury in determining an issue of liability for or extent of the debt or obligation or damages in question.

C. A registered limited liability partnership is considered to be in substantial compliance with Subsection A of this section if the partnership provides an amount of funds equal to the amount of insurance required by that subsection specifically designated and segregated for the satisfaction of judgments against the partnership or its partners based on errors, omissions, negligence, wrongful acts, misconduct and malpractice for which liability is limited by Section 54-1-15 NMSA 1978 as follows:

(1) a deposit in trust or bank escrow or cash, bank certificates of deposit or United States treasury obligations; or

(2) a bank letter of credit or insurance company surety bond.

D. The amount of liability insurance described in Subsection A of this section or the amount described in Subsection C of this section shall be adjusted as follows:

(1) on January 1 of the second year following enactment of this section, and on January 1 of each year thereafter, the amounts specified in Subsections A and C of this section shall be multiplied by an inflation factor, which shall be a number determined by dividing the June 30 consumer price index immediately preceding the calendar year in which the adjustment shall take effect by the December 31 consumer price index for 1995. The secretary of state shall round the adjusted amount to the nearest one hundred thousand dollars (\$100,000) and publish a notice setting forth this adjustment on February 1 of each year in which the adjustment is required to be made. A registered limited liability partnership shall adjust the amount of liability insurance described in Subsection A of this section or the amount described in Subsection C of this section no later than April 1 of the year in which the adjustment is required to be made; and

(2) as used in this subsection, "consumer price index" means the Albuquerque consumer price index for all urban consumers, all items, using the 1982-1984 base of one hundred, as published by the bureau of labor statistics of the United States department of labor."

Section 13

Section 13. A new section of the Uniform Partnership Act, Section 54-1-48 NMSA 1978, is enacted to read:

"54-1-48. REGISTERED LIMITED LIABILITY PARTNERSHIP PARTNER'S LIABILITY.--

A. Subject to Subsection B of this section, a partner in a registered limited liability partnership is not liable directly or indirectly, by way of indemnification, contribution or otherwise, for debts, obligations and liabilities of or chargeable to the partnership or another partner or partners, whether in tort, contract or otherwise, arising from omissions, negligence, wrongful acts, misconduct or malpractice committed while the partnership is a registered limited liability partnership and in the course of the partnership business by another partner or an employee, agent or representative of the partnership.

B. Subsection A of this section shall not affect the liability of a partner in a registered limited liability partnership for the partner's own omission, negligence, wrongful act, misconduct or malpractice or that of any person under the partner's direct supervision and control.

C. A partner in a registered limited liability partnership is not a proper party to a proceeding by or against a registered limited liability partnership, the object of which is to recover damages or enforce the obligations arising out of the omissions, negligence, wrongful acts, misconduct or malpractice of the type described in Subsection A of this section, unless such partner is personally liable under Subsection B of this section."

HOUSE BILL 632

CHAPTER 186

RELATING TO LAW ENFORCEMENT; AMENDING A SECTION OF THE NMSA 1978 PERTAINING TO FEDERAL LAW ENFORCEMENT OFFICER AUTHORITY.

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

Section 1

Section 1. Section 29-1-11 NMSA 1978 (being Laws 1972, Chapter 8, Section 1, as amended) is amended to read:

"29-1-11. AUTHORIZATION OF TRIBAL AND PUEBLO POLICE OFFICERS AND CERTAIN FEDERAL OFFICERS TO ACT AS NEW MEXICO PEACE OFFICERS--AUTHORITY, PAYMENT AND PROCEDURE FOR COMMISSIONED PEACE OFFICERS.--

A. All persons who are duly commissioned officers of the police or sheriff's department of any New Mexico Indian tribe or pueblo or who are law enforcement officers employed by the bureau of Indian affairs and are assigned in New Mexico are, when commissioned under Subsection B of this section, recognized and authorized to act as New Mexico peace officers. These officers have all the powers of New Mexico peace

officers to enforce state laws in New Mexico, including but not limited to the power to make arrests for violation of state laws.

B. The chief of the New Mexico state police is granted authority to issue commissions as New Mexico peace officers to members of the police or sheriff's department of any New Mexico Indian tribe or pueblo or a law enforcement officer employed by the bureau of Indian affairs to implement the provisions of this section. The procedures to be followed in the issuance and revocation of commissions and the respective rights and responsibilities of the departments shall be set forth in a written agreement to be executed between the chief of the New Mexico state police and the tribe or pueblo or the appropriate federal official.

C. The agreement referred to in Subsection B of this section shall contain the following conditions:

(1) the tribe or pueblo, but not the bureau of Indian affairs, shall submit proof of adequate public liability and property damage insurance for vehicles operated by the peace officers and police professional liability insurance from a company licensed to sell insurance in the state;

(2) each applicant for a commission shall successfully complete four hundred hours of basic police training that is approved by the director of the New Mexico law enforcement academy;

(3) the chief of the New Mexico state police shall have the authority to suspend any commission granted pursuant to Subsection B of this section for reasons solely within his discretion;

(4) if any provision of the agreement is violated by the tribe or pueblo or any of its agents, the chief of the New Mexico state police shall suspend the agreement on five days' notice, which suspension shall last until the chief is satisfied that the violation has been corrected and will not recur;

(5) the goldenrod-colored officer's second copy of any citation issued pursuant to a commission authorized by this section shall be submitted within five days to the chief of the New Mexico state police;

(6) any citation issued pursuant to a commission authorized by this section shall be to a magistrate court of New Mexico; except that any citations issued to Indians within the exterior boundaries of an Indian reservation shall be cited into tribal court;

(7) the agreement or any commission issued pursuant to it shall not confer any authority on a tribal court or other tribal authority which that court or authority would not otherwise have;

(8) the authority conferred by any agreement entered into pursuant to the provisions of this section shall be coextensive with the exterior boundaries of the reservation; except that an officer commissioned under this section may proceed in hot pursuit of an offender beyond the exterior boundaries of the reservation, and the authority conferred in any written agreement between the chief of the New Mexico state police and the Navajo tribe may extend beyond the exterior boundaries of the Navajo reservation to and including the area enclosed by the following description:

Beginning at a point where the southern boundary line of the Navajo Indian reservation intersects the western right-of-way line of US 666, and running thence; southerly along the western right-of-way line of US 666 to the northerly city limits of Gallup; thence, easterly along the northerly city limits of Gallup to the northern side of the right-of-way of I-40; thence, in an easterly direction along the northerly side of the right-of-way of I-40 to the northerly limits of the village of Prewitt; thence, in a straight line between the northerly boundary of the village of Prewitt to the southerly boundary of Ambrosia Lake; thence in a straight line between the southerly boundary of Ambrosia Lake to the southerly boundary of Hospah; thence, east along a straight line from the southerly boundary of Hospah to the southern boundary of Torreon; thence along the easterly side of the right-of-way of state road 197 to the westerly city limits of Cuba; thence, north along the westerly side of the right-of-way of state road 44 to the southerly boundary of the Jicarilla Apache Indian reservation; thence, westerly along the southerly boundary of the Jicarilla Apache Indian reservation to the southwest corner of that reservation; thence, northerly along the westerly boundary of the Jicarilla Apache Indian reservation to a point where the westerly boundary of the reservation intersects the southerly side of the right-of-way of state road 44; thence, northerly along the southerly side of the right-of-way of state road 44 to its intersection with the northerly side of the right-of-way of Navajo road 3003; thence, along the northerly side of the right-of-way of Navajo road 3003 to a point where the northerly side of the right-of-way of Navajo road 3003 intersects the westerly side of the right-of-way line of state road 371; thence, northerly along the west side of the right-of-way of state road 371 to the southerly side of the right-of-way of Navajo road 36; thence, westerly along the southerly side of the right-of-way of Navajo road 36 to the eastern border of the Navajo Indian reservation; thence, along the eastern and southerly borders of the Navajo Indian reservation to the point of beginning.

The municipalities of Cuba and Gallup and the villages of Thoreau and Prewitt are excluded from the grant of authority that may be conferred in any written agreement entered into pursuant to provisions of this section; provided, however, any written agreement may include under such grant of authority the communities of Ambrosia Lake, Hospah, Torreon, Lybrook, Nageezi, Counselors and Blanco Trading Post and those communities commonly known as the Wingate community; the Navajo Tribe blue water ranch area of the Thoreau community; the Prewitt community, exclusive of the village of Prewitt; the Haystack community; the Desidero community; the Sand Springs community; the Rincon Marquis community; the Charley Jesus Arviso and the Castillo community; and state road 264 beginning at the point where it intersects US 666 and ending where state road 264 intersects the Arizona-New Mexico state line;

(9) the chief of the New Mexico state police or his designee and the tribe or pueblo or the appropriate federal official shall be required to meet at least quarterly or more frequently at the call of the chief of the New Mexico state police to discuss the status of the agreement and invite other law enforcement or other officials to attend as necessary; and

(10) as consideration for law enforcement services rendered for the state by tribal or pueblo police officers who are commissioned peace officers pursuant to this section, each tribe or pueblo shall receive from the law enforcement protection fund three hundred dollars (\$300) for each commissioned peace officer in the tribe or pueblo. To be counted as a commissioned peace officer for the purposes of this paragraph, a commissioned peace officer shall have been assigned to duty and have worked in New Mexico for no fewer than two hundred days in the calendar year immediately prior to the date of payment. Payments shall be made for only those divisions of the tribal or pueblo police departments that perform services in New Mexico. No Indian nation, tribe or pueblo police department shall be eligible for any disbursement under the fund if officers of that department cite non-Indians into the court of that Indian nation, tribe or pueblo. This eligibility requirement would apply to either civil or criminal citations issued by an Indian nation, tribe or pueblo police department.

D. Nothing in this section impairs or affects the existing status and sovereignty of tribes and pueblos of Indians as established under the laws of the United States.

E. All persons who are duly commissioned federal law enforcement officers employed by the federal bureau of investigation; drug enforcement administration; bureau of alcohol, tobacco and firearms; United States secret service; United States customs service; immigration and naturalization service; United States marshals service; postal inspection service; and other appropriate federal officers whose primary duty is law enforcement related, as designated by the chief of the New Mexico state police upon a recommendation by a county sheriff, who are assigned in New Mexico, are recognized and authorized to act as New Mexico peace officers and have all the powers of New Mexico peace officers to enforce state laws in New Mexico, including the power to make arrests for violation of state laws. This subsection shall not be construed to impose liability upon or to require indemnification by the state for any act performed by a federal law enforcement officer pursuant to this subsection."

HOUSE BILL 674

CHAPTER 187

RELATING TO CAPITAL PROJECTS; PROVIDING LEGISLATIVE AUTHORIZATION FOR FINANCING OF CAPITAL PROJECTS FROM THE PUBLIC PROJECTS REVOLVING FUND AS REQUIRED BY LAW; DECLARING AN EMERGENCY.

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

Section 1

Section 1. AUTHORIZATION OF PROJECTS.--Pursuant to the provisions of Section 6-21-6 NMSA 1978, the legislature authorizes the New Mexico finance authority to provide financing from the public projects revolving fund to the following qualified entities for the following public projects on terms and conditions established by the authority:

A. to the high plains regional solid waste authority for a regional solid waste disposal project;

B. to the northwest New Mexico regional solid waste authority for a regional solid waste disposal project;

C. to the energy, minerals and natural resources department for park system capital projects, including the acquisition of real property adjacent to the entrance of the Rio Grande nature center in Albuquerque;

D. to McKinley county for a public building project;

E. to the village of Mosquero for a wastewater project;

F. to the town of Red River for a wastewater project;

G. to the village of Roy for a water system project;

H. to the Antelope Valley irrigation district for an irrigation project;

I. to the village of Fort Sumner for a water project and for a wastewater project;

J. to the village of Jemez Springs for a wastewater project;

K. to the village of Magdalena for a solid waste project;

L. to Rio Arriba county for a public building project;

M. to the city of Santa Fe for a wastewater project;

N. to Dona Ana county for a flood control project;

O. to Angel Fire for a wastewater facility project;

P. to the city of Santa Fe for a regional solid waste disposal project;

Q. to the city of Rio Rancho for a public safety building project;

R. to the north central solid waste authority for a regional solid waste disposal project;

S. to the central Rio Grande regional solid waste authority for a regional solid waste disposal project;

T. to the Sangre de Cristo solid waste authority for a regional solid waste disposal project;

U. to the city of Las Vegas for a solid waste transfer and recycling project;

V. to the city of Las Cruces for a wastewater project;

W. to the city of Las Cruces for a building project;

X. to the village of Capitan for a water project;

Y. to Santa Fe county for a landfill road project;

Z. to Torrance county for a solid waste project;

AA. to the city of Las Vegas for a water system improvement project; and

BB. to San Juan county for hospital capital projects.

Section 2

Section 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 364 WITH EMERGENCY CLAUSE
SIGNED APRIL 6, 1995

CHAPTER 188

RELATING TO WATER; PROVIDING FOR RESERVATIONS OF WATER FOR CERTAIN FEDERAL RECLAMATION PROJECTS; AMENDING SECTION 72-5-33 NMSA 1978 (BEING LAWS 1907, CHAPTER 49, SECTION 40, AS AMENDED); DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 72-5-33 NMSA 1978 (being Laws 1907, Chapter 49, Section 40, as amended) is amended to read:

"72-5-33. FEDERAL RECLAMATION PROJECTS--APPROPRIATION FOR.--

A. Whenever the proper officers of the United States, authorized by the Federal Reclamation Law of June 17, 1902, 32 Statutes at Large 388, or acts amendatory thereof or supplementary thereto, to construct federal reclamation project works for the utilization of waters within the state, notify the state engineer that the United States intends to utilize certain specified waters, the waters so described and unappropriated, and not covered by applications or affidavits duly filed or permits as required by law, at the date of such notice shall not be subject to a further appropriation under the laws of the state for a period of three years from the date of the notice, within which time the proper officers of the United States shall file plans for the proposed works in the office of the state engineer for his information, and no adverse claim to the use of water required in connection with such plans, initiated subsequent to the date of such notice, shall be recognized under the laws of the state, except as to such amount of water described in such notice as may be formally released in writing by the secretary of the interior as the officer of the United States duly authorized; provided that:

(1) in case of failure to file plans of the proposed works within three years as required in this section, the waters specified in the notice given by the United States to the state engineer shall become public waters subject to general appropriations; and

(2) even if plans are filed within three years as required by this section, in the event the United States congress, the secretary of the interior or a court of competent jurisdiction, in a nonappealable final judgment, determines that the planned federal reclamation project will not be constructed, the water withheld under the provisions of this section for the federal reclamation project shall be released by operation of state law and shall become public water subject to general appropriations and the provisions of this section.

B. If it is determined pursuant to the provisions of this section that a planned federal reclamation project will not be constructed:

(1) upon receipt of an application, the state engineer shall give first preference for any appropriation of released water to water users who have contracted to receive such waters under a repayment contract with the United States or its agencies, provided the water users under the repayment contract apply to appropriate the water within one year of being released;

(2) the appropriation by the water users shall be presumed to be consistent with the public welfare of the state and the conservation of water within the state; and

(3) the appropriation of water under this section by water users under a repayment contract shall bear the priority date of the original notice to appropriate such water.

C. The provisions of this section apply to all pending notices, permits issued pursuant to such notices, prospective notices and permits issued pursuant to prospective notices filed under this section.

D. Nothing in this section shall affect the water rights of any senior appropriators in New Mexico or any Indian tribe."

Section 2

Section 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE AGRICULTURE AND WATER RESOURCES COMMITTEE SUBSTITUTE
FOR HOUSE BILL 382 WITH EMERGENCY CLAUSE
SIGNED APRIL 6, 1995

CHAPTER 189

RELATING TO HEALTH PLANNING; CREATING THE BRAIN INJURY ADVISORY COUNCIL; PROVIDING POWERS AND DUTIES; ABOLISHING THE HEAD INJURY TASK FORCE.

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

Section 1

Section 1. BRAIN INJURY ADVISORY COUNCIL--CREATED-- POWERS AND DUTIES.--

A. The "brain injury advisory council" is created to advise the developmental disabilities planning council, the governor, the legislature and other state agencies.

B. The brain injury advisory council shall consist of no fewer than eighteen and no more than twenty-four members appointed by the governor, and shall include survivors of brain injuries; family members of persons with brain injuries; and health care professionals and other representatives of private sector organizations and state agencies that provide services and support to persons with brain injuries.

C. Members shall be appointed for staggered terms of three years, so that the terms of one-third of the members shall expire in a given year.

D. Members shall elect annually a chairman and vice chairman. Staff and other administrative support shall be provided by the developmental disabilities planning council or other state agency as assigned by the governor. Members shall meet at the call of the chairman.

E. Members who are not state employees may receive per diem and travel expenses as provided in the Per Diem and Mileage Act for state employees. Reasonable accommodations shall be made available to permit full participation in council activities by its members, including personal assistance to members who are survivors of brain injuries and respite care for members who are family members of persons with brain injuries.

F. The brain injury advisory council shall:

(1) study and make recommendations to the developmental disabilities planning council, the governor, the legislature and other state agencies concerning case management, community support systems, long-term care, employment, emergency medical services, rehabilitation and prevention and the improvement and coordination of state activities relative to the concerns of persons with brain injuries and their families or other care givers; and

(2) advise appropriate state agencies and private organizations on the development of services and supports that meet the needs of persons with brain injuries.

Section 2

Section 2. REPEAL.--Section 24-20-2 NMSA 1978 (being Laws 1990, Chapter 103, Section 1, as amended) is repealed.

Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE BILL 399

CHAPTER 190

RELATING TO FINANCIAL INSTITUTIONS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 46-2-1 NMSA 1978 (being Laws 1951, Chapter 193, Section 1, as amended) is amended to read:

"46-2-1. DEFINITIONS.--As used in the Uniform Trusts Act:

A. "person" means an individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization or two or more persons having a joint or common interest;

B. "trustee" includes trustees, a corporate as well as a natural person and a successor or substitute trustee, personal representative, guardian, conservator, agent and a trustee of an inter vivos or testamentary trust;

C. "relative" means a spouse, ancestor, descendant, brother or sister;

D. "affiliate" means any person directly or indirectly controlling or controlled by another person, or any person under direct or indirect common control with another person. "Affiliate" includes any person with whom a trustee has an express or implied agreement regarding the purchase of trust investments by each from the other, directly or indirectly, except a broker or stock exchange;

E. "trust" means an express trust only;

F. "in-state depository institution" means a main office or branch of a bank, savings and loan association or credit union authorized to engage in business in New Mexico; and

G. "division" means the financial institutions division of the regulation and licensing department."

Section 2

Section 2. Section 46-2-4 NMSA 1978 (being Laws 1951, Chapter 193, Section 4) is repealed and a new Section 46-2-4 NMSA 1978 is enacted to read:

"46-2-4. CORPORATE TRUSTEE DEPOSITING TRUST FUNDS WITH SELF OR AFFILIATED DEPOSITORY INSTITUTION.--

A. A corporate trustee that is subject to regulation by the state or federal authorities may deposit with itself or an affiliated in-state depository institution, for a period of up to one year, trust funds being held necessarily pending investment, distribution or the payment of debts. The corporate trustee shall pay the trust the interest as it is required by statute to pay on uninvested trust funds, or, if there is no statute, the same rate of interest it or the affiliated in-state depository institution pays upon similar nontrust deposits. The corporate trustee shall maintain a separate fund as security for the deposit with itself or an affiliated in-state depository institution consisting

of securities authorized for trust investments, or safekeeping receipts representing the pledge of such securities by the affiliated in-state depository institution, at all times equal in total market value to the amount of the deposits. No security shall be required to the extent that the deposits are insured or given preference by any state or federal law. The separate fund of securities shall be marked as such. Withdrawals from or additions to it may be made, as long as the required value is maintained. The income of securities in the fund shall belong to the corporate trustee. In all statements of its financial condition delivered to the division, the corporate trustee shall show as separate items the amount of trust funds that it has deposited with itself or an affiliated in-state depository institution and the amount of securities that it holds or have been pledged as security for the payment of those deposits.

B. A corporate trustee that is subject to regulation by state or federal authorities may invest trust funds in deposit accounts with itself or an affiliated in-state depository institution, if this investment authority is specifically provided pursuant to Sections 46-2-14 and 46-2-15 NMSA 1978. Trust fund investments in deposits with itself or an affiliated in-state depository institution shall not be secured by assets of the depository institution."

Section 3

Section 3. Section 46-2-6 NMSA 1978 (being Laws 1951, Chapter 193, Section 6) is repealed and a new Section 46-2-6 NMSA 1978 is enacted to read:

"46-2-6. TRUSTEE SELLING FROM ONE TRUST TO ANOTHER TRUST.--A trustee may sell assets held by it as fiduciary in one account to itself as fiduciary in another account, if documentation is retained showing the transaction is beneficial to both accounts, the assets are purchased and sold at fair market value and the transaction is not prohibited by the terms of any governing instrument."

Section 4

Section 4. Section 46-2-14 NMSA 1978 (being Laws 1951, Chapter 193, Section 17) is amended to read:

"46-2-14. POWER OF SETTLOR.--The settlor of any trust affected by the Uniform Trusts Act may, by provision in the instrument creating the trust if the trust was created by a writing or by oral statement to the trustee at the time of the creation of the trust if the trust was created orally or by an amendment of the trust if the settlor reserved the power to amend the trust, relieve his trustee from any or all of the duties, restrictions and liabilities that would otherwise be imposed upon him by that act, or alter or deny to his trustee any or all of the privileges and powers conferred upon the trustee by that act, or add duties, restrictions, liabilities, privileges or powers to those imposed or granted by that act; but no act of the settlor shall relieve a trustee from the duties, restrictions and liabilities imposed upon him by Section 46-2-3, Subsection A of Section 46-2-4 and Section 46-2-5 NMSA 1978."

Section 5

Section 5. Section 46-2-15 NMSA 1978 (being Laws 1951, Chapter 193, Section 18) is amended to read:

"46-2-15. POWER OF BENEFICIARY.--Any beneficiary of a trust affected by the Uniform Trusts Act may, if of full legal capacity and acting upon full information, by written instrument delivered to the trustee relieve the trustee as to that beneficiary from any or all of the duties, restrictions and liabilities that would otherwise be imposed on the trustee by that act, except as to the duties, restrictions and liabilities imposed by Section 46-2-3, Subsection A of Section 46-2-4 and Section 46-2-5 NMSA 1978. Any such beneficiary may release the trustee from liability to that beneficiary for past violations of any of the provisions of that act."

Section 6

Section 6. Section 56-4-4 NMSA 1978 (being Laws 1971, Chapter 154, Section 4) is amended to read:

"56-4-4. LIABILITY OF CARDHOLDER.--

A. A cardholder is liable for the unauthorized use of a credit card only if:

- (1) the card is an accepted credit card;
- (2) the liability is not in excess of fifty dollars (\$50.00);
- (3) the card issuer has provided the cardholder with a toll-free number or other convenient, no-cost method of notifying the card issuer in the event of loss or theft of the credit card; and
- (4) the unauthorized use occurs before the cardholder has notified the card issuer that an unauthorized use of the credit card has occurred or may occur as the result of loss, theft or otherwise.

B. No cardholder is liable for the unauthorized use of any credit card that was issued on or after the effective date of the Credit Card Act, and, after the expiration of twelve months following that effective date, no cardholder is liable for the unauthorized use of any credit card regardless of its date of issuance unless:

- (1) the conditions of liability specified in Subsection A of this section are met; and
- (2) the card issuer has provided a method whereby the user of the credit card can be identified as the person authorized to use it.

C. For the purposes of this section, a cardholder notifies a card issuer by taking such steps as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information whether or not any particular officer, employee or agent of the card issuer does in fact receive such information.

D. In any action by a card issuer to enforce liability for the use of a credit card, the burden of proof is upon the card issuer to show that the use was authorized or, if the use was unauthorized, then the burden of proof is upon the card issuer to show that the conditions of liability for the unauthorized use of a credit card, as set forth in Subsection A of this section, have been met.

E. Nothing in this section imposes liability upon a cardholder for the unauthorized use of a credit card in excess of his liability for such use under other applicable law or under any agreement with the card issuer.

F. Except as provided in this section, a cardholder incurs no liability from the unauthorized use of a credit card."

Section 7

Section 7. Section 58-1-33 NMSA 1978 (being Laws 1963, Chapter 305, Section 32) is amended to read:

"58-1-33. OATH OF SECRECY--SURETY BONDS.--The director and all officers and employees of the division shall, before entering upon the discharge of their duties, in addition to any oath required by the constitution of New Mexico, take and subscribe an oath to keep secret all information acquired by them in the discharge of their duties under the Banking Act except as may be otherwise required by law. All employees of the division shall be covered under the surety bond provided pursuant to the Surety Bond Act."

Section 8

Section 8. Section 58-1-40 NMSA 1978 (being Laws 1975, Chapter 330, Section 24, as amended) is amended to read:

"58-1-40. REPORTS OF CONDITION--SPECIAL REPORTS--FAILURE TO MAKE--PENALTY.--Every bank shall make and file with the director reports not to exceed five in number during the calendar year, according to the form that may be prescribed by the director, verified by the oath of the president or cashier of incorporated banks and attested by the signature of three or more directors. Each such report shall exhibit in detail and as may be required by the director the resources and liabilities of the bank at the close of business on a day past to be specified by the director in writing, the days past to be the days named by the comptroller of the currency in his official calls for reports of national banks. When the calls of the comptroller are less than five in number, the director may make additional calls on such

dates as he deems advisable. The reports shall be transmitted to the director within thirty days after the call of the director. The director has power to call for special reports from any particular bank whenever, in his judgment, they are necessary to a full and complete understanding and knowledge of its condition. The reports required by and filed pursuant to this section shall be in lieu of all others required by law from banks. Every bank failing to comply with the provisions of this section shall pay to the director a penalty of fifty dollars (\$50.00) for each day's delay."

Section 9

Section 9. Section 58-1-46 NMSA 1978 (being Laws 1963, Chapter 305, Section 35) is amended to read:

"58-1-46. EXAMINATIONS AND REPORTS.--

A. The director shall examine the condition of each state bank at least once in each twelve-month period. A report of examination shall be sent to the board of directors of the organization examined.

B. A bank may be examined within each eighteen- month period if:

(1) the bank has total assets of less than two hundred fifty million dollars (\$250,000,000);

(2) the bank is well-capitalized;

(3) when the bank was most recently examined, it was found to be well-managed, and its composite condition was found to be outstanding; or for a bank that has total assets of not more than one hundred million dollars (\$100,000,000), it was found to be outstanding or good;

(4) the bank is not subject to a formal enforcement proceeding or order; and

(5) no person acquired control of the bank during the twelve-month period in which an examination would be required but for this subsection.

C. Whenever the director deems it necessary, he may examine any corporation, the majority of the stock of which is owned by a state bank or which he finds is controlled by a state bank."

Section 10

Section 10. Section 58-1-48 NMSA 1978 (being Laws 1963, Chapter 305, Section 37) is repealed and a new Section 58-1-48 NMSA 1978 is enacted to read:

"58-1-48. RECORDS OF DIVISION.--Information from the records of the division shall be revealed only with the consent of the director. The records of the division are not public records. Any examination reports, financial information contained in applications for charters or files on investigations relating to violations of the Banking Act that do not or have not yet culminated in administrative, civil or criminal action are confidential and may be released only by order of a court of competent jurisdiction."

Section 11

Section 11. Section 58-1-66 NMSA 1978 (being Laws 1963, Chapter 305, Section 54, as amended) is amended to read:

"58-1-66. DIRECTORS--MEETINGS AND DUTIES.--

A. The board of directors shall meet at least once each calendar quarter. The director may, at his discretion, require more frequent meetings. The director of the division, a board member or an executive officer may call a special meeting. A majority of the board shall constitute a quorum. The board shall keep minutes of each meeting, including a record of attendance and of all votes cast.

B. The board of directors or an executive committee of not less than one-third of the board shall review, at least quarterly, the following transactions that have occurred since the last review:

(1) each loan, advance, discount, overdraft and purchase or sale of a security that exceeds in amount one-tenth of one percent of the capital and surplus of the corporation or twenty-five thousand dollars (\$25,000), whichever is larger; and

(2) every increase in loans, advances, discounts and overdrafts that exceeds the amount specified in Paragraph (1) of this subsection or with the increase will exceed it and every purchase or sale of a security that, together with other such transactions in the security during the preceding three months, involves that amount.

C. The board of directors shall examine, at least once in each calendar year at intervals of not more than fifteen months, all the affairs of the state bank, including the character and value of investments and loans and the efficiency of operating procedures. A report of the examination shall be submitted to the director of the division promptly. The board may provide that the examination shall be conducted by a committee of not less than three directors or may employ the services of qualified examiners or certified public accountants approved by the director of the division. The examination shall be conducted in accordance with generally accepted auditing procedures or in accordance with regulations of the director of the division.

D. In lieu of the director's examination required by Subsection C of this section, the board of directors of a state bank may submit to the director of the division at least once each calendar year at intervals of not more than fifteen months a certified

audit report for the bank. The examination shall be conducted by a certified public accountant in accordance with generally accepted auditing procedures. The director of the division may require the board of directors of a bank submitting a certified audit examination in lieu of a directors' examination to submit such other information as the director of the division deems necessary, including information relating to the character and value of investments and loans and the efficiency of operating procedures of the bank.

E. A state bank authorized to exercise trust powers shall not accept or voluntarily relinquish a fiduciary account without the approval or ratification of the board of directors or of a committee of officers or directors designated by the board to perform this function, but the board or the committee may prescribe general rules governing acceptance or relinquishment of fiduciary accounts, and action taken by an officer in accordance with these rules is sufficient approval. Any committee so designated shall keep minutes of its meetings and report at each monthly meeting of the board all action taken since the previous meeting of the board. The board shall designate one or more committees of not less than three qualified officers or directors to supervise the investment of fiduciary funds. No such investment shall be made, retained or disposed of without the approval of a committee. At least once in every calendar year at intervals of not more than fifteen months, the committee shall review all the assets of each fiduciary account and shall determine their current value, safety and suitability and whether the investments should be modified or retained. The committee shall keep minutes of its meetings and shall report at each monthly meeting of the board its conclusions on all questions considered and all action taken since the previous meeting of the board."

Section 12

Section 12. Section 58-1-82 NMSA 1978 (being Laws 1963, Chapter 305, Section 70) is repealed and a new Section 58-1-82 NMSA 1978 is enacted to read:

"58-1-82. REIMBURSEMENT FOR FINES AND PENALTIES.--

A. It is unlawful for a state bank to pay a fine or penalty imposed by law upon any other person or any judgment against such person or to reimburse directly or indirectly any person by whom such fine, penalty or judgment has been paid, except:

(1) in the settlement of a bank's own liability or in connection with the acquisition of property against which a judgment is a lien;

(2) if provided in its articles of incorporation, a bank may indemnify its directors, officers and employees for expenses, fines, penalties and judgments reasonably incurred in actions to which the directors, officers or employees are parties or potential parties by reason of the performance of their official duties. The provisions of this paragraph shall not allow the indemnification of directors, officers or employees of a bank against expenses, penalties or other payments incurred in an administrative

proceeding or action instituted by an appropriate bank regulatory agency, which proceeding or action results in a final order assessing civil money penalties or requiring affirmative action by an individual in the form of payments to the bank; and

(3) if provided in its articles of incorporation, a bank may acquire and pay the premiums for insurance covering the liability of its directors, officers or employees, except that the provisions of this paragraph shall exclude insurance coverage for a formal order assessing civil money penalties against a bank director, officer or employee.

B. In accordance with his supervisory responsibilities, the director may, in his discretion, review the threat to bank safety and soundness posed by any indemnification or proposed indemnification of directors, officers or employees by a bank or for the consistency of any such indemnification with the standards adopted by that bank in its articles of incorporation. Based upon this review, the director may direct a prospective modification of a specific indemnification by a bank through appropriate administrative action."

Section 13

Section 13. Section 58-5-1 NMSA 1978 (being Laws 1975, Chapter 330, Section 1, as amended) is amended to read:

"58-5-1. BOARD OF DIRECTORS--OATHS.--

A. A board member, when initially elected, shall take an oath that:

(1) he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of the bank and will not knowingly violate or willingly permit to be violated any of the provisions of the Banking Act; and

(2) he is the owner, in good faith and in his own right or jointly with his spouse, of the number of shares of stock required by law standing in his name on the books of the corporation and that the stock is not hypothecated or in any way pledged as security for any loan or debt.

B. The oath, subscribed by the board member making it and certified by the notary public before whom it was taken, shall be immediately transmitted to the director of the division and shall be filed and preserved in his office."

Section 14

Section 14. Section 58-5-2 NMSA 1978 (being Laws 1965, Chapter 130, Section 1, as amended) is amended to read:

"58-5-2. BRANCH BANKS.--

A. Banks duly authorized to transact business in New Mexico are authorized to conduct branches subject to the limitations of Section 58-5-3 NMSA 1978 with the powers and limitations provided in this article, after having first obtained written approval of the director, which approval may be given or withheld by the director in his discretion. The director, in exercising his discretion, shall take into account, but not by way of limitation, factors such as the financial history and condition of the applicant bank, the adequacy of its capital structure, its future earnings prospects and the general character of its management. His approval shall not be given until he has ascertained to his satisfaction:

(1) that the establishment of the branch will meet the needs and promote the convenience of the community to be served by the branch; and

(2) that the probable volume of business and reasonable public demand in the community are sufficient to assure and maintain the solvency of the branch and of the existing banks in the same community. An investigation fee of one thousand dollars (\$1,000) shall accompany each application for a branch and each application to relocate a branch or main office. The director may waive the investigation fee, at his discretion, when a branch or main office is relocating in the immediate vicinity of its present location.

B. Branch banks shall be operated as branches under the control and direction of the board of directors and executive officers of the parent bank. The name of each branch shall refer to the name of the parent bank or a registered trade name used by the parent bank.

C. As used in this section, "branch bank" includes any additional house, office, agency or place of business at which deposits are received, checks are paid or money is lent; except, where the additional house, office, agency or place of business is connected with the main banking premises by subterranean or overhead passageways through which bank personnel may pass, it shall not be considered as a branch."

Section 15

Section 15. Section 58-7-3 NMSA 1978 (being Laws 1959, Chapter 327, Section 3, as amended) is repealed and a new Section 58-7-3 NMSA 1978 is enacted to read:

"58-7-3. LOANS COVERED BY ACT.--The New Mexico Bank Installment Loan Act of 1959 applies to a loan that is a precomputed loan repayable in installments or that is clearly identified on the loan documents as being made under that act."

Section 16

Section 16. Section 58-7-9 NMSA 1978 (being Laws 1959, Chapter 327, Section 10, as amended) is amended to read:

"58-7-9. CONSTRUCTION.--

A. None of the provisions of the New Mexico Small Loan Act of 1955 are amended or repealed by the New Mexico Bank Installment Loan Act of 1959.

B. With the exception of precomputed loan transactions, a lender is not bound by the provisions of the New Mexico Bank Installment Loan Act of 1959 in making loans where the loan is made in accordance with the provisions of Sections 56-8-9 through 56-8-14 NMSA 1978.

C. None of the provisions of the New Mexico Bank Installment Loan Act of 1959 apply to the assignment or purchase of retail installment contracts originated under the provisions of Sections 58-19-1 through 58-19-14 NMSA 1978 or originated under the provisions of Sections 56-1-1 through 56-1-15 NMSA 1978.

D. As used in the New Mexico Bank Installment Loan Act of 1959:

(1) "year" means three hundred sixty-five days;

(2) "month" means one-twelfth of a year; and

(3) "day" means one-three-hundred-sixty-fifth of a year.

E. The director of the financial institutions division of the regulation and licensing department is empowered and directed to issue and file as required by law interpretive regulations to effectuate the purposes of the New Mexico Bank Installment Loan Act of 1959. In issuing, amending or repealing interpretive regulations, the director shall issue the regulation amendment or repeal of the regulation as a proposed regulation amendment or repeal of a regulation and file it for public inspection in the office of the director of the financial institutions division. Distribution thereof shall be made to interested persons, and their comments shall be invited. After the proposed regulation has been on file for not less than two months, the director may issue it as a final regulation by filing as required by law.

Any person who is or may be adversely affected by the adoption, amendment or repeal of a regulation under this section may file an appeal of that action in the district court in Santa Fe county within thirty days after the filing of the adopted regulation, amendment or repeal as required by law.

F. Any person, corporation or association complying with the regulations adopted by the director of the financial institutions division of the regulation and licensing department is deemed to have complied with the provisions of the New Mexico Bank Installment Loan Act of 1959.

G. All loans other than precomputed loan transactions made under the New Mexico Bank Installment Loan Act of 1959 shall be clearly identified on the loan documents as being made under that act."

Section 17

Section 17. Section 58-16-11 NMSA 1978 (being Laws 1990, Chapter 123, Section 11, as amended) is amended to read:

"58-16-11. INTERCOUNTY RESTRICTIONS.--

A. Notwithstanding any provision to the contrary in the Remote Financial Service Unit Act, no ATM shall be owned or leased by a person other than an in-state financial institution having its main office, a manned branch office or any other authorized branch in the county in which the ATM is located.

B. Notwithstanding any provision to the contrary in the Remote Financial Service Unit Act, no POS terminal shall be operated by any person other than a merchant or an in-state financial institution.

C. Notwithstanding the provisions of Subsection A of this section, an off-premises ATM may be owned and operated by an in-state financial institution not having its main office, a manned branch office or any authorized branch in the county in which the ATM is located if:

(1) the financial institutions located in the county do not provide off-premises ATM service; and

(2) the director approves the application of the in-state financial institutions to install and operate an off-premises ATM in the county."

Section 18

Section 18. A new Section 58-16-14.1 NMSA 1978 is enacted to read:

"58-16-14.1 TRANSACTION FEE.--

A. A financial institution may charge a reasonable foreign transaction fee for use of an automated teller machine if the fee is disclosed:

(1) on a sign posted on the automated teller machine or in clear view of the customer while viewing the machine; or

(2) electronically during the course of the transaction in a manner that permits a customer to cancel the transaction without incurring the foreign transaction fee.

B. For the purpose of this section, "foreign transaction fee" means a fee charged for the use of an automated teller machine to a noncustomer of the financial institution that owns the machine."

Section 19

Section 19. Laws 1987, Chapter 177, Section 16, as amended by Laws 1992, Chapter 8, Section 1, is amended to read:

"Section 16. EFFECTIVE DATES.--

A. Except as provided in Subsection B of this section, the effective date of the provisions of this act is January 1, 1988.

B. The effective date of the provisions of Section 16 of this act is July 1, 1987."

HOUSE BILL 432

CHAPTER 191

RELATING TO REGIONAL HOUSING AUTHORITIES; AMENDING AND REPEALING CERTAIN SECTIONS OF THE REGIONAL HOUSING LAW.

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

Section 1

Section 1. Section 11-3A-1 NMSA 1978 (being Laws 1994, Chapter 132, Section 1) is amended to read:

"11-3A-1. SHORT TITLE.--Chapter 11, Article 3A NMSA 1978 may be cited as the "Regional Housing Law".

Section 2

Section 2. Section 11-3A-2 NMSA 1978 (being Laws 1994, Chapter 132, Section 2) is amended to read:

"11-3A-2. FINDING AND DECLARATION OF NECESSITY.--It is declared that:

A. unsanitary or unsafe dwelling accommodations exist in the state;

B. persons of low income are forced to reside in such unsanitary or unsafe accommodations;

C. within the state:

(1) there is a shortage of safe or sanitary dwelling accommodations available at rents that persons of low income can afford;

(2) low-income persons are forced to occupy overcrowded, congested dwelling accommodations; and

(3) these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the residents of the state and impair economic values;

D. excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection and other public services and facilities are necessitated;

E. private enterprise alone cannot meet the need or resolve the problems inherent in providing appropriate, safe, sanitary and sufficient housing for low-income persons, and public participation in construction of low-income housing does not compete with private enterprise;

F. demolition, replanning, reconstruction or renovation of unsanitary or unsafe housing or acquisition of land to provide safe and sanitary dwellings for persons of low income are in the public interest and are essential state and local governmental functions requiring expenditures of public money; and

G. it is in the public interest that work on projects for demolition, planning, reconstruction, renovation or land acquisition for provision of safe and sanitary dwellings for low-income people be started immediately in order to relieve the housing shortage that has reached emergency status, and it is a necessity that the Regional Housing Law be continued to relieve that emergency."

Section 3

Section 3. Section 11-3A-3 NMSA 1978 (being Laws 1994, Chapter 132, Section 3) is amended to read:

"11-3A-3. DEFINITIONS.--As used in the Regional Housing Law:

A. "authority" means any regional housing authority or a nonprofit corporation created by an authority;

B. "bond" means any bond, note, interim certificate, debenture or other obligation issued by an authority pursuant to the Regional Housing Law;

C. "federal government" includes the United States of America, programs of the United States department of housing and urban development, the farmers home administration and rural development administration of the United States department of agriculture or housing programs or any other agency or instrumentality, corporate or otherwise, of the United States of America;

D. "housing project" means an undertaking of an authority to:

(1) demolish, clear or remove buildings from any slum area. The undertaking may embrace the adaptation of the area to public purposes, including parks or other recreational or community purposes; or

(2) provide decent, safe and sanitary dwellings, apartments, single-family dwellings or other living accommodations for persons of low income. The undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, welfare or other purposes. "Housing project" also may be applied to the planning of buildings and improvements, acquisition of property or existing structures, demolition of existing structures, construction, reconstruction, alteration and repair of improvements or buildings or any other work performed to complete housing projects;

E. "local public body" means any county, municipality, commission, district or other subdivision of the state;

F. "low-income person" means any individual, couple or family whose gross income does not exceed eighty percent of the resident's particular county median income and who cannot afford to pay more than thirty percent of his gross income for housing rent or mortgage payments or a low-income person as defined by the federal government;

G. "obligee" means:

(1) a holder of bonds issued pursuant to the Regional Housing Law or a trustee for that bondholder;

(2) a lessor leasing to an authority property used in connection with a housing project or any assignee of a lessor's interest or partial interest; or

(3) the federal government when it is a party to a contract with an authority in regard to a housing project;

H. "real property" includes all lands, including improvements and fixtures on the land, property of any nature appurtenant to or used in connection with the land and every estate, interest and right, legal or equitable, in the land, including terms for

years and liens by way of judgment, mortgage or other instrument and the indebtedness secured by the lien; and

I. "slum" means any area where dwellings predominate, which by reason of dilapidation, overcrowding, lack of ventilation, light or sanitary facilities or any combination of these factors are detrimental to safety, health or morals."

Section 4

Section 4. Section 11-3A-5 NMSA 1978 (being Laws 1994, Chapter 132, Section 5) is amended to read:

"11-3A-5. JURISDICTION.--A regional authority created by the Regional Housing Law shall operate within the area of its housing region, except for that portion of the area that lies within the territorial boundary of a municipality or county that has established an authority or housing agency. If by resolution the governing bodies of municipalities or counties that have established authorities or housing agencies consent to have the regional authority take action within the territory that would be excluded under this section, the regional authority may enlarge its jurisdiction to include the previously excluded territory. Any subsequent withdrawal of consent by resolution of a local public body or a municipal or county authority shall not prohibit the development and operation of any housing projects initiated in the city or county by the regional authority prior to the date of the resolution withdrawing consent when there is a financial assistance contract in existence for the project with the state or federal government at the date of the withdrawal of consent except upon terms that are mutually agreed upon between the regional authority, the governing bodies of the cities or counties and the state or federal government."

Section 5

Section 5. Section 11-3A-6 NMSA 1978 (being Laws 1994, Chapter 132, Section 6) is amended to read:

"11-3A-6. POWERS OF AUTHORITY IN BOARD OF COMMISSIONERS--
APPOINTMENT OF BOARD OF AUTHORITIES--TERMS.--

A. The powers of each regional authority shall be vested in its board of commissioners as the board may be constituted, from time to time. The board of commissioners of the authority for each of the seven regions shall consist of seven commissioners who shall be residents of the region for which the authority is created and appointed by the governor. Appointments shall be for terms of four years or less and shall be made so that the terms of not more than two commissioners on each board expire on July 1 of each year. Vacancies shall be filled for the unexpired term. Commissioners shall serve until their successors have been appointed.

B. The members of the boards of commissioners may receive per diem and mileage as provided in the Per Diem and Mileage Act, but shall receive no other compensation, perquisite or allowance. Each board of commissioners shall select a chairman and vice chairman from among its members. Each board may employ necessary agents and employees and set the salaries of the agents and employees. Each board may delegate to its agents or employees such duties as the board deems proper. A regional planning and development district, created pursuant to the Planning District Act, may provide technical staff for a regional housing authority. Four commissioners shall constitute a quorum of a board for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by an authority upon a vote of a majority of the commissioners present. Each board shall organize itself at its annual meeting each even-numbered year. A board may authorize an authority to employ a secretary who shall be executive director and who shall be removable only for cause, and technical experts and other officers, attorneys, agents and employees, permanent and temporary, as the authority requires; to determine employee and contractor qualifications, duties and compensation; and to delegate to one or more employees or contractors the powers or duties that the board deems proper.

C. The financial affairs of every regional authority and any nonprofit corporation created by an authority shall be thoroughly examined and audited annually by the state auditor, by personnel of his office designated by him or by auditors approved by him. The audits shall be conducted in accordance with generally accepted auditing standards. Each regional authority shall submit to the state auditor, the department of finance and administration, the state housing authority of the economic development department and the legislative finance committee, within thirty days following the receipt of the audit by the authority, a copy of the annual audit."

Section 6

Section 6. Section 11-3A-7 NMSA 1978 (being Laws 1994, Chapter 132, Section 7) is amended to read:

"11-3A-7. POWERS.--

A. Every authority may:

(1) within its region, prepare, carry out, acquire, purchase, lease, construct, reconstruct, improve, alter, extend or repair any housing project and operate and maintain the housing project. For any of such purposes, the board of commissioners of the authority may appropriate money and authorize the use of any property of the authority;

(2) purchase its bonds at a price of not more than the principal amount and the accrued interest. All bonds so purchased shall be canceled;

(3) lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project and establish and revise the rents or lease charges; own, hold and improve real or personal property; purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise or otherwise any real or personal property or any interest therein; acquire by the exercise of the power of eminent domain any real property; sell, lease, mortgage, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest in real or personal property; or procure or agree to the procurement of insurance or guarantees from the federal government of the payment of any bonds or parts thereof, including the power to pay premiums on the insurance;

(4) enter on any lands, buildings or property for the purpose of making surveys, soundings and examinations in connection with the planning or construction, or both, of any housing project;

(5) insure or provide for the insurance of any housing project of the authority against the risks that the authority may deem advisable;

(6) arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works or facilities for, or in connection with, a housing project or the occupants thereof and include in any construction contract let in connection with a housing project stipulations requiring that the contractor and any subcontractors comply with employment requirements, including those in the constitution and laws of this state, as to minimum wages and maximum hours of labor and comply with any conditions that the state or federal government may have attached to its financial aid of the project;

(7) within its area of operation, investigate the living, dwelling and housing conditions and the means and methods of improving those conditions; determine where slum areas exist or where there is a shortage of decent, safe and sanitary dwelling accommodations for persons of low income; make studies and recommendations relating to the problem of clearing, replanning and reconstructing slum areas and the problem of providing dwelling accommodations for persons of low income and cooperate with the state or any political subdivision of the state in action taken in connection with the problems identified; and engage in research, studies and experimentation on the subject of housing; and

(8) exercise all or any part or combination of powers granted in this subsection.

B. To standardize the delivery of affordable housing programs and services in New Mexico, regional authorities within their jurisdictions shall:

(1) create partnerships between state, federal, city and county governments, nonprofit entities and the private sector that will provide the necessary

resources to carry out the planning, financing, development and delivery of affordable housing;

(2) assist city or county authorities or housing nonprofit agencies in developing the knowledge, expertise and technical capacity to provide a comprehensive approach to the development and delivery of affordable housing; and

(3) provide or secure planning, technical assistance and training that city or county governments and nonprofit entities may need in an effort to enhance the local affordable housing delivery system.

C. Any two or more cities or authorities may join or cooperate with one another to exercise, either jointly or otherwise, any of their powers for the purpose of financing, including the provision of security for or the issuance of bonds, or contracting with respect to a housing project located within the area of operation of any one or more of the cities or authorities. A city or authority may prescribe and authorize by resolution another authority to act on its behalf to exercise, as its agent, any power granted to the city or authority pursuant to the provisions of the Regional Housing Law. The authorized authority may act in the name of the city, the authorizing authority or in its own name."

Section 7

Section 7. Section 11-3A-8 NMSA 1978 (being Laws 1994, Chapter 132, Section 8) is amended to read:

"11-3A-8. REQUIREMENTS RESPECTING LEASE.--

A. Prior to the leasing of any housing project, the authority shall determine and find the following:

(1) the amount necessary in each year to pay the principal of and the interest on the bonds proposed to be issued to finance the housing project; and

(2) the amount necessary to be paid each year into any reserve funds that the authority may deem advisable to establish in connection with the retirement of the proposed bonds and the maintenance of the housing project and, unless the terms under which the housing project is to be leased provide that the lessee shall maintain the housing project and carry all proper insurance with respect to it, the estimated cost of maintaining the housing project in good repair and keeping it properly insured.

B. The determinations and findings of the authority required to be made in this section shall be set forth in the proceedings under which the proposed bonds are to be issued.

C. Prior to the issuance of the bonds, the authority shall lease or sell the housing project to a lessee or purchaser under an agreement that is conditioned upon completion of the housing project and that provides for payment to the authority of rentals or payments in an amount that is found, based on the determinations and findings, to:

(1) pay the principal of and interest on the bonds issued to finance the housing project;

(2) build up and maintain any reserve deemed by the authority to be advisable in connection with the housing project; and

(3) pay the costs of maintaining the housing project in good repair and keeping it properly insured, unless the agreement of lease obligates the lessee to pay for the maintenance and insurance of the housing project."

Section 8

Section 8. Section 11-3A-9 NMSA 1978 (being Laws 1994, Chapter 132, Section 9) is amended to read:

"11-3A-9. NONPROFIT CORPORATIONS.--Every authority, in addition to other powers conferred by the Regional Housing Law, shall have, if authorized by resolution of its board, the power to create nonprofit corporations to carry out the powers and duties set forth in Section 11-3A-7 NMSA 1978. Such nonprofit corporations shall be subject to all of the duties and limitations imposed on the authority and its board of commissioners."

Section 9

Section 9. Section 11-3A-10 NMSA 1978 (being Laws 1994, Chapter 132, Section 10) is amended to read:

"11-3A-10. INTERESTED OFFICERS OR EMPLOYEES.--No officer or employee of an authority shall acquire any direct or indirect interest in any housing project or in any property included or planned to be included in any housing project of the authority or in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project of the authority."

Section 10

Section 10. Section 11-3A-12 NMSA 1978 (being Laws 1994, Chapter 132, Section 12) is amended to read:

"11-3A-12. STATE POLICY--OPERATION NOT FOR PROFIT.--

A. It is declared to be the policy of this state that each authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe and sanitary dwelling accommodations.

B. No authority shall construct or operate any housing project for profit.

C. An authority shall fix the rentals for dwellings in the housing projects it manages and operates at no higher rates than it finds to be necessary in order to produce revenues that, together with any grants or subsidies from the state or federal government or other sources for housing projects, will be sufficient to:

(1) pay, as they become due, the principal and interest on the bonds or other obligations of the authority issued under the Regional Housing Law;

(2) meet the cost of and provide for maintaining and operating the housing projects, including the cost of any insurance, the administrative expenses of the authority incurred in connection with the housing projects and the funding of any operational reserves as the authority shall deem appropriate;

(3) fund operational reserves to secure the payment of its bonds as the authority deems appropriate; and

(4) allow private, profit-making entities to enter into agreements with the authority, without the agreements affecting the nonprofit status of the authority or conflicting with the intent of the creation of the authority."

Section 11

Section 11. Section 11-3A-11 NMSA 1978 (being Laws 1994, Chapter 132, Section 11) is amended to read:

"11-3A-11. EMINENT DOMAIN.--In addition to the other purposes for which an authority may appropriate property, an authority shall have the right to acquire by the exercise of the power of eminent domain any real property that authority deems necessary for fulfilling the purposes of the Regional Housing Law after adopting a resolution declaring that the acquisition of the real property is necessary. An authority may exercise the power of eminent domain in the manner provided by Chapter 42A, Articles 1 and 3 NMSA 1978 or any other applicable provision of law. Title to property so acquired shall be taken in the name of the authority."

Section 12

Section 12. Section 11-3A-13 NMSA 1978 (being Laws 1994, Chapter 132, Section 13) is amended to read:

"11-3A-13. SALES, RENTALS AND TENANT SELECTION.--

A. In the operation or management of housing projects or the sale of any property pursuant to the Regional Housing Law, an authority shall:

(1) rent, lease or sell the dwelling accommodations in the housing project only to persons falling within the standards adopted by the authority;

(2) rent, lease or sell to a tenant dwelling accommodations consisting of the number of rooms, but no greater number, that it deems necessary to provide safe and sanitary accommodations to the proposed occupants without overcrowding; and

(3) reject any person as a tenant in any housing project if the person has an annual net income in excess of federally established standards.

B. Nothing contained in this section or Section 11-3A-12 NMSA 1978 shall be construed as limiting the power of an authority to vest in an obligee the right, in the event of a default by the authority, to take possession and operate a housing project or cause the appointment of a receiver for the housing project, free from all the restrictions imposed by this section or Section 11-3A-12 NMSA 1978."

Section 13

Section 13. Section 11-3A-14 NMSA 1978 (being Laws 1994, Chapter 132, Section 14) is amended to read:

"11-3A-14. BONDS.--

A. An authority shall have power to issue bonds from time to time in its discretion to finance in whole or in part the cost of the preparation, acquisition, purchase, lease, construction, reconstruction, improvement, alteration, extension or repair of any housing project or housing undertaking. An authority shall also have power to issue refunding bonds for the purpose of paying or retiring bonds previously issued by it pursuant to the provisions of the Regional Housing Law. In order to carry out the purposes of the Regional Housing Law, an authority may issue, upon proper resolution, bonds on which the principal and interest are payable:

(1) exclusively from the income and revenues of the housing project financed with the proceeds of such bonds; or

(2) exclusively from such income and revenues, together with grants and contributions from the federal government or other sources in aid of the project.

B. Neither the board of commissioners of an authority nor any person executing the bonds shall be liable personally on any bonds because the bonds were issued pursuant to the Regional Housing Law. The bonds issued under the provisions of the Regional Housing Law shall be payable solely from the sources provided in this section. The bonds shall not be a general obligation of the authority issuing them, the state or any local public body of this state, and they shall so state on their face. The bonds shall not constitute a debt or indebtedness within the meaning of any constitutional, statutory or charter debt limitation or restriction."

Section 14

Section 14. Section 11-3A-15 NMSA 1978 (being Laws 1994, Chapter 132, Section 15) is amended to read:

"11-3A-15. FORM AND SALE OF BONDS--INTEREST ON CERTAIN OBLIGATIONS.--

A. Bonds of an authority issued pursuant to the provisions of the Regional Housing Law shall be authorized by a resolution of the regional authority's board. The resolution, its trust indenture or the bonds to be issued shall set forth with regard to the bonds the date of issuance, the date of maturity, the rates of interest that the bonds will bear, the denominations, the form, either coupon or registered, the conversion or registration privileges, the rank or priority, the manner of execution, the medium and place of repayment and the terms of redemption, with or without premiums.

B. Obligations issued by an authority that are true loan obligations made to the farmers home administration of the United States department of agriculture or the department of housing and urban development may bear interest at a rate of interest not exceeding par.

C. The bonds shall be sold at not less than par at public sale held after notice published once at least five days prior to the sale in a newspaper having a general circulation in the authority and in a financial newspaper published in the city of New York, New York; provided that the bonds may be sold to the federal government at private sale at not less than par, and, in the event fewer than all of the bonds authorized in connection with any housing project are sold to the federal government, the balance of the bonds may be sold at private sale at not less than par at an interest cost to the authority that does not exceed the interest cost to the authority of the portion of the bonds sold to the federal government.

D. If an officer of an authority or any of its instrumentalities whose signature appears on bonds issued pursuant to the Regional Housing Law ceases to hold that office before the delivery of the bonds, the signature shall, nevertheless, be valid and sufficient for all purposes the same as if the officer had remained in office until delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to the Regional Housing Law shall be fully negotiable.

E. In any suit, action or proceedings involving the validity or enforceability of any bond of an authority or the security for the bonds, any bond reciting in substance that it has been issued by the authority to aid in financing a housing project to provide dwelling accommodations for persons of low income shall be conclusively deemed to have been issued for a housing project of that character, and the housing project shall be conclusively deemed to have been planned, located and constructed in accordance with the purposes and provisions of the Regional Housing Law."

Section 15

Section 15. Section 11-3A-16 NMSA 1978 (being Laws 1994, Chapter 132, Section 16) is amended to read:

"11-3A-16. PROVISIONS OF BONDS AND TRUST INDENTURES.--In connection with the issuance of bonds pursuant to the Regional Housing Law or the incurring of obligations under leases made pursuant to the Regional Housing Law and in order to secure the payment of bonds or obligations, an authority, in addition to its other powers, shall have power:

A. to pledge all or any part of the gross or net rents, fees or revenues of a housing project, and to mortgage and otherwise encumber a housing project financed with the proceeds of such bonds, to which its rights then exist or may thereafter come into existence;

B. to covenant against pledging all or any part of the rents, fees and revenues, or against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease or otherwise dispose of any housing project or any part thereof; and to covenant regarding what other or additional debts or obligations may be incurred by it;

C. to covenant regarding the bonds to be issued, the issuance of bonds in escrow or otherwise and the use and disposition of the proceeds of the bonds; to provide for the replacement of lost, destroyed or mutilated bonds; to covenant against extending the time for the payment of its bonds or interest accrued on the bonds; and to redeem the bonds, and to covenant for their redemption and to provide the terms and conditions of redemption;

D. to covenant, subject to the limitations contained in the Regional Housing Law, regarding the rents and fees to be charged in the operation of a housing project, the amount to be raised each year or other period of time by rents, fees and other revenues and regarding the use and disposition to be made of rents, fees and other revenues; to create or to authorize the creation of special funds for money held for construction or operating costs, debt service, reserves or other purposes; and to covenant regarding the use and disposition of the money held in such funds;

E. to prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the bondholders shall consent to and the manner in which such consent may be given;

F. to covenant as to the use of any or all of its real or personal property acquired pursuant to the Regional Housing Law; and to covenant regarding the maintenance of such real and personal property, the replacement of that property, the insurance to be carried on that property and the use and disposition of insurance money;

G. to covenant regarding the rights, liabilities, powers and duties arising upon the breach by the regional authority of any covenant, condition or obligation; and to covenant regarding and prescribe events of default and terms and conditions upon which the declaration and its consequences may be waived;

H. to vest in a trustee or the holders of bonds issued pursuant to the Regional Housing Law, or any specified proportion of them, the right to enforce the payment of bonds or any covenants securing or relating to the bonds; to vest in a trustee the right, in the event of a default by the authority, to take possession of any housing project or part of a housing project and, so long as the authority continues in default, to retain possession and use, operate and manage the housing project, to collect the rents and revenues arising from the housing project and to dispose of the money in accordance with the agreement of the authority and the trustee; to provide for the powers and duties of a trustee and to limit the liabilities of the trustee; and to provide the terms and conditions upon which the trustee or the holders of bonds, or any proportion of them, may enforce any covenant or rights securing or relating to the bonds; and

I. to exercise all or any part or combination of the powers granted in this section; to make covenants other than and in addition to the covenants expressly authorized, of like or different character; and to make covenants that will tend to make the bonds more marketable, notwithstanding that the covenants or acts may not be enumerated in this section."

Section 16

Section 16. Section 11-3A-17 NMSA 1978 (being Laws 1994, Chapter 132, Section 17) is amended to read:

"11-3A-17. CONSTRUCTION OF BOND PROVISIONS.--The Regional Housing Law without reference to other statutes of the state shall constitute full authority for the authorization and issuance of bonds pursuant to that act. No other act or law with regard to the authorization or issuance of bonds that provides for an election, requires an approval or in any way impedes or restricts the carrying out of the acts authorized by the provisions of the Regional Housing Law shall be construed as applying to any proceedings taken or acts performed pursuant to the Regional Housing Law."

Section 17

Section 17. Section 11-3A-18 NMSA 1978 (being Laws 1994, Chapter 132, Section 18) is amended to read:

"11-3A-18. CERTIFICATION OF ATTORNEY GENERAL.--An authority may submit to the attorney general any bonds to be issued by it after all proceedings for the issuance of the bonds have been taken. Upon the submission of the bonds and record of the proceedings to the attorney general, it is the duty of the attorney general to examine and pass upon the validity of the bonds and the regularity of all proceedings in connection with the bonds. If the bonds and proceedings conform to the provisions of the Regional Housing Law and are otherwise regular in form and if the bonds when delivered and paid for will constitute binding and legal obligations enforceable according to the terms of the sale and issuance, the attorney general shall certify in substance upon the back of each of the bonds that it is issued in accordance with the constitution and laws of New Mexico."

Section 18

Section 18. Section 11-3A-19 NMSA 1978 (being Laws 1994, Chapter 132, Section 19) is amended to read:

"11-3A-19. REMEDIES OF AN OBLIGEE.--An obligee of an authority shall have the right, in addition to all other rights that may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee to:

A. compel by mandamus, suit, action or proceeding at law or in equity, the authority and its officers, agents or employees to perform each and every term, provision and covenant contained in any contract of the authority with or for the benefit of the obligee and to require the carrying out of any or all covenants and agreements of the authority and the fulfillment of all duties imposed upon the authority by the Regional Housing Law; and

B. enjoin by suit, action or proceeding in equity, any acts or things that may be unlawful or in violation of any of the rights of the obligee of the authority."

Section 19

Section 19. Section 11-3A-20 NMSA 1978 (being Laws 1994, Chapter 132, Section 20) is amended to read:

"11-3A-20. ADDITIONAL REMEDIES CONFERRABLE TO AN OBLIGEE.--An authority shall have the power by its resolution, trust indenture, lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, or holding a lease, the right, in addition to all rights that may otherwise be conferred, upon

default as defined in the resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction:

A. to cause possession of any housing project or any part of a housing project to be surrendered to the obligee, and retained by the bondholder or trustee so long as the authority continues in default;

B. to obtain the appointment of a receiver of any housing project of the authority and of the rents and profits from the housing project. If a receiver is appointed, he may enter and take possession of all or a part of the housing project and, so long as the authority continues in default, operate and maintain the housing project and collect and receive all fees, rents, revenues or other charges arising from the housing project and shall keep the money in a separate account and apply it in accordance with the obligations of the authority as the court directs; and

C. to require the authority and its officers and agents to account for the money actually received as if it and they were the trustees of an express trust."

Section 20

Section 20. Section 11-3A-21 NMSA 1978 (being Laws 1994, Chapter 132, Section 21) is amended to read:

"11-3A-21. EXEMPTION OF PROPERTY FROM EXECUTION SALE.--All real property owned or held by an authority for the purposes of the Regional Housing Law shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall be issued against property of the authority or shall any judgment against an authority be a charge or lien on the authority's real property; provided, however, that the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given to them on rents, fees or revenues."

Section 21

Section 21. Section 11-3A-23 NMSA 1978 (being Laws 1994, Chapter 132, Section 23) is amended to read:

"11-3A-23. AID FROM STATE OR FEDERAL GOVERNMENT.-- In addition to the powers conferred upon an authority by other provisions of the Regional Housing Law, an authority is empowered to borrow money or accept contributions, grants or other financial assistance from the state or federal government for or in aid of any housing project within its area of operation and, to these ends, to comply with conditions, trust indentures, leases or agreements as necessary, convenient or desirable. It is the purpose and intent of the Regional Housing Law to authorize every authority to do all things necessary, convenient or desirable to secure the financial aid

or cooperation of the federal government in the undertaking, acquisition, construction, maintenance or operation of any housing project of an authority."

Section 22

Section 22. Section 11-3A-24 NMSA 1978 (being Laws 1994, Chapter 132, Section 24) is amended to read:

"11-3A-24. COOPERATION IN UNDERTAKING HOUSING PROJECTS.--For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of housing projects located within the area in which it is authorized to act, any local public body may, upon such terms as it may determine, with or without consideration:

A. dedicate, sell, convey or lease any of its interest in any property, or grant easements, licenses or any other rights or privileges to any authority;

B. cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works that it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects;

C. furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places that it is otherwise empowered to undertake;

D. cause services to be furnished for housing projects of the character which the local public body is otherwise empowered to furnish;

E. enter into agreements with respect to the exercise by the local public body of its powers relating to the repair, elimination or closing of unsafe, unsanitary or unfit dwellings;

F. do any things necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of housing projects;

G. incur the entire expense of any public improvements made by the local public body in exercising the powers granted in the Regional Housing Law; and

H. enter into agreements, which may extend over any period, notwithstanding any provision or rule of law to the contrary, with any authority respecting action to be taken by the local public body pursuant to any of the powers granted by the Regional Housing Law. Any law or statute to the contrary notwithstanding, any sale, conveyance, lease or agreement provided for in this section may be made by a local public body without appraisal, public notice, advertisement or public bidding."

Section 23

Section 23. Section 11-3A-25 NMSA 1978 (being Laws 1994, Chapter 132, Section 25) is amended to read:

"11-3A-25. PROCEDURE FOR EXERCISING POWERS.--The exercise by an authority or other local public body of the powers granted in the Regional Housing Law may be authorized by resolution of the governing body of the public body adopted by a majority of the members of its governing body present at a meeting of the governing body. The resolution may be adopted at the meeting at which the resolution is introduced. The resolution shall take effect immediately and need not be laid over or published or posted."

Section 24

Section 24. Section 11-3A-27 NMSA 1978 (being Laws 1994, Chapter 132, Section 27) is amended to read:

"11-3A-27. HOUSING BONDS--LEGAL INVESTMENTS-- SECURITY-- NEGOTIABLE.--The state and all public officers, municipal corporations, political subdivisions and public bodies; all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business; all insurance companies, insurance associations and other persons carrying on an insurance business; and all executors, administrators, guardians, trustees and other fiduciaries may legally invest sinking funds, money or other funds belonging to them or within their control in bonds or other obligations issued pursuant to the Regional Housing Law or issued by any authority or agency in the United States, when the bonds or other obligations are secured by a pledge of annual contributions to be paid by the United States government or any of its agencies. Bonds and other obligations shall be authorized security for all public deposits and shall be fully negotiable in this state. It is the purpose of the Regional Housing Law to authorize any persons, firms, corporations, associations, political subdivisions, bodies and officers, public or private, to use any funds owned or controlled by them, including, but not limited to, sinking, insurance, investment, retirement, compensation, pension and trust funds and funds held on deposit, for the purchase of any bonds or other obligations of an authority. Any bonds or other obligations of an authority shall be authorized security for all public deposits and shall be fully negotiable in this state; provided, however, that nothing contained in the Regional Housing Law shall be construed as relieving any person, firm or corporation from any duty of exercising reasonable care in selecting securities."

Section 25

Section 25. REPEAL.--Laws 1994, Chapter 132, Section 30 is repealed.
HOUSE BILL 713

CHAPTER 192

RELATING TO BORDER DEVELOPMENT; AMENDING THE BORDER DEVELOPMENT ACT; AMENDING, REPEALING AND ENACTING CERTAIN SECTIONS OF THE BORDER DEVELOPMENT ACT.

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

Section 1

Section 1. Section 58-27-3 NMSA 1978 (being Laws 1991, Chapter 131, Section 3, as amended) is amended to read:

"58-27-3. DEFINITIONS.--As used in the Border Development Act:

A. "authority" means the border authority;

B. "mortgage" means a mortgage or a mortgage and deed of trust or the pledge and hypothecation of any assets as collateral security;

C. "port of entry" means any international port of entry in New Mexico at which customs services are provided by the United States customs service;

D. "project" means any land or building or any other improvements acquired as a part of a port of entry or associated with a port of entry or to aid commerce in connection therewith, and all real and personal property deemed necessary in connection therewith, whether or not now in existence, which is suitable for use by the following or by any combination of the following:

(1) a port of entry, a foreign trade zone and other facilities to be used by any agency or entity of the United States government or by any other foreign international state or local public agency or entity at the port of entry or foreign trade zone;

(2) an industry for the manufacturing, processing or assembling of any agricultural, mining or manufactured product;

(3) a railroad switching yard, railroad station, bus terminal, airport or other passenger, commuter or mass transportation system or freight transportation system;

(4) a commercial business or other enterprise engaged in storing, warehousing, distributing or selling products of manufacturing, agriculture, mining or related industries, not including facilities designed for the distribution to the public of electricity or gas;

(5) an enterprise in which all or part of the activities of the enterprise involve supplying services to the general public or to governmental agencies or to a specific industry or customer;

(6) any industrial, commercial, agricultural, professional or other business enterprise seeking to occupy office space;

(7) infrastructure development involving acquiring, repairing, improving or maintaining storm sewers and other drainage improvements, sanitary sewers, sewage treatment or water utilities, including acquiring rights of way or water rights;

(8) infrastructure development involving reconstructing, resurfacing, maintaining, repairing or improving existing alleys, streets, roads or bridges or laying off, opening, constructing or acquiring new alleys, streets, roads or bridges, including acquiring rights of way;

(9) any industry that involves any water distribution or irrigation system, including pumps, distribution lines, transmission lines, fences, dams and similar facilities and equipment, including acquiring rights of way; or

(10) fire protection services or equipment or police protection services or equipment;

E. "property" means land, improvements to the land, buildings and improvements to the buildings, machinery and equipment of any kind necessary to the project, operating capital and any other personal properties deemed necessary in connection with the project;

F. "bond" means any bonds, notes or other obligations; and

G. "bondholder" means a person who is the owner of a bond, regardless whether the bond is registered."

Section 2

Section 2. Section 58-27-4 NMSA 1978 (being Laws 1991, Chapter 131, Section 4) is amended to read:

"58-27-4. BORDER AUTHORITY CREATED--MEMBERSHIP.--

A. The "border authority" is created. The authority is a state agency as defined in Section 6-3-1 NMSA 1978. It shall be administratively attached to the economic development department. It shall be subject to the same laws, regulations and administrative and budgetary controls that apply to a department in the executive branch of state government created pursuant to the Executive Reorganization Act,

including but not limited to the Audit Act, the Per Diem and Mileage Act, the Procurement Code, the Public Employees Retirement Act, the Open Meetings Act and the Public Records Act.

B. The authority shall consist of seven voting members, six of whom shall be appointed by the governor of which no more than three shall belong to the same political party and the seventh member shall be the secretary of the economic development department. The voting members appointed by the governor shall be confirmed by the state senate. The lieutenant governor shall serve as a nonvoting ex-officio member. The chairman may appoint a nonvoting advisory committee to provide advice and recommendations on authority matters.

C. The six voting members of the authority appointed by the governor shall be citizens of the state and shall serve for terms of four years except for the initial appointees who shall be appointed so that the terms are staggered after initial appointment. Initial appointees shall serve terms as follows: two members for two years, two members for three years and two members for four years."

Section 3

Section 3. Section 58-27-5 NMSA 1978 (being Laws 1991, Chapter 131, Section 5) is amended to read:

"58-27-5. AUTHORITY--MEMBERS' COMPENSATION.--Appointed voting members of the authority shall be reimbursed for expenses in accordance with those provisions of the Per Diem and Mileage Act that apply to nonsalaried public officers unless a different provision of that act applies to a specific member, in which case that member shall be paid under the applicable provision. Members and advisors shall receive no other compensation, perquisite or allowance for serving as a member of or advisor to the authority."

Section 4

Section 4. Section 58-27-6 NMSA 1978 (being Laws 1991, Chapter 131, Section 6, as amended) is amended to read:

"58-27-6. OFFICERS OF THE AUTHORITY.--The secretary of economic development shall serve as the chairman of the authority. Authority members shall elect any other officers from the membership that the authority determines appropriate."

Section 5

Section 5. Section 58-27-10 NMSA 1978 (being Laws 1991, Chapter 131, Section 10, as amended) is amended to read:

"58-27-10. POWERS AND DUTIES OF AUTHORITY.--

A. The authority shall:

(1) advise the governor and his staff, and the New Mexico finance authority oversight committee on methods, proposals, programs and initiatives involving the New Mexico-Chihuahua border area that may further stimulate the border economy and provide additional employment opportunities for New Mexico citizens;

(2) subject to the provisions of the Border Development Act, initiate, develop, acquire, own, construct and maintain border development projects;

(3) create programs to expand economic opportunities beyond the New Mexico-Chihuahua border area to other areas of the state;

(4) create avenues of communication between New Mexico and Chihuahua and the republic of Mexico concerning economic development, trade and commerce, transportation and industrial affairs;

(5) promote legislation that will further the goals of the authority and development of the border region;

(6) produce or cause to have produced promotional literature related to explanation and fulfillment of the authority's goals;

(7) actively recruit industries and establish programs that will result in the location and relocation of new industries in the state;

(8) coordinate and expedite the involvement of the executive department's border area efforts; and

(9) perform or cause to be performed environmental, transportation, communication, land use and other technical studies necessary or advisable for projects, programs or to secure port-of-entry approval by the United States and the Mexican governments and other appropriate governmental agencies.

B. The authority shall be authorized to also:

(1) solicit and accept federal, state, local and private grants of funds, property, financial or other aid in any form for the purpose of carrying out the provisions of the Border Development Act;

(2) adopt regulations governing the manner in which its business shall be transacted and the manner in which the powers of the authority shall be exercised and its duties performed;

(3) act as an applicant for and operator of port-of-entry facilities and, as the applicant, carry out all tasks and functions, including acquisition by

purchase or gift of any real property necessary for port-of-entry facilities, acquisition by purchase, gift or construction of any facilities or other real or personal property necessary for a port of entry and filing all necessary documents and follow-up of such filings with appropriate agencies; and

(4) as part of a port, give or transfer real property, facilities and improvements owned by the authority to the United States government."

Section 6

Section 6. Section 58-27-11 NMSA 1978 (being Laws 1991, Chapter 131, Section 11, as amended) is amended to read:

"58-27-11. ADDITIONAL POWERS OF THE AUTHORITY.--

A. Subject to prior approval by the state board of finance, the authority shall have the following powers:

(1) to acquire, whether by construction, purchase, gift or lease, one or more projects that shall be located within the state; provided the authority shall not have the power to operate any projects engaged in any enterprise of wholesale or retail distribution of water or collection and treatment of wastewater or any other water or wastewater improvements that serve or will serve residents of an area that has been approved for annexation to an incorporated municipality by the municipal boundary commission, if any of the boundaries of the incorporated municipality touch the boundary of El Paso, Texas;

(2) to sell, lease or otherwise dispose of any or all of its projects upon such terms and conditions as the authority may deem advisable and not in conflict with the provisions of the Border Development Act;

(3) to issue revenue bonds whether intended to be tax exempt or taxable under federal income tax laws and borrow money for the purpose of defraying the cost of acquiring, by construction or purchase or both, any project and to secure the payment of the bonds or the loan as provided in the Border Development Act. The authority shall not have the power to operate any project as a business or in any manner except as lessor thereof; and

(4) to refinance one or more projects.

B. The authority shall neither expend funds nor incur any indebtedness for any improvement, repair, maintenance or addition to any real or personal property owned by anyone other than the authority."

Section 7

Section 7. Section 58-27-12 NMSA 1978 (being Laws 1991, Chapter 131, Section 12) is amended to read:

"58-27-12. AUTHORITY STAFF--CONTRACTS.--

A. The authority shall hire an executive director who shall employ the necessary professional, technical and clerical staff to enable the authority to function efficiently.

B. The executive director of the authority shall direct the affairs and business of the authority, subject to the policies, control and direction of the authority.

C. The authority may contract with any other competent private or public organization or individual to assist in the fulfillment of its duties."

Section 8

Section 8. Section 58-27-14 NMSA 1978 (being Laws 1991, Chapter 131, Section 14) is amended to read:

"58-27-14. AUTHORITY FEES AND CHARGES.--Under such terms and conditions as may be prescribed by law, the authority may fix, alter, charge and collect tolls, fees or rentals and may impose any other charges for the use of or for services rendered by any authority facility, program or service."

Section 9

Section 9. Section 58-27-15 NMSA 1978 (being Laws 1991, Chapter 131, Section 15) is amended to read:

**"58-27-15. BORDER AUTHORITY--BONDING AUTHORITY--POWER TO
ISSUE REVENUE BONDS.--**

A. The authority may act as an issuing authority for the purposes of the Private Activity Bond Act.

B. The authority may issue revenue bonds for authority projects. With the exception of the port of entry or foreign trade zone, the border authority shall not be authorized to issue bonds for projects for a qualified entity, as defined in Section 6-21-3 NMSA 1978. Revenue bonds so issued may be considered appropriate investments for the severance tax permanent fund or collateral for the deposit of public funds if the bonds are rated not less than "A" by a national rating service and both the principal and interest of the bonds are fully and unconditionally guaranteed by a lease agreement executed by an agency of the United States government or by a corporation organized and operating within the United States, that corporation or the long-term debt of that corporation being rated not less than "A" by a national rating service. All bonds issued

by the authority are legal and authorized investments for banks, trust companies, savings and loan associations and insurance companies.

C. The authority may pay from the bond proceeds all expenses, premiums and commissions that the authority may deem necessary or advantageous in connection with the authorization, sale and issuance of the bonds."

Section 10

Section 10. A new section of the Border Development Act is enacted to read:

"BONDS SECURED BY TRUST INDENTURE.--The bonds may be secured by a trust indenture between the authority and a corporate trustee that may be either a bank having trust powers or a trust company. The trust indenture may contain reasonable provisions for protecting and enforcing the rights and remedies of bondholders, including covenants setting forth the duties of the authority in relation to the exercise of its powers and the custody, use and investment of the project revenues or other funds. The authority may provide in a trust indenture or otherwise for the payment of the proceeds of the bonds and the project revenue to the trustee under the trust indenture or other depository for disbursement with any safeguards the authority determines are necessary."

Section 11

Section 11. Section 58-27-16 NMSA 1978 (being Laws 1991, Chapter 131, Section 16) is amended to read:

"58-27-16. AUTHORITY REVENUE BONDS--TERMS.--Authority revenue bonds:

A. may have interest, appreciated principal value or any part thereof payable at intervals as may be determined by the authority;

B. may be subject to prior redemption or mandatory redemption at the authority's option at such time and upon such terms and conditions with or without the payment of such premium as may be provided by resolution of the authority;

C. may mature at any time not exceeding thirty years after the date of issuance;

D. may be serial in form and maturity or may consist of one or more bonds payable at one time or in installments or may be in such other form as may be determined by the authority;

E. may be in registered or bearer form or in book entry form through the facilities of a securities depository either as to principal or interest or both;

F. shall be sold for cash at, above or below par and at a price that results in a net effective interest rate that conforms to the Public Securities Act;

G. may be sold at public or negotiated sale; and

H. subject to the approval of the state board of finance, may enter into other financial arrangements if the authority determines that the arrangements will assist the authority in more effectively managing its interest costs or in more effectively managing its interest rate exposure."

Section 12

Section 12. Section 58-2-16.1 NMSA 1978 (being Laws 1993, Chapter 335, Section 4) is amended to read:

"58-27-16.1. AUTHORITY LOANS--TERMS.--If the authority borrows money from a financial institution or other entity:

A. the interest, principal payments or any part thereof shall be payable at intervals as may be determined by the authority;

B. the loan shall mature at any time not exceeding thirty years from the date of origination;

C. the principal amount of the loan shall not exceed the fair market value of the real or personal property to be acquired with the proceeds of the loan as evidenced by a certified appraisal in accordance with the Real Estate Appraisers Act; and

D. the loan shall be subject to the approval of the state board of finance."

Section 13

Section 13. Section 58-27-17 NMSA 1978 (being Laws 1991, Chapter 131, Section 17, as amended) is amended to read:

"58-27-17. AUTHORITY REVENUE BONDS AND BORROWED FUNDS NOT GENERAL OBLIGATIONS--AUTHORIZATION--AUTHENTICATION.--

A. Revenue bonds or refunding revenue bonds issued as authorized in the Border Development Act and other loans to the authority are:

(1) not general obligations of the state, any other agency of the state or of the authority; and

(2) payable only from the proper pledged revenues. Each bond or loan shall state that it is payable solely from the proper pledged revenues and that the bondholders or lenders may not look to any other fund for the payment of the interest and principal of the bond or the loan.

B. Revenue or refunding bonds or loans may be authorized by resolution of the authority, which resolution shall be approved by a majority of the voting members of the authority and by the state board of finance.

C. The bonds or loans shall be executed by the chairman and secretary of the authority and may be authenticated by any public or private transfer agent or registrar, or its successor, named or otherwise designated by the authority. Bonds, notes or other certificates of indebtedness of the authority may be executed as provided under the Uniform Facsimile Signature of Public Officials Act, and the coupons, if any, shall bear the facsimile signature of the chairman of the authority."

Section 14

Section 14. Section 58-27-18 NMSA 1978 (being Laws 1991, Chapter 131, Section 18, as amended) is amended to read:

"58-27-18. SECURITY FOR BONDS, NOTES OR CERTIFICATES OF INDEBTEDNESS.--The principal of and interest on any bonds, notes or other certificates of indebtedness issued pursuant to the provisions of the Border Development Act shall be secured by a pledge of the revenues out of which the bonds shall be made payable, may be secured by a mortgage, deed of trust note or other certificate of indebtedness covering all or any part of the project from which the revenues so pledged may be derived and may be secured by a pledge of any lease or installment sale agreement or other fees or revenues with respect to the project. The resolution of the authority under which bonds, notes or certificates of indebtedness are authorized to be issued or any mortgage, notes or certificates of indebtedness may contain any agreement and provisions customarily contained in instruments securing bonds, notes or certificates of indebtedness, including, without limiting the generality of the foregoing, provisions respecting the fixing and collection of all revenues from any project covered by the proceedings or mortgage, the terms to be incorporated in any lease or installment sale agreement with respect to the project, the maintenance and insurance of the project, the creation and maintenance of special funds from the revenues with respect to the project and the rights and remedies available in the event of default to the bondholders, to the trustee under a mortgage, deed of trust or trust indenture or to a lender, all as the authority deems advisable and not in conflict with the provisions of the Border Development Act; provided, however, that in making the agreements or provisions, the authority shall not have the power to obligate itself except with respect to the project and the application of the revenues from the project and shall not have the power to incur a pecuniary liability or a charge upon the state general credit or against the state taxing powers. The resolution authorizing any bonds and any mortgage securing the bonds, any note or other certificate of indebtedness may set

forth the procedure and remedies in the event of default in payment of the principal of or the interest on the bond, note or certificate of indebtedness or in the performance of any agreement. No breach of any agreement shall impose any pecuniary liability upon the state or any charge upon its general credit or against its taxing powers."

Section 15

Section 15. Section 58-27-19 NMSA 1978 (being Laws 1991, Chapter 131, Section 19, as amended) is amended to read:

"58-27-19. REQUIREMENTS RESPECTING RESOLUTION AND LEASE.--

A. Prior to approving a resolution for the issuance of bonds or the closing of a loan for any project, the authority shall determine and find the following in the resolution approving the issuance of the bonds or the closing of the loan:

(1) if the resolution is for the issuance of bonds, the principal and interest of the bonds to be issued shall be fully secured by a lease agreement or installment sale agreement executed by an agency of the United States government, by any state or local public agency or institution, by a corporation organized and operating within the United States that corporation or the long-term debt of that corporation being rated not less than "A" by a national rating service or by an irrevocable letter of credit issued by a chartered financial institution approved for this purpose by the state board of finance or by a bond insurance policy issued by an insurance company rated not less than "AA" by a national rating service;

(2) the amount necessary in each year to pay the principal of and the interest on the bonds proposed to be issued or the loan proposed to be obtained to finance the project; and

(3) the amount necessary to be paid each year into any reserve funds that the governing body may deem advisable to establish in connection with the retirement of the proposed bonds or the repayment of the loan and, in either case, the maintenance of the project. Unless the terms under which the project is to be leased or sold provide that the lessee or purchaser shall maintain the project and carry all proper insurance with respect thereto, the resolution shall set forth the estimated cost of maintaining the project in good repair and keeping it properly insured.

B. If the resolution is for the issuance of bonds, the determinations and findings of the authority required to be made by this section shall be set forth in the proceedings under which the proposed bonds are to be issued.

C. Prior to the issuance of the bonds or the closing of the loan, the authority may lease or sell the project to a lessee or purchaser under an agreement conditioned upon completion of the project and providing for payment to the authority of

such rentals or payments as, upon the basis of such determinations and findings, will be sufficient to:

(1) pay the principal of and interest on the bonds issued or on the loan to be obtained to finance the project;

(2) build up and maintain any reserve deemed by the authority to be advisable in connection with the financing of the project; and

(3) pay the costs of maintaining the project in good repair and keeping it properly insured, unless the agreement of lease obligates the lessee to pay for the maintenance and insurance of the project.

D. With prior approval of the state board of finance, the authority may borrow funds to purchase, lease, acquire or develop water rights, a water system or a wastewater collection and treatment system, provided the authority does not obligate itself or the state to any debt or obligation that cannot be paid from funds derived from the project.

E. Upon prior approval of the state board of finance, the authority may obtain a commitment from a financial institution to borrow funds, provided that closing of the loan and disbursement of the proceeds is conditional upon compliance with the requirements of the Border Development Act. Nothing in this section shall be deemed to authorize the authority to incur any debt obligation of the authority in connection with a loan commitment prior to the closing of the loan."

Section 16

Section 16. Section 58-27-20 NMSA 1978 (being Laws 1991, Chapter 131, Section 20) is amended to read:

"58-27-20. USE OF PROCEEDS FROM SALE OF BONDS.--The proceeds from the sale of any bonds issued under authority of the Border Development Act shall be applied only for the purpose for which the bonds were issued; provided, however, that any accrued interest and premiums received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold; and provided, further, that if for any reason any portion of such proceeds are not needed for the purpose for which the bonds were issued, then the balance of the proceeds shall be applied to the payment of the principal of or the interest on the bonds; and provided, further, that any portion of the proceeds from the sale of the bonds or any accrued interest and premium received in any such sale may, in the event the money will not be needed or cannot be effectively used to the advantage of the authority for the purposes provided herein, be invested in short-term, interest-bearing securities if such investment will not interfere with the use of the funds for the primary purpose of the project. The cost of acquiring any project shall be deemed to include the following:

A. the actual cost of construction of any part of a project, including architects', attorneys' and engineers' fees;

B. the purchase price of any part of a project that may be acquired by purchase;

C. the actual cost of the extension of any utility to the project site and all expenses in connection with the authorization, sale and issuance of the bonds to finance such acquisition; and

D. the interest on those bonds for a reasonable time prior to construction, during construction and not exceeding six months after completion of construction."

Section 17

Section 17. Section 58-27-22 NMSA 1978 (being Laws 1991, Chapter 131, Section 22) is amended to read:

"58-27-22. AUTHORITY REFUNDING BONDS--ESCROW--DETAIL.--

A. Refunding bonds issued pursuant to the Border Development Act shall be authorized by resolution of the authority. Any bonds that are refunded under the provisions of this section shall be paid at maturity or on any permitted prior redemption date in the amounts, at the time and places and, if called prior to maturity, in accordance with any applicable notice provisions, all as provided in the proceedings authorizing the issuance of the refunded bonds or otherwise appertaining thereto, except for any such bond that is voluntarily surrendered for exchange or payment by the holder or owner.

B. Provision shall be made for paying the bonds refunded at the time provided in Subsection A of this section. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds and may also be less than or the same as the principal amount of the bonds being refunded so long as provision is duly and sufficiently made for the payment of the refunded bonds.

C. The proceeds of refunding bonds, including any accrued interest and premium appertaining to the sale of refunding bonds, shall either be immediately applied to the retirement of the bonds being refunded or be placed in escrow in a commercial bank or trust company which possesses and is exercising trust powers and which is a member of the federal deposit insurance corporation, to be applied to the payment of the principal of, interest on and any prior redemption premium due in connection with the bonds being refunded; provided that such refunding bond proceeds, including any accrued interest and any premium appertaining to a sale of refunding bonds, may be applied to the establishment and maintenance of a reserve fund and to the payment of expenses incidental to the refunding and the issuance of the refunding bonds, the interest thereon

and the principal thereof or both interest and principal as the authority may determine. Nothing in this section requires the establishment of an escrow if the refunded bonds become due and payable within one year from the date of the refunding bonds and if the amounts necessary to retire the refunded bonds within that time are deposited with the paying agent for the refunded bonds. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other money available for its purpose. Any proceeds in escrow pending such use may be invested or reinvested in bills, certificates of indebtedness, notes or bonds which are direct obligations of or the principal and interest of which obligations are unconditionally guaranteed by the United States of America or in certificates of deposit of banks that are members of the federal deposit insurance corporation. Such proceeds and investments in escrow, together with any interest or other income to be derived from any such investment, shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable therefrom to pay the bonds being refunded as they become due at their respective maturities or due at any designated prior redemption date in connection with which the authority shall exercise a prior redemption option. Any purchaser of any refunding bond issued under the Border Development Act is in no manner responsible for the application of the proceeds thereof by the authority or any of its officers, agents or employees.

D. Refunding bonds may bear such additional terms and provisions as may be determined by the authority subject to the limitations in this section and Section 58-27-23 NMSA 1978."

Section 18

Section 18. Section 58-27-23 NMSA 1978 (being Laws 1991, Chapter 131, Section 23) is amended to read:

"58-27-23. AUTHORITY REFUNDING REVENUE BONDS--TERMS.--Authority refunding revenue bonds:

A. may have interest, appreciated principal value or any part thereof payable at intervals or at maturity as may be determined by the authority in the resolution;

B. may be subject to prior redemption at the authority's option at such time and upon such terms and conditions, with or without the payment of premiums, as may be provided by the resolution;

C. may be serial in form and maturity, may consist of a single bond payable in one or more installments, may be in both forms or may be in other forms as may be determined by the authority; and

D. shall be exchanged for the bonds and any mature unpaid interest being refunded at not less than par or sold at public or negotiated sale at, above or below par

and at a price which results in a net effective interest rate which does not exceed the maximum permitted by the Public Securities Act."

Section 19

Section 19. Section 58-27-24 NMSA 1978 (being Laws 1991, Chapter 131, Section 24) is amended to read:

"58-27-24. EXEMPTION FROM TAXATION.--Bonds authorized pursuant to the Border Development Act and the income from those bonds, all mortgages or other security instruments executed as security for those bonds, all lease and installment purchase agreements made pursuant to the provisions of that act and revenue derived from any lease or sale by the authority shall be exempt from all taxation by the state or any subdivision thereof."

Section 20

Section 20. Section 58-27-25 NMSA 1978 (being Laws 1991, Chapter 131, Section 25, as amended) is amended to read:

"58-27-25. FUND CREATED.--

A. The "border authority fund" is created in the state treasury. Separate accounts within the fund may be created for any project. Money in the fund is appropriated to the authority for the purposes of carrying out the provisions of the Border Development Act. Money in the fund shall not revert at the end of a fiscal year.

B. Except as provided in Subsection E of this section, any money received by the authority shall be deposited in the border authority fund, including, but not limited to:

(1) the proceeds of any bonds issued by the authority or from any loan to the authority made pursuant to the Border Development Act;

(2) interest earned upon any money in the fund;

(3) any property or securities acquired through the use of money belonging to the fund;

(4) all earnings of such property or securities;

(5) all lease or rental payments received from the authority from any project;

(6) all other money received by the authority from any public or private source; and

(7) any tolls, fees, rents or other charges imposed and collected by the authority.

C. Any tolls, fees, rents or other charges imposed and collected by the authority in excess of those imposed and collected for an approved project and for all debt service and reserves for the bonds that financed the project may be expended only as appropriated and in accordance with a budget approved by the state budget division of the department of finance and administration. Disbursements from the border authority fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the executive director of the authority or his designee pursuant to the Border Development Act; provided that in the event the position of executive director is vacant, vouchers may be signed by the chairman of the authority.

D. Earnings on the balance in the border authority fund shall be credited to the fund. In addition, in the event that the proceeds from the issuance of bonds or from money borrowed by the authority are deposited in the state treasury, interest earned on that money during the period commencing with the deposit in the state treasury until the actual transfer of the money to the fund shall be credited to the fund.

E. All proceeds from issuing revenue bonds shall be placed in trust with a chartered bank to be dispersed by the trustee, pursuant to the terms set forth in the bonding resolution adopted by the authority."

Section 21

Section 21. A new section of the Border Development Act is enacted to read:

"NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE--
OVERSIGHT POWERS AND DUTIES.--The New Mexico finance authority oversight committee shall serve as the oversight committee to the border authority. The New Mexico finance authority oversight committee shall:

A. monitor and oversee the operation of the border authority;

B. meet on a regular basis to receive and review reports from the border authority on implementation of the provisions of the Border Development Act and to review and approve regulations proposed for adoption pursuant to that act;

C. monitor and provide assistance and advice on the project financing program of the border authority;

D. oversee and monitor state and local government capital planning and financing and take testimony from state and local officials on border and port of entry capital needs;

E. provide advice and assistance to the border authority and cooperate with the executive branch of state government and local governments on planning, setting priorities for and financing of border and port of entry capital projects;

F. undertake an ongoing examination of the statutes, constitutional provisions, regulations and court decisions governing border and port of entry capital financing in New Mexico; and

G. report its findings and recommendations, including recommended legislation or necessary changes, to the governor and to each session of the legislature. The report and proposed legislation shall be made available on or before December 15 each year."

Section 22

Section 22. REPEAL.--Section 58-27-16.2 NMSA 1978 (being Laws 1993, Chapter 335, Section 9) is repealed.

HOUSE BILL 1116

CHAPTER 193

RELATING TO TORT LIABILITY; AMENDING THE EQUINE LIABILITY ACT TO INCLUDE LLAMAS; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 42-13-3 NMSA 1978 (being 1993, Chapter 117, Section 3) is amended to read:

"42-13-3. DEFINITIONS.--As used in the Equine Liability Act:

A. "equine" means a llama, horse, pony, mule, donkey or hinny;

B. "equine activities" means:

(1) equine shows, fairs, competitions, rodeos, gymkhanas, performances or parades that involve any or all breeds of equines and any of the equine disciplines;

(2) training or teaching activities;

(3) boarding equines;

(4) riding an equine belonging to another whether or not the owner has received some monetary consideration or other thing of equivalent value for the use of the equine or is permitting a prospective purchaser of the equine to ride, inspect or evaluate the equine;

(5) rides, shows, clinics, trips, hunts or other equine occasions of any type, however informal or impromptu, connected with any equine or nonequine group or club; and

(6) equine racing;

C. "behavior of equine animals" means the propensity of an equine animal to kick, bite, shy, buck, stumble, bolt, rear, trample, be unpredictable or collide with other animals, objects or persons;

D. "llama" means a South American camelid that is an animal of the genus lama, including llamas, alpacas, guanacos and vicunas; and

E. "rider" means a person, whether amateur or professional, who is engaged in an equine activity."

SENATE BILL 430

CHAPTER 194

CHANGING THE PURPOSE AND EXTENDING THE EXPENDITURE PERIOD; FOR A WINE MUSEUM IN THE TOWN OF BERNALILLO LOCATED IN SANDOVAL COUNTY.

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

Section 1

Section 1. APPROPRIATION--CHANGE IN PURPOSE--EXTENDING EXPENDITURE PERIOD.--The appropriation for fifteen thousand dollars (\$15,000) to the local government division of the department of finance and administration, pursuant to Paragraph (7) of Subsection P of Section 7 of Chapter 147 of Laws 1994 to plan a wine museum in Sandoval county shall not be expended for that purpose but is appropriated to renovate, make improvements to or construct a wine museum in the town of Bernalillo located in Sandoval county. The appropriation shall not revert at the end of the eighty-third fiscal year but may also be expended during fiscal year 1996. Any unexpended or unencumbered balance remaining at the end of fiscal year 1996 shall revert to the general fund.

HOUSE BILL 695

CHAPTER 195

RELATING TO HOUSING; AMENDING, REPEALING AND ENACTING SECTIONS OF THE UNIFORM OWNER-RESIDENT RELATIONS ACT; PROVIDING FOR THE EXPEDITED EVICTION OF RESIDENTS FOR SUBSTANTIAL VIOLATIONS OF THE UNIFORM OWNER-RESIDENT RELATIONS ACT; MODIFYING CERTAIN APPEAL PROVISIONS; ELIMINATING LANDLORD LIENS ON RESIDENTIAL PROPERTY.

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

Section 1

Section 1. Section 47-8-1 NMSA 1978 (being Laws 1975, Chapter 38, Section 1) is amended to read:

"47-8-1. SHORT TITLE.--Sections 47-8-1 through 47-8-51 NMSA 1978 may be cited as the "Uniform Owner-Resident Relations Act"."

Section 2

Section 2. Section 47-8-3 NMSA 1978 (being Laws 1975, Chapter 38, Section 3, as amended) is amended to read:

"47-8-3. DEFINITIONS.--As used in the Uniform Owner-Resident Relations Act:

A. "abandonment" means absence of the resident from the dwelling, without notice to the owner, for one full rental period or in excess of seven days, whichever is less; providing such absence occurs only after rent for the dwelling unit is delinquent;

B. "action" includes recoupment, counterclaim, set off, suit in equity and any other proceeding in which rights are determined, including an action for possession;

C. "codes" includes building codes, housing codes, health and safety codes, sanitation codes and any law, ordinance or governmental regulation concerning fitness for habitation or the construction, maintenance, operation, occupancy or use of a dwelling unit;

D. "deposit" means an amount of currency or instrument delivered to the owner by the resident as a pledge to abide by terms and conditions of the rental agreement;

E. "dwelling unit" means a structure, mobile home or the part of a structure, including a hotel or motel, that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household and includes a parcel of land, other than a mobile home lot, leased by its owner for use as a site for the parking of a mobile home;

F. "eviction" means any action initiated by the owner to regain possession of a dwelling unit and use of the premises under terms of the Uniform Owner-Resident Relations Act;

G. "fair rental value" is that value that is comparable to the value established in the market place;

H. "good faith" means honesty in fact in the conduct of the transaction concerned as evidenced by all surrounding circumstances;

I. "normal wear and tear" means deterioration that occurs based upon the use for which the rental unit is intended, without negligence, carelessness, accident, abuse or intentional damage of the premises, equipment or chattels of the owner by the residents or by any other person in the dwelling unit or on the premises with the resident's consent; however, uncleanliness does not constitute normal wear and tear;

J. "organization" includes a corporation, government, governmental subdivision or agency thereof, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest or any other legal or commercial entity;

K. "owner" means one or more persons, jointly or severally, in whom is vested:

(1) all or part of the legal title to property, but shall not include the limited partner in an association regulated under the Uniform Limited Partnership Act; or

(2) all or part of the beneficial ownership and a right to present use and enjoyment of the premises and agents thereof and includes a mortgagee in possession and the lessors, but shall not include a person or persons, jointly or severally, who as owner leases the entire premises to a lessee of vacant land for apartment use;

L. "person" includes an individual, corporation, entity or organization;

M. "premises" means facilities, facilities and appurtenances, areas and other facilities held out for use of the resident or whose use is promised to the resident coincidental with occupancy of a dwelling unit;

N. "rent" means payments in currency or in kind under terms and conditions of the rental agreement for use of a dwelling unit or premises, to be made to the owner by the resident, but does not include deposits;

O. "rental agreement" means all written agreements between an owner and resident and valid rules and regulations adopted under Section 47-8-23 NMSA 1978 embodying the terms and conditions concerning the use and occupancy of a dwelling unit or premises;

P. "resident" means a person entitled under a rental agreement to occupy a dwelling unit in peaceful possession to the exclusion of others and includes the owner of a mobile home renting premises, other than a lot or parcel in a mobile home park, for use as a site for the location of the mobile home;

Q. "roomer" means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility in a structure where one or more major facilities are used in common by occupants of the dwelling units. As referred to in this subsection, "major facility", in the case of a bathroom, means toilet and either a bath or shower and, in the case of a kitchen, means refrigerator, stove or sink;

R. "single family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment nor any other essential facility or service with any other dwelling unit;

S. "substantial violation" means any act or series of acts that occur in the dwelling unit or on the premises by the resident or with the resident's consent and:

(1) is considered a felony under the Controlled Substances Act;

(2) involves a deadly weapon and is considered a felony under the Criminal Code;

(3) is considered assault with intent to commit a violent felony, murder, criminal sexual penetration, robbery or burglary under the Criminal Code; or

(4) is considered criminal damage to property and a felony under the Criminal Code;

T. "term" is the period of occupancy specified in the rental agreement; and

U. "transient occupancy" means occupancy of a dwelling unit for which rent is paid on less than a weekly basis or where the resident has not manifested an intent to make the dwelling unit a residence or household."

Section 3

Section 3. Section 47-8-4 NMSA 1978 (being Laws 1975, Chapter 38, Section 4) is amended to read:

"47-8-4. PRINCIPLES OF LAW AND EQUITY.--Unless displaced by the provisions of the Uniform Owner-Resident Relations Act, the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, equitable abatement, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy or other validating or invalidating cause supplement its provisions."

Section 4

Section 4. Section 47-8-9 NMSA 1978 (being Laws 1975, Chapter 38, Section 9) is amended to read:

"47-8-9. EXEMPTIONS.--Unless created to avoid the application of the Uniform Owner-Resident Relations Act, the following arrangements are exempted by that act:

A. residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, counseling, religious, educational when room and board are an entity or similar service;

B. occupancy under a contract of sale of a dwelling unit or the property of which it is part, if the occupant is the purchaser or a person who succeeds to his interest;

C. occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

D. transient occupancy in a hotel or motel;

E. occupancy by an employee of an owner pursuant to a written rental or employment agreement that specifies the employee's right to occupancy is conditional upon employment in and about the premises; and

F. occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes."

Section 5

Section 5. Section 47-8-13 NMSA 1978 (being Laws 1975, Chapter 38, Section 13) is amended to read:

"47-8-13. SERVICE OF NOTICE.--

A. A person has notice of a fact if:

- (1) he has actual knowledge of it;
- (2) he has received a notice or notification of it; or
- (3) from all facts and circumstances known to him at the time in question he has reason to know that it exists.

B. A person notifies or gives a notice or notification to another by taking steps reasonably calculated to inform the other in ordinary course, whether or not the other actually comes to know of it.

C. A person receives a notice or notification:

- (1) when it comes to his attention;
- (2) where written notice to the owner is required, when it is mailed or otherwise delivered at the place of business of the owner through which the rental agreement was made or at any place held out by him as the place for receipt of the communication; or
- (3) if written notice to the resident is required, when it is delivered in hand to the resident or mailed to him at the place held out by him as the place for receipt of the communication, or in the absence of such designation, to his last known place of residence.

D. Notwithstanding any other provisions of this section, notice to a resident for nonpayment of rent shall be effective only when hand delivered or mailed to the resident or posted on an exterior door of the dwelling unit. In all other cases where written notice to the resident is required, even if there is a notice by posting, there must also be a mailing of the notice by first class mail or hand delivery of the notice to the resident. The date of a posting shall be included in any notice posted, mailed or hand delivered, and shall constitute the effective date of the notice. A posted notice shall be affixed to a door by taping all sides or placed in a fixture or receptacle designed for notices or mail.

E. Notice, knowledge or a notice or notification received by the resident or person is effective for a particular transaction from the time it is brought to the attention of the resident or person conducting that transaction, and in any event from the time it would have been brought to the resident's or person's attention if the resident or person had exercised reasonable diligence.

F. Where service of notice is required under the Uniform Owner-Resident Relations Act, and the item is mailed but returned as undeliverable, or where the last known address is the vacated dwelling unit, the owner shall serve at least one additional notice if an alternative address has been provided to the owner by the resident."

Section 6

Section 6. Section 47-8-15 NMSA 1978 (being Laws 1975, Chapter 38, Section 15) is amended to read:

"47-8-15. PAYMENT OF RENT.--

A. The resident shall pay rent in accordance with the rental agreement. In the absence of an agreement, the resident shall pay as rent the fair rental value for the use of the premises and occupancy of the dwelling unit.

B. Rent is payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit. Unless otherwise agreed, periodic rent is payable at the beginning of any term of one month or less and otherwise in equal monthly installments at the beginning of each monthly period. The date of one month to the same date of the following month shall constitute a term of one month.

C. Unless the rental agreement fixes a definite term, the residency is week-to-week in the case of a person who pays weekly rent and in all other cases month-to-month.

D. If the rental agreement provides for the charging of a late fee, and if the resident does not pay rent in accordance with the rental agreement, the owner may charge the resident a late fee in an amount not to exceed ten percent of the total rent payment for each rental period that the resident is in default. To assess a late fee, the owner shall provide notice of the late fee charged no later than the last day of the next rental period immediately following the period in which the default occurred.

E. An owner may not assess a fee from the resident for occupancy of the dwelling unit by a reasonable number of guests for a reasonable length of time. This shall not preclude charges for use of premises or facilities other than the dwelling unit by guests.

F. An owner may increase the rent payable by the resident in a month-to-month residency by providing written notice to the resident of the proposed increase at least thirty days prior to the periodic rental date specified in the rental agreement or, in the case of a fixed term residency, at least thirty days prior to the end of the term. In the case of a periodic residency of less than one month,

written notice shall be provided at least one rental period in advance of the first rental payment to be increased.

G. Unless agreed upon in writing by the owner and the resident, a resident's payment of rent may not be allocated to any deposits or damages."

Section 7

Section 7. Section 47-8-19 NMSA 1978 (being Laws 1975, Chapter 38, Section 19) is amended to read:

"47-8-19. OWNER DISCLOSURE.--

A. The owner or any person authorized to enter into a rental agreement on his behalf shall disclose to the resident in writing at or before the commencement of the residency the name, address and telephone number of:

(1) the person authorized to manage the premises; and

(2) an owner of the premises or a person authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for notices and demands.

B. The information required to be furnished by this section shall be kept current, and this section extends to and is enforceable against any successor, owner or manager.

C. A person designated under Paragraph (2) of Subsection A of this section becomes an agent of each person who is an owner for the purpose of service of process and receiving and receipting for notices and demands. A person designated under Paragraph (1) of Subsection A of this section becomes an agent of each person who is an owner for the purpose of performing the obligations of the owner under the Uniform Owner-Resident Relations Act and under the rental agreement.

D. Failure of the owner to comply with this section shall relieve the resident from the obligation to provide notice to the owner as required by the Uniform Owner-Resident Relations Act."

Section 8

Section 8. Section 47-8-22 NMSA 1978 (being Laws 1975, Chapter 38, Section 22) is amended to read:

"47-8-22. OBLIGATIONS OF RESIDENT.--The resident shall:

A. comply with obligations imposed upon residents by applicable minimum standards of housing codes materially affecting health or safety;

B. keep that part of the premises that he occupies and uses as clean and safe as the condition of the premises permit, and, upon termination of the residency, place the dwelling unit in as clean condition, excepting ordinary wear and tear, as when residency commenced;

C. dispose from his dwelling unit all ashes, rubbish, garbage and other waste in a clean and safe manner;

D. keep all plumbing fixtures in the dwelling unit or used by the resident as clean as their condition permits;

E. use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilation, air conditioning and other facilities and appliances including elevators, if any, in the premises;

F. not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so;

G. conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises;

H. abide by all bylaws, covenants, rules or regulations of any applicable condominium regime, cooperative housing agreement or neighborhood association not inconsistent with owner's rights or duties; and

I. not knowingly commit or consent to any other person knowingly committing a substantial violation."

Section 9

Section 9. Section 47-8-23 NMSA 1978 (being Laws 1975, Chapter 38, Section 23) is amended to read:

"47-8-23. APPLICATION OF RULES OR REGULATIONS.--An owner, from time to time, may adopt rules or regulations, however described, concerning the resident's use and occupancy of the premises. They are enforceable as provided in Section 47-8-33 NMSA 1978 against the resident only if:

A. their purpose is to promote the appearance, convenience, safety or welfare of the residents in the premises, preserve the owner's property from abusive use or make a fair distribution of services and facilities held out for the residents generally;

B. they are reasonably related to the purpose for which they are adopted;

C. they apply to all residents in the premises in a fair manner;

D. they are sufficiently explicit in their prohibition, direction or limitation of the resident's conduct to fairly inform him of what he must or must not do to comply;

E. they are not for the purpose of evading the obligations of the owner;
and

F. the resident is presented with copies of existing rules and regulations at the time he enters into the rental agreement and is presented notice of amendments to the rules and regulations and rules and regulations adopted subsequent to the time he enters into the rental agreement. A rule or regulation adopted after the resident enters into the rental agreement is enforceable against the resident if reasonable notice of its adoption is given to the resident and it does not work a substantial modification of his bargain."

Section 10

Section 10. Section 47-8-24 NMSA 1978 (being Laws 1975, Chapter 38, Section 24) is amended to read:

"47-8-24. RIGHT OF ENTRY.--

A. The resident shall, in accordance with provisions of the rental agreement and notice provisions as provided in this section, consent to the owner to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, prospective residents, workmen or contractors; provided that:

(1) unless otherwise agreed upon by the owner and resident, the owner may enter the resident's dwelling unit pursuant to this subsection only after giving the resident twenty-four hours written notification of his intent to enter, the purpose for entry and the date and reasonable estimate of the time frame of the entry;

(2) this subsection is not applicable to entry by the owner to perform repairs or services within seven days of a request by the resident or when the owner is accompanied by a public official conducting an inspection or a cable television, electric, gas or telephone company representative; and

(3) where the resident gives reasonable prior notice and alternate times or dates for entry and it is practicable or will not result in economic detriment to the owner, then the owner shall attempt to reasonably accommodate the alternate time of entry.

B. The owner may enter the dwelling unit without consent of the resident in case of an emergency.

C. The owner shall not abuse the right of access.

D. The owner has no other right of access except by court order, as permitted by this section if the resident has abandoned or surrendered the premises or if the resident has been absent from the premises more than seven days, as permitted in Section 47-8-34 NMSA 1978.

E. If the resident refuses to allow lawful access, the owner may obtain injunctive relief to compel access or terminate the rental agreement. In either case, the owner may recover damages.

F. If the owner makes an unlawful entry, or a lawful entry in an unreasonable manner, or makes repeated demands for entry that are otherwise lawful but that have the effect of unreasonably interfering with the resident's quiet enjoyment of the dwelling unit, the resident may obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case, the resident may recover damages."

"47-8-27.1. BREACH OF AGREEMENT BY OWNER AND RELIEF BY RESIDENT.--

A. Upon the failure of the owner to perform his obligations as required by Section 47-8-20 NMSA 1978, the resident shall give written notice to the owner specifying the breach and:

(1) if there is a material noncompliance by the owner with the rental agreement or a noncompliance with the Uniform Owner-Resident Relations Act materially affecting health and safety, the resident shall deliver a written notice to the owner specifying the acts and omissions constituting the breach. The notice shall state that the rental agreement will terminate upon a date not less than seven days after receipt of the notice if a reasonable attempt to remedy the breach is not made in seven days, and the rental agreement shall terminate as provided in the notice. If the owner makes a reasonable attempt to adequately remedy the breach prior to the date specified in the notice, the rental agreement shall not terminate. If the rental agreement is terminated by the resident and possession restored to the owner, the owner shall return the balance, if any, of prepaid rent and deposit to which the resident is entitled pursuant to the rental agreement or Section 47-8-18 NMSA 1978; or

(2) the resident may be entitled to abatement of the rent as provided in Section 47-8-27.2 NMSA 1978.

B. The rights provided under this section do not arise if the condition was caused by the deliberate or negligent act or omission of the resident, a member of his family or other person on the premises with his consent. If the noncompliance with the

rental agreement or with Section 47-8-20 NMSA 1978 results solely from circumstances beyond the owner's control, the resident is entitled only to those remedies set forth in Paragraph (1) or (2) of this subsection and is not entitled to an action for damages or injunctive relief against the owner.

C. The resident may also recover damages and obtain injunctive relief for any material noncompliance by the owner with the rental agreement or the provisions of Section 47-8-20 NMSA 1978. The remedy provided in this subsection is in addition to any right of the resident arising under Subsection A of this section.

D. If the resident proceeds under Paragraph (1) of Subsection A of this section, he shall not proceed under Paragraph (2) of Subsection A of this section in the same rental period for the same violation. If the resident proceeds under Paragraph (2) of Subsection A of this section, he shall not proceed under Paragraph (1) of Subsection A of this section in the same rental period for the same violation. A resident may, however, proceed under another paragraph of Subsection A of this section for a subsequent violation or the same violation that occurs in subsequent rental periods.

E. When the last day for remedying any breach pursuant to the written notice required under the Uniform Owner-Resident Relations Act occurs on a weekend or federal holiday, the period to remedy shall be extended until the next day that is not a weekend or federal holiday."

Section 12

Section 12. A new section of the Uniform Owner-Resident Relations Act, Section 47-8-27.2 NMSA 1978, is enacted to read:

"47-8-27.2. ABATEMENT.--

A. If there is a violation of Section 47-8-20 NMSA 1978, the resident shall give written notice to the owner of the conditions needing repair. If the owner does not remedy the conditions, the resident is entitled to abate rent as set forth below:

(1) one-third of the pro-rata daily rent for each day from the date the resident notified the owner of the conditions needing repair, through the day the conditions in the notice are remedied. If the conditions complained of continue to exist without remedy through any portion of subsequent rental period, the resident may abate at the same rate for each day that the conditions are not remedied; and

(2) one hundred percent of the rent for each day from the date the resident notified the owner of the conditions needing repair until the date the breach is cured if the dwelling is uninhabitable and the resident does not inhabit the dwelling unit as a result of the condition.

B. For each rental period in which there is a violation under Subsection A of this section, the resident may abate the rent or may choose an alternate remedy in accordance with the Uniform Owner-Resident Relations Act. The choice of one remedy shall not preclude the use of an alternate remedy for the same violation in a subsequent rental period.

C. If the resident's rent is subsidized in whole or in part by a government agency, the abatement limitation of one month's rent shall mean the total monthly rent paid for the dwelling and not the portion of the rent that the resident alone pays. Where there is a third party payor, either the payor or the resident may authorize the remedy and may abate rent payments as provided in this section.

D. Nothing in this section shall limit a court in its discretion to apply equitable abatement."

Section 13

Section 13. Section 47-8-28 NMSA 1978 (being Laws 1975, Chapter 38, Section 28) is amended to read:

"47-8-28. FAILURE TO DELIVER POSSESSION.--

A. At the time specified in the rental agreement for the commencement of occupancy, the owner shall deliver possession of the premises to the resident in compliance with the rental agreement and Section 47-8-20 NMSA 1978.

B. If the owner fails to deliver possession of the dwelling unit to the prospective resident as provided in Subsection A of this section, one hundred percent of the rent abates until possession is delivered and the prospective resident may:

(1) upon written notice to the owner, terminate the rental agreement effective immediately. Upon termination the owner shall return all prepaid rent and deposits; or

(2) demand performance of the rental agreement by the owner and, if the prospective resident elects, maintain an action for possession of the dwelling unit against any person wrongfully in possession or wrongfully withholding possession and recover the damages sustained by him and seek the remedies provided in Section 47-8-48 NMSA 1978.

C. If the owner makes reasonable efforts to obtain possession of the premises and returns prepaid rents, deposits and fees within seven days of receiving a resident's notice of termination, the owner shall not be liable for damages under this section."

Section 14

Section 14. Section 47-8-33 NMSA 1978 (being Laws 1975, Chapter 38, Section 33, as amended) is amended to read:

"47-8-33. BREACH OF AGREEMENT BY RESIDENT AND RELIEF BY OWNER.--

A. Except as provided in the Uniform Owner-Resident Relations Act, if there is noncompliance with Section 47-8-22 NMSA 1978 materially affecting health and safety or upon the initial material noncompliance by the resident with the rental agreement or any separate agreement, the owner shall deliver a written notice to the resident specifying the acts and omissions constituting the breach, including the dates and specific facts describing the nature of the alleged breach, and stating that the rental agreement will terminate upon a date not less than seven days after receipt of the notice if the breach is not remedied in seven days.

B. Upon the second material noncompliance with the rental agreement or any separate agreement by the resident, within six months of the initial breach, the owner shall deliver a written notice to the resident specifying the acts and omissions constituting the breach, including the dates and specific facts describing the nature of the alleged breach, and stating that the rental agreement shall terminate upon a date not less than seven days after receipt of the notice. If the subsequent breach occurs more than six months after the initial breach, it shall constitute an initial breach for purposes of applying the provisions of this section.

C. The initial notice provided in this section shall state that the rental agreement will terminate upon the second material noncompliance with the rental agreement or any separate agreement by the resident, within six months of the initial breach. To be effective, any notice pursuant to this subsection shall be given within thirty days of the breach or knowledge thereof.

D. If rent is unpaid when due and the resident fails to pay rent within three days after written notice from the owner of nonpayment and his intention to terminate the rental agreement, the owner may terminate the rental agreement and the resident shall immediately deliver possession of the dwelling unit; provided that tender of the full amount due, in the manner stated in the notice, prior to the expiration of the three-day notice shall bar any action for nonpayment of rent.

E. In any court action for possession for nonpayment of rent or other charges where the resident disputes the amount owed because:

(1) the resident has abated rent pursuant to Section 47-8-27.2 or 47-8-4 NMSA 1978; or

(2) the owner has allocated rent paid by the resident as payment for damages to the premises, then, if the owner is the prevailing party, the court shall enter a writ of restitution conditioned upon the right of the resident to remedy within three

days of entry of judgment. If the resident has satisfied the judgment within three days, the writ shall be dismissed. If the resident has not satisfied the judgment within three days, the owner may execute upon the writ without further order of the court.

F. Except as provided in the Uniform Owner-Resident Relations Act, the owner may recover damages and obtain injunctive or other relief for any noncompliance by the resident with the rental agreement or this section or Section 47-8-22 NMSA 1978.

G. In any judicial action to enforce a remedy for which prior written notice is required, relief may be granted based only upon the grounds set forth in the written notice served; provided, however, that this shall not bar a defendant from raising any and all defenses or counterclaims for which written notice is not otherwise required by the Uniform Owner-Resident Relations Act.

H. When the last day for remedying any breach pursuant to written notice required under this act occurs on a weekend or federal holiday, the period to remedy shall be extended until the next day that is not a weekend or federal holiday.

I. If the resident knowingly commits or consents to any other person in the dwelling unit or on the premises knowingly committing a substantial violation, the owner shall deliver a written notice to the resident specifying the time, place and nature of the act constituting the substantial violation and that the rental agreement will terminate upon a date not less than three days after receipt of the notice.

J. In any action for possession under Subsection I of this section, it shall be a defense that the resident is a victim of domestic violence. If the resident has filed for or secured a temporary domestic violence restraining order as a result of the incident that is the basis for the termination notice or as a result of a prior incident, then the writ of restitution shall not issue. In all other cases where domestic violence is raised as a defense, the court shall have the discretion to evict the resident accused of the violation, while allowing the tenancy of the remainder of the residents to continue undisturbed.

K. In any action for possession under Subsection I of this section, it shall be a defense that the resident did not know of, and could not have reasonably known of or prevented, the commission of a substantial violation by any other person in the dwelling unit or on the premises.

L. In any action for possession under Subsection I of this section, if the court finds that the action was frivolous or brought in bad faith, the petitioner shall be subject to a civil penalty equal to two times the amount of the monthly rent, plus damages and costs."

Section 15

Section 15. A new section of the Uniform Owner-Resident Relations Act, Section 47-8-34.1 NMSA 1978, is enacted to read:

"47-8-34.1 DISPOSITION OF PROPERTY LEFT ON THE PREMISES.--

A. Where the rental agreement terminates by abandonment pursuant to Section 47-8-34 NMSA 1978:

(1) the owner shall store all personal property of the resident left on the premises for not less than thirty days;

(2) the owner shall serve the resident with written notice stating the owner's intent to dispose of the personal property on a date not less than thirty days from the date of the notice. The notice shall also contain a telephone number and address where the resident can reasonably contact the owner to retrieve the property prior to the disposition date in the notice;

(3) the notice of intent to dispose of personal property shall be personally delivered to the resident or be sent by first class mail, postage prepaid, to the resident at his last known address. If the notice is returned as undeliverable, or where the resident's last known address is the vacated dwelling unit, the owner shall also serve at least one notice to such other address as has been provided to the owner by the resident, including the address of the resident's place of employment, or of a family member or emergency contact for which the owner has a record;

(4) the resident may contact the owner to retrieve the property at any time prior to the date specified in the notice for disposition of the property;

(5) the owner shall provide reasonable access and adequate opportunities for the resident to retrieve all of the property stored prior to any disposition; and

(6) if the resident does not claim or make attempt to retrieve the stored personal property prior to the date specified in the notice of disposition of the property, the owner may dispose of the stored personal property.

B. Where the rental agreement terminates by the resident's voluntary surrender of the premises, the owner shall store any personal property on the premises for a minimum of fourteen days from the date of surrender of the premises. The owner shall provide reasonable access to the resident for the purpose of the resident obtaining possession of the personal property stored. If after fourteen days from surrender of the premises, the resident has not retrieved all the stored personal property, the owner may dispose of the stored personal property.

C. Where the rental agreement terminates by a writ of restitution, the owner shall have no obligation to store any personal property left on the premises after

three days following execution of writ of restitution, unless otherwise agreed by the owner and resident. The owner may thereafter dispose of the personal property in any manner without further notice or liability.

D. Where the property has a market value of less than one hundred dollars (\$100), the owner has the right to dispose of the property in any manner.

E. Where the property has a market value of more than one hundred dollars (\$100), the owner may:

(1) sell the personal property under any provisions herein, and the proceeds of the sale, if in excess of money due and owing to the owner, shall be mailed to the resident at his last known address along with an itemized statement of the amounts received and amounts allocated to other costs, within fifteen days of the sale; or

(2) retain the property for his own use or the use of others, in which case the owner shall credit the account of the resident for the fair market value of the property against any money due and owing to the owner, and any value in excess of money due and owing shall be mailed to the resident at his last known address along with an itemized statement of the value allocated to the property and the amount allocated to costs within fifteen days of the retention of the property.

F. If the last known address is the dwelling unit, the owner shall also mail at least one copy of the accounting and notice of the sums for distribution, to the other address, if provided to the owner by the resident, such as, place of employment, family members, or emergency contact on record with the owner.

G. An owner may charge the resident reasonable storage fees for any time that the owner provided storage for the resident's personal property and the prevailing rate of moving fees. The owner may require payment of storage and moving costs prior to the release of the property.

H. The owner may not hold the property for any other debts claimed due or owing or for judgments for which an application for writ of execution has not previously been filed. The owner may not retain exempt property where an application for a writ of execution has been granted."

Section 16

Section 16. Section 47-8-36 NMSA 1978 (being Laws 1975, Chapter 38, Section 36) is amended to read:

"47-8-36. UNLAWFUL REMOVAL AND DIMINUTION OF SERVICES PROHIBITED.--

A. Except in case of abandonment, surrender or as otherwise permitted in the Uniform Owner-Resident Relations Act, an owner or any person acting on behalf of the owner shall not knowingly exclude the resident, remove, threaten or attempt to remove or dispossess a resident from the dwelling unit without a court order by:

- (1) fraud;
- (2) plugging, changing, adding or removing any lock or latching device;
- (3) blocking any entrance into the dwelling unit;
- (4) interfering with services or normal and necessary utilities to the unit pursuant to Section 47-8-32 NMSA 1978, including but not limited to electricity, gas, hot or cold water, plumbing, heat or telephone service, provided that this section shall not impose a duty upon the owner to make utility payments or otherwise prevent utility interruptions resulting from nonpayment of utility charges by the resident;
- (5) removing the resident's personal property from the dwelling unit or its premises;
- (6) removing or incapacitating appliances or fixtures, except for making necessary and legitimate repairs; or
- (7) any willful act rendering a dwelling unit or any personal property located in the dwelling unit or on the premises inaccessible or uninhabitable.

B. The provisions of Subsection A of this section shall not apply if an owner temporarily interferes with possession while making legitimate repairs or inspections as provided for in the Uniform Owner-Resident Relations Act.

C. If an owner commits any of the acts stated in Subsection A of this section, the resident may:

- (1) abate one hundred percent of the rent for each day in which the resident is denied possession of the premises for any portion of the day or each day where the owner caused termination or diminishment of any service for any portion of the day;
- (2) be entitled to civil penalties as provided in Subsection B of Section 47-8-48 NMSA 1978;
- (3) seek restitution of the premises pursuant to Sections 47-8-41 and Section 47-8-42 NMSA 1978 or terminate the rental agreement; and
- (4) be entitled to damages."

Section 17

Section 17. A new section of the Uniform Owner-Resident Relations Act, Section 47-8-36.1 NMSA 1978, is enacted to read:

"47-8-36.1. LANDLORD LIEN.--

A. There shall be no landlord's lien arising out of the rental of a dwelling unit to which the Uniform Owner-Resident Act applies.

B. Nothing in this section shall prohibit the owner from levy and execution on a judgment arising out of a claim for rent or damages."

Section 18

Section 18. Section 47-8-39 NMSA 1978, (being Laws 1975, Chapter 38, Section 39, as amended) is amended to read:

"47-8-39. OWNER RETALIATION PROHIBITED.--

A. An owner may not retaliate against a resident who is in compliance with the rental agreement and not otherwise in violation of any provision of the Uniform Owner-Resident Relations Act by increasing rent, decreasing services or by bringing or threatening to bring an action for possession because the resident has within the previous three months:

(1) complained to a government agency charged with responsibility for enforcement of a minimum building or housing code of a violation applicable to the premises materially affecting health and safety;

(2) organized or become a member of a residents' union, association or similar organization;

(3) acted in good faith to exercise his rights provided under the Uniform Owner-Resident Relations Act, including when the resident makes a written request or complaint to the owner to make repairs to comply with the owner's obligations under Section 47-8-20 NMSA 1978;

(4) made a fair housing complaint to a government agency charged with authority for enforcement of laws or regulations prohibiting discrimination in rental housing;

(5) prevailed in a lawsuit as either plaintiff or defendant or has a lawsuit pending against the owner relating to the residency;

(6) testified on behalf of another resident; or

(7) abated rent in accordance with the provisions of Sections 47-8-27.1 or 47-8-27.2 NMSA 1978.

B. If the owner acts in violation of Subsection A of this section, the resident is entitled to the remedies provided in Section 47-8-48 NMSA 1978 and the violation shall be a defense in any action against him for possession.

C. Notwithstanding the provisions of Subsection A of this section, the owner may increase the rent or change services upon appropriate notice at the end of the term of the rental agreement or as provided under the terms of the rental agreement if the owner can establish that the increased rent or changes in services are consistent with those imposed on other residents of similar rental units and are not directed at the particular resident, but are uniform."

Section 19

Section 19. Section 47-8-40 NMSA 1978 (being Laws 1975, Chapter 38, Section 40) is amended to read:

"47-8-40. ACTION FOR POSSESSION BY OWNER.--

A. Notwithstanding Subsections A and B of Section 47-8-39 NMSA 1978, an owner may bring an action for possession if:

(1) the violation of the applicable minimum building or housing code was caused primarily by lack of reasonable care by the resident or other person in his household or upon the premises with the resident's consent;

(2) the resident is in default in rent;

(3) there is a material noncompliance with the rental agreement that would otherwise give rise to the owner's right to terminate the rental agreement;

(4) a resident knowingly commits or consents to any other person in the dwelling unit or on the premises knowingly committing a substantial violation; or

(5) compliance with the applicable building or housing code requires alteration, remodeling or demolition that would effectively deprive the resident of use of the dwelling unit.

B. The maintenance of an action under Subsection A of this section does not release the owner from liability under Section 47-8-20 NMSA 1978."

Section 20

Section 20. Section 47-8-43 NMSA 1978 (being Laws 1975, Chapter 38, Section 43) is amended to read:

"47-8-43. ISSUANCE OF SUMMONS.--

A. The summons shall be issued and directed, with a copy of the petition attached to the summons, and shall state the cause of the complaint, the answer day for other causes of action and notice that if the defendant fails to appear, judgment shall be entered against him. The summons may be served pursuant to the New Mexico rules of civil procedure and returned as in other cases. Trial of the action for possession shall be set as follows:

(1) for any matter brought by the owner for possession, not less than seven or more than ten days after the service of summons; or

(2) for any matter brought by the resident for possession, not less than three or more than five days after the service of summons.

B. Upon finding of good cause, the court may continue the date of hearing on the action for possession for up to seven days from the date of the initial hearing."

Section 21

Section 21. Section 47-8-46 NMSA 1978 (being Laws 1975, Chapter 38, Section 46) is amended to read:

"47-8-46. WRIT OF RESTITUTION.--

A. Upon petition for restitution filed by the owner if judgment is rendered against the defendant for restitution of the premises, the court shall declare the forfeiture of the rental agreement and shall, at the request of the plaintiff or his attorney, issue a writ of restitution directing the sheriff to restore possession of the premises to the plaintiff on a specified date not less than three nor more than seven days after entry of judgment.

B. Upon a petition for restitution filed by the resident, if judgment is rendered against the defendant for restitution of the premises, the court shall, at the request of the plaintiff or his attorney, issue a writ of restitution directing the sheriff to restore possession of the premises to the plaintiff within twenty-four hours after entry of judgment."

Section 22

Section 22. Section 47-8-47 NMSA 1978 (being Laws 1975, Chapter 38, Section 47, as amended) is amended to read:

"47-8-47. APPEAL STAYS EXECUTION.--

A. If either party feels aggrieved by the judgment, he may appeal as in other civil actions. An appeal by the defendant shall stay the execution of any writ of restitution; provided that in cases in which the resident is the appellant, the execution of the writ of restitution shall not be stayed unless the resident shall, within five days of the filing of the notice of appeal, pay into an escrow account established by the trial court an amount equal to the rental amount that shall come due from the day following the judgment through the end of that rental period. The resident shall continue to pay the monthly rent established by the rental agreement at the time the complaint was filed, into the escrow account on a monthly basis on the date rent would otherwise become due. Payments into an escrow account pursuant to this subsection by a subsidized resident shall not exceed the actual amount of monthly rent paid by that resident. Such amounts shall be paid over to the owner monthly unless otherwise ordered by the trial court. Upon the resident's failure to make any monthly escrow deposit on the first day rent would otherwise come due, the owner shall serve a three-day written notice on the resident pursuant to Subsection B of Section 47-8-33 NMSA 1978. If the resident fails to deposit the rent within three days, a hearing on the issue shall be scheduled within ten days from the date the court is notified of the failure to deposit rent. The trial court shall lift the stay and issue the writ of restitution forthwith, unless the resident demonstrates a legal justification for failing to comply with the escrow requirement.

B. In order to stay the execution of a money judgment, the trial court, within its discretion, may require an appellant to deposit with the clerk of the trial court the amount of judgment and costs or to give a supersedeas bond in the amount of judgment and costs with or without surety. Any bond or deposit shall not be refundable during the pendency of any appeal.

C. If judgment is rendered in favor of the owner, all money remaining in the escrow account established by the court shall be paid over by the court, following judgment, to the owner without penalty or charges."

Section 23

Section 23. Section 47-8-48 NMSA 1978 (being Laws 1975, Chapter 38, Section 48) is amended to read:

"47-8-48. PREVAILING PARTY RIGHTS IN LAW SUIT--CIVIL PENALTIES.--

A. If suit is brought by any party to the rental agreement to enforce the terms and conditions of the rental agreement or to enforce any provisions of the Uniform Owner-Resident Relations Act, the prevailing party shall be entitled to reasonable attorneys' fees and court costs to be assessed by the court.

B. Any owner who violates a provision of Section 47-8-36 or 47-8-39 NMSA 1978 shall be subject to a civil penalty equal to two times the amount of the monthly rent.

C. Any resident who intentionally violates a provision of Subsection F of Section 47-8-22 NMSA 1978 shall be subject to a civil penalty equal to two times the amount of the monthly rent."

Section 24

Section 24. Section 47-8-49 NMSA 1978 (being Laws 1975, Chapter 38, Section 49) is amended to read:

"47-8-49. UNLAWFUL AND FORCIBLE ENTRY.--The laws and procedures of New Mexico pertaining to complaints of unlawful and forcible entry shall apply to actions for possession of any premises not subject to the provisions of the Uniform Owner-Resident Relations Act or the Mobile Home Park Act."

Section 25

Section 25. Section 48-3-5 NMSA 1978 (being Laws 1851-1852, p. 243, as amended) is amended to read:

"48-3-5. LANDLORDS' LIENS.--

A. Landlords have a lien on the property of their tenants that remains in or about the premises rented, for the rent due by the terms of any lease or other agreement in writing, and the property shall not be removed from the premises without the consent of the landlord until the rent is paid or secured. A lien shall not attach where the premises rented is a dwelling unit.

B. For purposes of this section, "dwelling unit" means a structure, mobile home, or a part of a structure that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household."

Section 26

Section 26. Section 48-3-16 NMSA 1978 (being Laws 1951, Chapter 51, Section 1) is amended to read:

"48-3-16. LIENS OF OWNERS AND OPERATORS OF PUBLIC ACCOMMODATIONS.--

A. The owner or operator of any hotel, motel, trailer court or campground shall have a lien upon the baggage, personal effects, trailer house, trailer, automobile,

motor vehicle and other property placed in or upon the premises of the hotel, motel, trailer court or campground of the owner or operator for the payment of any services and accommodations offered by the owner or operator to the person for transient occupancy, including gas, water, electricity or other things furnished to the person or at the request of the person.

B. For purposes of this section, "transient occupancy" means occupancy of the premises for which rent is paid on less than a weekly basis or by a person who has not manifested an intent to make the occupied premises a residence or to maintain a household on the premises."

Section 27

Section 27. REPEAL.--Sections 47-8-27, 47-8-29 and 47-8-32 NMSA 1978 (being Laws 1975, Chapter 38, Sections 27, 29 and 32) are repealed.

Section 28

Section 28. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 727 & 1077 AND SENATE JUDICIARY
COMMITTEE SUBSTITUTE FOR SENATE BILL 351

CHAPTER 196

RELATING TO UNEMPLOYMENT COMPENSATION; REQUIRING PARTICIPATION
IN REEMPLOYMENT SERVICES TO RECEIVE UNEMPLOYMENT BENEFITS;
AMENDING THE UNEMPLOYMENT COMPENSATION LAW; DECLARING AN
EMERGENCY.

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

Section 1

Section 1. Section 51-1-5 NMSA 1978 (being Laws 1969, Chapter 213, Section 2, as amended) is amended to read:

"51-1-5. BENEFIT ELIGIBILITY CONDITIONS.--

A. An unemployed individual shall be eligible to receive benefits with respect to any week only if he:

(1) has made a claim for benefits with respect to such week in accordance with such regulations as the secretary may prescribe;

(2) has registered for work at, and thereafter continued to report at, an employment office in accordance with such regulations as the secretary may prescribe, except that the secretary may, by regulation, waive or alter either or both of the requirements of this paragraph as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which he finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes of the Unemployment Compensation Law. No such regulation shall conflict with Subsection A of Section 51-1-4 NMSA 1978;

(3) is able to work and is available for work and is actively seeking permanent and substantially full-time work in accordance with the terms, conditions and hours common in the occupation or business in which the individual is seeking work, except that the secretary may, by regulation, waive this requirement for individuals who are on temporary layoff status from their regular employment with an assurance from their employers that the layoff shall not exceed four weeks or who have an express offer in writing of substantially full-time work that will begin within a period not exceeding four weeks;

(4) has been unemployed for a waiting period of one week. No week shall be counted as a week of unemployment for the purposes of this paragraph:

(a) unless it occurs within the benefit year that includes the week with respect to which he claims payment of benefits;

(b) if benefits have been paid with respect thereto; and

(c) unless the individual was eligible for benefits with respect thereto as provided in this section and Section 51-1-7 NMSA 1978, except for the requirements of this subsection and of Subsection E of Section 51-1-7 NMSA 1978;

(5) has, during his base period, been paid wages for insured work totaling not less than one and one-fourth his high-quarter wages;

(6) has reported to an office of the division in accordance with the regulations of the secretary for the purpose of an examination and review of the individual's availability for and search for work, for employment counseling, referral and placement and for participation in a job finding or employability training and development program. No individual shall be denied benefits under this section for any week that he is participating in a job finding or employability training and development program; and

(7) participates in reemployment services, such as job search assistance services, if the division determines that the individual is likely to exhaust

regular benefits and need reemployment services pursuant to a profiling system established by the division, unless the division determines that:

(a) the individual has completed such services; or

(b) there is justifiable cause for the individual's failure to participate in the services.

B. A benefit year as provided in Section 51-1-4 NMSA 1978 and Subsection P of Section 51-1-42 NMSA 1978 may be established; provided no individual may receive benefits in a benefit year unless, subsequent to the beginning of the immediately preceding benefit year during which he received benefits, he performed service in "employment", as defined in Subsection F of Section 51-1-42 NMSA 1978, and earned remuneration for such service in an amount equal to the lesser of three-thirtieths of the individual's high-quarter wages and six times his weekly benefit amount.

C. Benefits based on service in employment defined in Paragraph (8) of Subsection F of Section 51-1-42 and Section 51-1-43 NMSA 1978 are to be paid in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other services subject to the Unemployment Compensation Law; except that:

(1) benefits based on services performed in an instructional, research or principal administrative capacity for an educational institution shall not be paid for any week of unemployment commencing during the period between two successive academic years or terms or, when an agreement provides for a similar period between two regular but not successive terms, during such period or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if such individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms;

(2) benefits based on services performed for an educational institution other than in an instructional, research or principal administrative capacity shall not be paid for any week of unemployment commencing during a period between two successive academic years or terms if such services are performed in the first of such academic years or terms and there is a reasonable assurance that such individual will perform services for any educational institution in the second of such academic years or terms. If compensation is denied to any individual under this paragraph and the individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, the individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a claim and certified for benefits in accordance with the regulations of the division and for which benefits were denied solely by reason of this paragraph;

(3) benefits shall be denied to any individual for any week that commences during an established and customary vacation period or holiday recess if such individual performs any services described in Paragraphs (1) and (2) of this subsection in the period immediately before such period of vacation or holiday recess and there is a reasonable assurance that such individual will perform any such services in the period immediately following such vacation period or holiday recess;

(4) benefits shall not be payable on the basis of services specified in Paragraphs (1) and (2) of this subsection during the periods specified in Paragraphs (1), (2) and (3) of this subsection to any individual who performed such services in or to or on behalf of an educational institution while in the employ of a state or local governmental educational service agency or other governmental entity or nonprofit organization; and

(5) for the purpose of this subsection, to the extent permitted by federal law, "reasonable assurance" means a reasonable expectation of employment in a similar capacity in the second of such academic years or terms based upon a consideration of all relevant factors, including the historical pattern of reemployment in such capacity, a reasonable anticipation that such employment will be available and a reasonable notice or understanding that the individual will be eligible for and offered employment in a similar capacity.

D. Paragraphs (1), (2), (3), (4) and (5) of Subsection C of this section shall apply to services performed for all educational institutions, public or private, for profit or nonprofit, which are operated in this state or subject to an agreement for coverage under the Unemployment Compensation Law of this state, unless otherwise exempt by law.

E. Notwithstanding any other provisions of this section or Section 51-1-7 NMSA 1978, no otherwise eligible individual is to be denied benefits for any week because he is in training with the approval of the division nor is such individual to be denied benefits by reason of application of provisions in Paragraph (3) of Subsection A of this section or Subsection C of Section 51-1-7 NMSA 1978 with respect to any week in which he is in training with the approval of the division. The secretary shall provide, by regulation, standards for approved training and the conditions for approving such training for claimants, including any training approved or authorized for approval pursuant to Section 236(a)(1) and (2) of the Trade Act of 1974, as amended, or required to be approved as a condition for certification of the state's Unemployment Compensation Law by the United States secretary of labor.

F. Notwithstanding any other provisions of this section, benefits shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for the purposes of performing such services or was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United

States as a result of the application of the provisions of Section 212(d)(5) of the Immigration and Nationality Act; provided that:

(1) any information required of individuals applying for benefits to determine their eligibility for benefits under this subsection shall be uniformly required from all applicants for benefits; and

(2) no individual shall be denied benefits because of his alien status except upon a preponderance of the evidence.

G. Notwithstanding any other provision of this section, benefits shall not be paid to any individual on the basis of any services substantially all of which consist of participating in sports or athletic events or training or preparing to so participate for any week that commences during the period between two successive sport seasons, or similar periods, if such individual performed such services in the first of such seasons, or similar periods, and there is a reasonable assurance that such individual will perform such services in the latter of such seasons or similar periods.

H. Students who are enrolled in a full-time course schedule in an educational or training institution or program, other than those persons in an approved vocational training program in accordance with Subsection E of this section, shall not be eligible for unemployment benefits except as provided by regulations promulgated by the secretary.

I. As used in this subsection, "seasonal ski employee" means an employee who has not worked for a ski area operator for more than six consecutive months of the previous twelve months or nine of the previous twelve months. Any employee of a ski area operator who has worked for a ski area operator for six consecutive months of the previous twelve months or nine of the previous twelve months shall not be considered a seasonal ski employee. The following benefit eligibility conditions apply to a seasonal ski employee:

(1) except as provided in Paragraphs (2) and (3) of this subsection, a seasonal ski employee employed by a ski area operator on a regular seasonal basis shall be ineligible for a week of unemployment benefits that commences during a period between two successive ski seasons unless such individual establishes to the satisfaction of the secretary that he is available for and is making ive search for permanent full-time work;

(2) a seasonal ski employee who has been employed by a ski area operator during two successive ski seasons shall be presumed to be unavailable for permanent new work during a period after the second successive ski season that he was employed as a seasonal ski employee; and

(3) the presumption described in Paragraph (2) of this subsection shall not arise as to any seasonal ski employee who has been employed by the same

ski area operator during two successive ski seasons and has resided continuously for at least twelve successive months and continues to reside in the county in which the ski area facility is located.

J. Notwithstanding any other provision of this section, an otherwise eligible individual shall not be denied benefits for any week by reason of the application of Paragraph (3) of Subsection A of this section because he is before any court of the United States or any state pursuant to a lawfully issued summons to appear for jury duty."

Section 2

Section 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 737 WITH EMERGENCY CLAUSE
SIGNED APRIL 6, 1995

CHAPTER 197

RELATING TO THE PROCUREMENT CODE; PROVIDING FOR COUNTIES TO PURCHASE USED ROAD EQUIPMENT AT AUCTIONS.

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

Section 1

Section 1. Section 13-1-155 NMSA 1978 (being Laws 1984, Chapter 65, Section 128, as amended) is amended to read:

"13-1-155. PROCUREMENT OF USED ITEMS--APPRAISAL REQUIRED--
COUNTY ROAD EQUIPMENT EXCEPTION FOR AUCTIONS.--

A. A central purchasing office, when procuring used items of tangible personal property the estimated cost of which exceeds five thousand dollars (\$5,000), shall request bids as though the items were new, adding specifications that permit used items under conditions to be outlined in the bid specifications, including but not limited to requiring a written warranty for at least ninety days after date of delivery and an independent "certificate of working order" by a qualified mechanic or appraiser.

B. Notwithstanding the provisions of Subsection A of this section, the purchasing office for a county may purchase, at public or private auctions conducted by established, recognized commercial auction companies, used heavy equipment, having an estimated cost that exceeds five thousand dollars (\$5,000), for use in construction

and maintenance of county streets, roads and highways, subject to the following provisions:

(1) the commercial auction company shall have been in business for at least three years preceding the date of purchase and shall conduct at least five auctions annually;

(2) the value of each piece of equipment shall be appraised prior to the auction by a qualified disinterested appraiser retained and paid by the county, who shall make a written appraisal report stating the basis for the appraisal, including the age, condition and comparable sales, and stating that the appraiser has exercised his independent judgment without prior understanding or agreement with any person as to a target value or range of value;

(3) an independent "certificate of working condition" shall be obtained prior to the auction from a qualified mechanic who shall have made a detailed inspection of each major working or major functional part and certified the working condition of each; and

(4) the price paid, including all auction fees and buyer's surcharges, shall not exceed the appraised value."

HOUSE BILL 798

CHAPTER 198

RELATING TO ELECTIONS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE ELECTION CODE PERTAINING TO VOTER REGISTRATION AND THE ADMINISTRATION OF ELECTIONS; PROHIBITING VOTER COERCION; PROVIDING A PENALTY; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 1-1-16 NMSA 1978 (being Laws 1969, Chapter 240, Section 16) is amended to read:

"1-1-16. REGISTRATION OFFICER.--As used in the Election Code, "registration officer" means a county clerk or his authorized deputy or a member of the board of registration."

Section 2

Section 2. Section 1-2-2 NMSA 1978 (being Laws 1969, Chapter 240, Section 23, as amended) is amended to read:

"1-2-2. SECRETARY OF STATE--GENERAL DUTIES.--The secretary of state shall:

A. generally supervise all elections;

B. administer the Election Code in its statewide application especially as it relates to federal and state elective offices;

C. prepare instructions for the conduct of election and registration matters in accordance with the laws of the state;

D. advise county clerks, boards of county commissioners and boards of registration as to the proper methods of performing their duties prescribed by the Election Code;

E. report possible violations of the Election Code of which he has knowledge to the district attorney or the attorney general for prosecution;

F. cause to be published in pamphlet form and distributed to the county clerk of each county for use by precinct boards a sufficient number of copies of the Election Code as it is from time to time amended and supplemented;

G. be responsible for the education and training of county clerks regarding elections;

H. be responsible for the education and training of voting machine technicians; and

I. assist the county clerks in the education and training of registration officers and precinct boards."

Section 3

Section 3. A new section of the Election Code, Section 1-4-5.2 NMSA 1978, is enacted to read:

"1-4-5.2. AGENCY REGISTRATION--FORM.--

A. A qualified elector may register to vote at certain state government offices.

B. Pursuant to Section 1-4-47 NMSA 1978, a qualified elector who applies for a driver's license, license renewal or motor vehicle identification card may

simultaneously register to vote or file a change of address for voter registration purposes.

C. Pursuant to Section 1-4-48 NMSA 1978, a qualified elector may register to vote in any state agency that provides public assistance or services to persons with disabilities. The secretary of state may designate other state or local public offices with the agreement of those offices."

Section 4

Section 4. Section 1-4-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 66, as amended by Laws 1993, Chapter 314, Section 9 and also by Laws 1993, Chapter 316, Section 9) is amended to read:

"1-4-8. DUTIES OF COUNTY CLERK--ACCEPTANCE OF REGISTRATION--
CLOSE OF REGISTRATION.--

A. The county clerk shall receive certificates of registration at all times during normal working hours, except that he shall close registration at 5:00 p.m. on the twenty-eighth day immediately preceding any election at which the registration books are to be furnished to the precinct board.

B. Registration shall be reopened on the Monday following the election.

C. For purposes of a municipal or school election, the registration period for those precincts within the municipality or school district is closed at 5:00 p.m. on the twenty-eighth day immediately preceding the municipal or school election and is opened again on the Monday following the election.

D. During the period when registration is closed, the county clerk shall receive certificates of registration and other documents pertaining thereto but shall not file the certificate of registration in the registration book until the Monday following the election, at which time a voter identification card shall be mailed to the registrant at the address shown on the certificate of registration.

E. When the twenty-eighth day prior to any election referred to in this section is a Saturday, Sunday or legal holiday, registration shall be closed at 5:00 p.m. of the next succeeding regular business day for the office of the county clerk.

F. The county clerk shall accept for filing any certificate of registration that is hand delivered before 5:00 p.m. on the Friday immediately following the close of registration. The county clerk shall accept for filing any mailed certificate of registration postmarked not less than twenty-eight days prior to any election referred to in this section. The county clerk shall accept for filing any certificate of registration accepted at a state agency designated pursuant to Section 1-4-5.2 NMSA 1978 not later than twenty-eight days prior to any election."

Section 5

Section 5. Section 1-4-11 NMSA 1978 (being Laws 1969, Chapter 240, Section 67, as amended by Laws 1993, Chapter 314, Section 10 and also by Laws 1993, Chapter 316, Section 10) is amended to read:

"1-4-11. DUTIES OF COUNTY CLERK--UPON RECEIPT OF CERTIFICATES.--

A. Upon receipt of a complete certificate of registration, if in proper form, the county clerk shall determine if the qualified elector applying for registration is already registered in the registration records of the county. If the qualified elector is not already registered in the county and if the certificate of registration is received within the time allowed by law for filing certificates of registration in the county clerk's office, the county clerk shall sign or stamp, in the space provided therefor on each copy of the certificate, his name and the date the certificate was accepted for filing in the county registration records. A voter identification card shall be handed or mailed to the voter and to no other person.

B. If the qualified elector is already registered in the county as shown by his original certificate of registration currently on file in the county registration records, the county clerk shall not accept the new certificate of registration unless it is filed pursuant to Section 1-4-13, 1-4-15, 1-4-17 or 1-4-18 NMSA 1978. He shall stamp or write the word "rejected" on the new certificate of registration and hand or mail it to the voter with an explanation why the new certificate of registration was rejected and what remedial action, if any, the voter must take to bring his registration up to date."

Section 6

Section 6. Section 1-4-12 NMSA 1978 (being Laws 1969, Chapter 240, Section 68, as amended by Laws 1993, Chapter 314, Section 11 and also by Laws 1993, Chapter 316, Section 11) is amended to read:

"1-4-12. DUTIES OF COUNTY CLERK--FILING OF CERTIFICATES.--

A. Certificates of registration, if in proper form, shall be processed and filed by the county clerk as follows:

(1) a voter identification card shall be delivered or mailed to the voter; and

(2) the original certificate shall be filed alphabetically by surname and inserted into the county register pursuant to Section 1-5-5 NMSA 1978.

B. The county clerk shall, on Monday of each week, process all certificates of registration that are in proper form and that were received in his office up to 5:00 p.m. on the preceding Friday.

C. The contents of certificates of registration are public records."

Section 7

Section 7. Section 1-4-14 NMSA 1978 (being Laws 1969, Chapter 240, Section 70, as amended by Laws 1993, Chapter 314, Section 13 and also by Laws 1993, Chapter 316, Section 13) is amended to read:

"1-4-14. CERTIFICATE OF REGISTRATION--VOTER IDENTIFICATION CARD--REPLACEMENT OF LOST COPY.--If any certificate of registration or voter identification card is lost, the county clerk upon application of the voter shall make a replacement voter identification card from the certificates in his office. The application for replacement shall be retained for six years by the county clerk in a file established for that purpose. The voter identification card issued pursuant to the application shall be stamped "Replacement Copy"."

Section 8

Section 8. Section 1-4-15 NMSA 1978 (being Laws 1969, Chapter 240, Section 71, as amended by Laws 1993, Chapter 314, Section 14 and also by Laws 1993, Chapter 316, Section 14) is amended to read:

"1-4-15. REGISTRATION--CHANGE OF PARTY AFFILIATION.--

A. A voter may change his designated party affiliation by executing a certificate of registration for change of party affiliation.

B. A voter who has previously declined to designate a party affiliation but who desires to designate a party affiliation shall make an original designation of party affiliation by executing a certificate of registration for designation of party affiliation."

Section 9

Section 9. Section 1-4-23 NMSA 1978 (being Laws 1969, Chapter 240, Section 79, as amended by Laws 1993, Chapter 314, Section 19 and also by Laws 1993, Chapter 316, Section 19) is amended to read:

"1-4-23. REVIEW OF REGISTRATION--BOARD OF REGISTRATION--INACTIVE VOTER LIST CREATION.--Beginning on the third Monday of March of each odd-numbered year, the board of registration shall review all certificates of registration for failure of the voter to vote and, based on that review, shall establish a list of inactive voters. Voters who fail to vote in at least one statewide or local election in a two-year period shall be placed on an inactive voter list."

Section 10

Section 10. Section 1-4-24 NMSA 1978 (being Laws 1969, Chapter 240, Section 80, as amended by Laws 1993, Chapter 314, Section 20 and also by Laws 1993, Chapter 316, Section 20) is amended to read:

"1-4-24. CANCELLATION OF REGISTRATION--COUNTY CLERK--GROUNDS.-
-The county clerk shall cancel certificates of registration for the following reasons:

- A. death of the voter;
- B. legal insanity of the voter;
- C. a felony conviction of the voter;
- D. at the request of the voter; or
- E. at the direction of the board of registration."

Section 11

Section 11. Section 1-4-28 NMSA 1978 (being Laws 1975, Chapter 255, Section 46, as amended by Laws 1993, Chapter 314, Section 24 and also by Laws 1993, Chapter 316, Section 24) is amended to read:

"1-4-28. CANCELLATION OF REGISTRATION--CERTAIN FAILURE TO VOTE--
SUSPENSION--NOTICE.--

A. The failure of a voter to vote in at least one statewide or local election in a four-year period after being placed on an inactive voter list shall be grounds for cancellation of registration by the board of registration.

B. The secretary of state shall prescribe procedures for ascertaining whether a voter has voted at least once in the last four-year period, establishing an inactive voter list and providing notice of inactive status to voters on the inactive voter list.

C. After a determination that a voter has apparently not voted, the board of registration shall suspend the certificate of registration for sixty days.

D. The county clerk, upon direction of the board of registration, shall mail a notice to the voter at his residence address shown on the certificate of registration.

E. The certificate of registration shall be canceled if, after being placed on the inactive voter list, the voter fails to vote at least once in any statewide or local election in the ensuing four-year period and the voter fails to respond to notification of intended cancellation."

Section 12

Section 12. Section 1-4-47 NMSA 1978 (being Laws 1991, Chapter 80, Section 4) is amended to read:

"1-4-47. DRIVER'S LICENSE VOTER REGISTRATION.--

A. Every person applying for a driver's license, to renew a driver's license or for an identification card shall, if otherwise qualified to register to vote, with the consent of the applicant be simultaneously registered to vote.

B. The secretary of taxation and revenue shall select certain employees of the motor vehicle division of the taxation and revenue department or employees of entities on contract to provide field services to the motor vehicle division of the taxation and revenue department to provide assistance to any applicant requesting voter registration assistance.

C. Every motor vehicle division office, field office or contract field office of the division shall display within the offices clearly visible signs stating "voter registration assistance available". Personnel in each office shall advise any applicant for licensure, renewal or for an identification card that initial voter registration or a change of address for voter registration may be made simultaneously with the motor vehicle application.

D. No motor vehicle division employee or contractor may intentionally influence the prospective registrant in the selection of political party, or independent status, by word or act. No motor vehicle division employee or contractor may reveal the existence of or the nature of the voter registration to anyone other than a registration officer.

E. Any voter registration made or accepted at a motor vehicle division office or motor vehicle division field office shall be transmitted to the appropriate registration officer within ten calendar days."

Section 13

Section 13. A new section of the Election Code, Section 1-4-48 NMSA 1978, is enacted to read:

"1-4-48. AGENCY REGISTRATION.--

A. The secretary of state shall adopt and publish in accordance with the State Rules Act regulations for the administration of a state-agency-based voter registration program. The regulations shall provide for distribution of voter registration forms, provisions for the acceptance of voter registration forms and procedures for reporting voter registration activity in accordance with the federal National Voter Registration Act of 1993.

B. Voter registration shall be made available at all state agencies providing public assistance or services to people with disabilities. The secretary may, with the agreement of those offices, designate other state and local public offices to provide voter registration services.

C. Each state agency participating in the voter registration program shall maintain sufficient records for the secretary of state to comply with federal voter registration reporting requirements. Any records maintained by the state agency regarding voter registration activities in that agency are confidential and shall not be released as public records.

D. Any voter registration made or accepted at a state agency pursuant to this section shall be transmitted to the appropriate registration officer within ten calendar days.

E. No state agency employee or agency contractor who participates in the voter registration process may intentionally influence the prospective registrant in the selection of political party, or independent status, by word or act. No state agency employee or agency contractor who participates in the voter registration process may reveal the existence of or the nature of the voter registration to anyone other than a registration officer."

Section 14

Section 14. Section 1-12-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 247, as amended by Laws 1993, Chapter 314, Section 55 and also by Laws 1993, Chapter 316, Section 55) is amended to read:

"1-12-8. CONDUCT OF ELECTION--VOTER'S COPY OR CERTIFICATE VOTING.--

A. Notwithstanding the provisions of Section 1-12-7 NMSA 1978, a person shall be permitted to vote even though his original certificate of registration cannot be found in the county register or even if his name does not appear on the signature roster, provided:

(1) his residence is within the boundaries of the precinct in which he offers to vote;

(2) his name is not on the list of persons submitting absentee ballots;

(3) he presents his voter identification card that appears on its face to be valid or he presents a certificate of eligibility bearing the seal and signature of the county clerk stating that the voter's duplicate certificate of registration is on file at the county clerk's office and that such voter has not received an absentee ballot nor has he

been purged and that he shall be permitted to vote in the precinct and election specified therein, provided that such authorization shall not be given orally by the county clerk; and

(4) he executes a statement swearing or affirming to the best of his knowledge that he is a qualified elector, currently registered and eligible to vote in that precinct and has not cast a ballot or voted in that election.

B. An election judge shall insert the voter's ballot number or voter number on the public counter on the voter's copy of the certificate of registration or certificate of eligibility and on the executed statement. The voter's copy of the certificate of registration or certificate of eligibility shall be retained by the precinct board and the voter's copy of his certificate of registration or certificate of eligibility, along with the executed statement, shall be returned with the election returns to the county clerk.

C. Knowingly executing a false statement constitutes perjury as provided in the Criminal Code of this state, and voting on the basis of such falsely executed statement constitutes fraudulent voting.

D. To be valid, a voter's copy of the certificate of registration dated after June 30, 1955 shall bear the signature stamp of the county clerk.

E. Within thirty days after the election, the county clerk shall examine each executed statement and investigate the truth of the statements made therein. The county clerk shall also determine the reason why the original certificate of registration of the voter was not in the county register or the signature roster sent to the precinct board and shall take actions to avoid similar circumstances requiring the use of the voter's copy of the certificate of registration or certificate of eligibility by voters in future elections."

Section 15

Section 15. A new section of the Election Code is enacted to read:

"COERCION OF VOTERS.--Coercion of voters consists of compelling any voter at any election to vote for or to refrain from voting for any candidate, party, proposition, question or constitutional amendment either against the voter's will or in the absence of the voter's ability to understand the purpose and effect of his vote. Whoever commits coercion of voters is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978."

Section 16

Section 16. Section 3-8-7 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-8-5, as amended) is amended to read:

"3-8-7. MUNICIPAL CLERK--COUNTY CLERK--ELECTION DUTIES.--

A. The municipal clerk shall:

- (1) administer the municipal election;
- (2) with the consent of the governing body, secure the necessary polling places;
- (3) see that all necessary supplies and equipment are present at each polling place prior to the opening of the polls on the day of the election;
- (4) certify voting machines;
- (5) conduct an election school for precinct board members as required in Section 3-8-21 NMSA 1978; and
- (6) keep the office of the municipal clerk open on election day for the purpose of receiving ballot boxes, election returns and materials until all election returns and materials are received; and
- (7) within fifteen days of the holding of any municipal election, forward to the county clerk a listing of all individuals voting in the municipal election.

B. Within fifteen days of the adoption of the election resolution, the municipal clerk shall request in writing from the county clerk the registered voter lists and signature rosters containing only the qualified electors eligible to vote in the municipal election. At least seven days prior to every municipal election, the county clerk shall furnish to the municipal clerk the registered voter list and signature roster containing only the qualified electors eligible to vote in the municipal election. A municipal clerk shall not amend, add or delete any information to or from the registered voter list. The registered voter list shall constitute the registration list for the municipal election. The registered voter list does not have to be returned to the county clerk. The municipality shall bear the reasonable cost of preparation of the voter lists and signature rosters."

Section 17

Section 17. REPEAL.--Sections 1-4-39 through 1-4-45 NMSA 1978 (being Laws 1971, Chapter 195, Sections 1 and 2 and Laws 1969, Chapter 240, Sections 97 through 101, as amended) are repealed.

Section 18

Section 18. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 754 WITH EMERGENCY CLAUSE
SIGNED APRIL 6, 1995

CHAPTER 199

RELATING TO WATER; AMENDING SECTION 73-11-27 NMSA 1978 (BEING LAWS 1919, CHAPTER 20, SECTION 31, AS AMENDED) TO INCREASE THE DEBT LIMIT FOR CERTAIN IRRIGATION DISTRICTS IN ORDER TO IMPROVE WATER CONSERVATION.

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

Section 1

Section 1. Section 73-11-27 NMSA 1978 (being Laws 1919, Chapter 20, Section 31, as amended) is amended to read:

"73-11-27. BORROWING MONEY--LIMITATION ON INDEBTEDNESS.--

A. To secure money for the operation, maintenance, improvement or betterment of the works of the district or in case of emergency, the board of directors has the power to borrow money, with interest not exceeding the rate permitted under Section 56-8-11.1 NMSA 1978, upon such terms and conditions as deemed for the best interest of the district, not to exceed, however, in the aggregate, fifteen dollars (\$15.00) per acre upon all district lands.

B. The board of directors or other officers of the district have no power to incur any debt or liability whatever, either by issuing bonds or otherwise, except as expressly provided by law, and any debt or liability incurred in excess of such express provision is void.

C. Lease agreements and lease-purchase agreements do not constitute the creation of debt."

HOUSE BILL 845

CHAPTER 200

RELATING TO MUNICIPAL ELECTIONS; AMENDING CERTAIN SECTIONS OF THE MUNICIPAL ELECTION CODE.

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

Section 1

Section 1. Section 3-8-1 NMSA 1978 (being Laws 1985, Chapter 208, Section 9, as amended) is amended to read:

"3-8-1. ELECTION CODE--SHORT TITLE--PURPOSE--"SHALL" AND "MAY"--
HEADINGS--CONSTRUCTION--COUNTING DAYS.--

A. Chapter 3, Articles 8 and 9 NMSA 1978 may be cited as the "Municipal Election Code".

B. It is the purpose of the Municipal Election Code to:

- (1) secure the secrecy of the ballot;
- (2) secure the purity and integrity of elections;
- (3) guard against the abuse of the elective franchise; and
- (4) provide for the efficient administration and conduct of elections.

C. As used in the Municipal Election Code, "shall" is mandatory and "may" is permissive.

D. Article and section headings do not in any manner affect the scope, meaning or intent of the provisions of the Municipal Election Code.

E. The Municipal Election Code shall govern the conduct of all aspects of all municipal elections except when the Municipal Election Code is silent or is in conflict with the state Election Code with respect to any procedures or protections required of the state by federal law, then the state Election Code shall govern, as appropriate. The provisions of the Municipal Election Code shall not apply to home rule municipalities or municipalities incorporated under special act unless the Municipal Election Code is adopted by reference by such municipality.

F. When computing time, the first day shall be excluded and the last included unless the last falls on a Sunday or legal holiday, in which case, the time prescribed shall be extended to include the whole of the following business day.

G. In the event that a municipality is required by law or ordinance to elect any or all members of the governing body from districts, then that municipality shall adopt an ordinance setting forth rules and regulations necessary to implement elections by district, and such municipal ordinance may conflict with and supersede the Municipal Election Code to the extent such ordinance must do so to legally implement elections by district."

Section 2

Section 2. Section 3-8-33 NMSA 1978 (being Laws 1985, Chapter 208, Section 41, as amended) is amended to read:

"3-8-33. REGULAR MUNICIPAL ELECTION--CERTIFICATES OF ELECTION--QUALIFICATION OF OFFICIAL--TAKING OFFICE.--

A. After canvass and not later than 5:00 p.m. on the sixth day following the election, the municipal clerk shall prepare a certificate of election for each candidate elected and shall post, in the office of the municipal clerk, the election results and the date, time and place where the oath of office will be administered.

B. Each candidate elected shall personally appear before the municipal clerk after canvass and after the municipal clerk has prepared the certificate of election and not later than 7:00 p.m. on the sixth day following the election. When the candidate appears, the municipal clerk shall deliver the certificate of election to the candidate and the candidate shall sign a written statement acknowledging receipt of the certificate of election and acknowledging that the candidate is legally qualified to hold office. The municipal clerk shall file a copy of the certificate of election and the written receipt and qualification statement in the official minute book of the municipality. Not later than 7:00 p.m. on the sixth day following the election, the municipal clerk or any other person allowed by law to administer oaths shall administer the oath of office to each candidate who has provided the written receipt and qualification statement to the municipal clerk. Upon taking the oath of office, the candidate shall be deemed to have taken office.

C. If a candidate fails to appear as required in Subsection B of this section, then the candidate or the candidate's authorized personal representative shall file an affidavit with the municipal clerk, not later than 5:00 p.m. on the tenth day following the election, stating that the candidate was unable to personally appear before the municipal clerk as required by law and the reasons therefor. If such an affidavit is timely filed, the candidate shall appear before the municipal clerk not later than 5:00 p.m. on the thirtieth day after the election to receive the election certificate, file the receipt and qualification statement and take the oath of office.

D. If a candidate fails to comply with Subsection B of this section, then the municipal clerk shall administer an impartial drawing by lot to determine which person shall remain in office until the candidate takes office or the office is declared vacant.

E. If a candidate fails to comply with Subsection B and Subsection C of this section, then the governing body shall declare by resolution that the office is vacant.

F. After each elected candidate has taken the oath of office, the municipal clerk shall mail, within five days thereof, a copy of the certificate of election to the county clerk and the secretary of state for information purposes.

G. An elected official shall remain in office as provided in this section until the official's successor has taken office as provided in this section.

H. The newly elected officials of the governing body who have taken office, the elected officials of the governing body whose terms have not expired and the elected officials of the governing body whose successors have not taken office shall meet not earlier than the sixth day after the election or later than the twenty-first day after the election for an organizational meeting. Such a meeting may be a special meeting or a regular meeting of the governing body."

Section 3

Section 3. Section 3-8-39 NMSA 1978 (being Laws 1985, Chapter 208, Section 47) is amended to read:

"3-8-39. CONDUCT OF ELECTION--MAINTENANCE OF ORDER--PEACE OFFICER--MEMORANDA OF ACTIONS OR OMISSIONS.--

A. The election judges shall maintain order within the polling place.

B. Crowding or disruption of the voting process shall not be permitted in the polling place.

C. Admittance of voters to the polling place shall be controlled and limited to prevent crowding or rushing the precinct board in the performance of its duties.

D. The election judges may call upon any state or local law enforcement officer to assist in the maintenance of order in the polling place. When so requested, the law enforcement officer shall render assistance.

E. The election judges may request any state or local law enforcement officer to assist in the conduct of the election by standing outside the polling place entrance and controlling the admission of voters to the polling place.

F. Any state or local law enforcement officer may enter a polling place upon request of a precinct board member for the purpose of observing the conduct of the election.

G. No state or local law enforcement officer shall interfere in any way with a member of the precinct board, a person voting or the conduct of the election, except to assist in maintaining order and orderly control of access, when requested by an election judge.

H. Any state or local law enforcement officer violating Subsection G of this section is guilty of a petty misdemeanor and in addition to any other penalty provided by law shall be subject to dismissal and is ineligible for reinstatement.

I. Any member of the precinct board may make written memoranda and preserve them for future reference. The memoranda may concern any action or

omission on the part of any person charged with a duty under the Municipal Election Code."

Section 4

Section 4. Section 3-8-44 NMSA 1978 (being Laws 1985, Chapter 208, Section 52) is amended to read:

"3-8-44. CONDUCT OF ELECTION--VOTING MACHINES-- INSTRUCTIONS--
INSPECTION OF VOTING MACHINE FACE AFTER VOTE--ENTRY INTO MACHINE.--

A. Before each person votes, a member of the precinct board shall, at the request of the voter and so far as possible, instruct the person on how to operate the voting machine, illustrate its operation on the model and call attention to the posted sample ballot. If any person, before voting, asks for further information regarding the machine's operation, an election judge shall give him the necessary information prior to the person casting his vote.

B. The member of the precinct board attending the voting machine shall inspect the face of the machine after each person has voted to see that the ballot labels are in their proper places and have not been defaced.

C. After a person has announced his name and address, had voter registration confirmed, signed the signature roster and has had no challenge affirmed against casting a ballot, the person may vote. No person shall be permitted to occupy the voting booth longer than three and one-half minutes."

Section 5

Section 5. Section 3-8-65 NMSA 1978 (being Laws 1985, Chapter 208, Section 73) is amended to read:

"3-8-65. CONTEST OF ELECTIONS--PRESERVATION OF BALLOTS--
BALLOTS DEFINED--APPLICATION FOR ORDER--DEPOSIT.--

A. Either the contestant or contestee, within the time provided by the Municipal Election Code for the preservation of ballots, may give notice by certified mail to the municipal clerk that a contest is pending in a designated court, and it is the duty of the municipal clerk to preserve the ballots of all precincts named in the notice of contest and to notify the county clerk to impound the ballot labels and voting machines used in all of the precincts named in the notice of contest until the contest has been finally determined.

B. "Ballots", as used in Subsection A of this section, includes signature rosters, registered voter lists, machine-printed returns, voting machine permits, registration affidavits, paper ballots, absentee ballots, absentee ballot outer envelopes,

statements of canvass, absentee ballot applications, absentee ballot registers and absentee voter lists.

C. Any contestant or contestee may petition the district court for an order impounding ballots in one or more precincts or consolidated precincts. The petition shall state what specific items of ballots are requested to be impounded. Upon receipt of the petition, along with a cash deposit of twenty-five dollars (\$25.00) per precinct or consolidated precinct, the court may issue an order of impoundment."

Section 6

Section 6. Section 3-8-71 NMSA 1978 (being Laws 1985, Chapter 208, Section 79) is amended to read:

"3-8-71. PRESERVATION OF ELECTION INFORMATION.--

A. The municipal clerk shall retain for two years after each municipal election:

(1) the absentee ballot register and ballots, application for absentee ballots, absentee voter lists and affidavits of destruction;

(2) the signature roster and registered voter list;

(3) the machine-printed returns;

(4) oaths of office of the precinct board;

(5) the declarations of candidacy and withdrawals;

(6) election resolution;

(7) proof of all publications;

(8) copies of all election material required to be published or posted;

(9) copies of all paper ballots, sample ballots and ballot labels;

(10) voting machine permits;

(11) affidavits of triplicate voter registration or certificates submitted by voters;

(12) copies of all affidavits and certificates prepared in connection with the election;

(13) certificates of canvass and amended certificates of canvass, if any;

(14) all results of recounts, rechecks, contests and recanvass; and

(15) all other significant election materials.

B. The district court shall retain for forty-five days after each municipal election all election materials sent by the precinct board. Thereafter, the material may be destroyed unless needed by the court in connection with a contest or other case or controversy.

C. The municipal clerk shall destroy election records two years after the election by shredding, burning or otherwise destroying."

Section 7

Section 7. Section 3-9-7 NMSA 1978 (being Laws 1973, Chapter 375, Section 8, as amended) is amended to read:

"3-9-7. MANNER OF VOTING.--

A. Any person voting an absentee ballot under the provisions of the Municipal Election Code shall secretly mark the ballot in the manner provided in the Municipal Election Code for marking emergency paper ballots, remove any visible number on the ballot, place the ballot in the official inner envelope and securely seal the envelope. The person voting shall then place the official inner envelope inside the official mailing envelope and securely seal the envelope. The person voting shall then fill in the form on the reverse of the official mailing envelope.

B. Federal voters and federal qualified electors shall either deliver or mail the official mailing envelope to the municipal clerk of their municipality of residence or deliver it to a person designated by federal authority to receive executed ballots for transmission to the municipal clerk of the municipality of residence. Voters shall either deliver or mail the official mailing envelope to the municipal clerk of their municipality of residence."

Section 8

Section 8. Section 3-9-9 NMSA 1978 (being Laws 1973, Chapter 375, Section 10, as amended) is amended to read:

"3-9-9. ABSENT VOTER PRECINCT.--For the purposes of absentee voting, the governing body shall create a special absent voter precinct, cause a precinct board to be appointed consisting of election judges and election clerks as provided in the Municipal Election Code and shall designate a polling place for the counting and tallying

of absentee ballots in the election. The municipal clerk shall administer the oath to the election judges. A regular precinct board may be designated to serve as the absent voter precinct board. Members of the absent voter precinct board shall receive the same compensation as other precinct board members, but in no case shall a precinct board member who also serves as a member of the absent voter precinct board be entitled to extra compensation for serving on the absent voter precinct board."

Section 9

Section 9. Section 3-9-10 NMSA 1978 (being Laws 1985, Chapter 208, Section 98) is amended to read:

"3-9-10. DELIVERY OF ABSENTEE BALLOTS TO ABSENT VOTER PRECINCT.--After 7:00 a.m. on election day, the municipal clerk shall deliver to the absent voter precinct board the absentee ballot register and the absent voter ballots received by the clerk. Prior to 7:00 p.m. on election day, the municipal clerk shall deliver any ballots received on election day to the absent voter precinct board and the precinct board shall note the receipt of ballots in the absentee ballot register and on the absentee voter list. On delivery of the ballots, the municipal clerk shall remain in the presence of the absent voter precinct board until the clerk has observed the opening of all official mailing envelopes, the deposit of all ballots in the locked ballot box and the listing of the names on all of the official mailing envelopes in the absentee voter list. All functions of the absent voter precinct board shall be conducted in the place designated as the absent voter precinct."

Section 10

Section 10. Section 3-9-11 NMSA 1978 (being Laws 1985, Chapter 208, Section 99) is amended to read:

"3-9-11. HANDLING ABSENTEE BALLOTS BY ABSENT VOTER PRECINCT BOARDS.--

A. Before opening any official mailing envelope, an election judge shall determine that the required signature has been executed on the reverse side of the official mailing envelope.

B. If the signature is missing, an election judge shall write "rejected" on the front of the official mailing envelope. The election clerks shall write the notation "rejected - missing signature" in the "notations" column on the absentee voter list. An election judge shall place the official mailing envelope unopened in an envelope provided for rejected ballots, seal the envelope, write the voter's name on the front of the envelope and deposit it in the locked ballot box.

C. Declared challengers certified by the municipal clerk may examine the official mailing envelope and may challenge the ballot of any absent voter for the following reasons:

(1) the official mailing envelope has been opened prior to being received by the precinct board; or

(2) the person offering to vote is not a federal voter, federal qualified elector or voter as provided in the Municipal Election Code.

Upon the challenge of an absentee ballot, an election judge shall generally follow the same procedure as when ballots are challenged when a person offers to vote in person. If a challenged ballot is not to be counted, it shall not be opened and shall be placed in an envelope provided for challenged ballots.

D. If the official mailing envelopes have properly executed signatures and the voters have not been challenged:

(1) an election judge shall open the official mailing envelopes and deposit the ballots in their still sealed official inner envelopes in the locked ballot box; and

(2) the election clerks shall mark the notation "AB" opposite the voter's name in the "notations" column of the absentee voter list.

E. Prior to the closing of the polls, an election judge may remove the absentee ballots from the official inner envelopes and either count and tally the results of absentee balloting by hand or register the results of each absentee ballot on a voting machine the same as if the absent voter had been present and voted in person. It shall be unlawful for any person to disclose the results of such count and tally or such registration on a voting machine of absentee ballots prior to the closing of the polls.

F. The municipal clerk shall, prior to the opening of the polls on election day, notify the absent voter precinct board in writing whether absentee ballots are to be counted and tallied or registered on a voting machine. The procedures shall be such as to ensure the secrecy of the ballot.

G. Absent voter precinct polls shall be closed at 7:00 p.m. on the day of the election by the absent voter precinct board."

HOUSE BILL 870

CHAPTER 201

RELATING TO EDUCATION; PROVIDING FOR AN ADDITIONAL MEMBER ON THE EDUCATIONAL ASSISTANCE FOUNDATION; AMENDING THE EDUCATIONAL ASSISTANCE ACT.

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

Section 1

Section 1. Section 21-21A-6 NMSA 1978 (being Laws 1981, Chapter 319, Section 6, as amended) is amended to read:

"21-21A-6. FOUNDATION--BOARD OF DIRECTORS--MEMBERS--TERMS--MEETINGS--BYLAWS.--

A. The foundation shall be governed by and all of its functions, powers and duties shall be exercised by a board of directors. The board shall consist of eleven members as follows:

(1) six members representing the institutions of higher education, consisting of one member from each of the boards of regents of the university of New Mexico, New Mexico state university, New Mexico highlands university, New Mexico institute of mining and technology, western New Mexico university and eastern New Mexico university, each member to be appointed by the board of regents from which the member is chosen;

(2) the regent members shall appoint three embers as follows:

(a) one member shall be an administrator of a private college, university or vocational school located in New Mexico; and

(b) two members shall be officers or directors of financial institutions located in New Mexico;

(3) one member shall be the state treasurer or his designee; and

(4) one member of the governing board of a two-year public community or technical college that is not a branch of a university, who shall be appointed by a representative body of the community and technical colleges.

B. The regent members and governing board member shall serve during their terms as regents or governing board member unless sooner terminated by the appointing boards. A vacancy shall be filled by the board of regents making the original appointment or by the two-year college representative body making the original appointment. The three members appointed by the regent members shall be appointed for four-year terms. A vacancy shall be filled by appointment by the board for the unexpired term.

C. The board shall elect a chairman and such other officers as it deems necessary.

D. Members of the board shall receive no compensation for their service, but shall be reimbursed on a per diem and mileage basis for their actual and necessary expenses reasonably incurred in the performance of their duties as board members, in an amount not exceeding the amount authorized by law for nonsalaried public officers of governmental entities of this state.

E. Board meetings shall be open to the public. The board shall adopt bylaws governing board meetings consistent with the provisions of the Open Meetings Act.

F. The foundation shall adopt bylaws, in accordance with the provisions of the Nonprofit Corporation Act, governing the conduct of the foundation in the performance of its duties under the Educational Assistance Act and the federal Higher Education Act of 1965, as amended.

G. Officers and employees of the foundation may serve simultaneously as officers and employees of the corporation, but no additional compensation may be paid for such service. The chairman of the board of directors of the foundation shall serve on the board of directors of the corporation, but no other members of the board of directors of the foundation may serve on the corporation board of directors."

HOUSE BILL 889

CHAPTER 202

RELATING TO PUBLIC ASSISTANCE; AMENDING A SECTION OF THE NMSA 1978 PERTAINING TO LIABILITY FOR REPAYMENT OF PUBLIC ASSISTANCE.

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

Section 1

Section 1. Section 27-2-28 NMSA 1978 (being Laws 1981, Chapter 90, Section 2, as amended) is amended to read:

"27-2-28. LIABILITY FOR REPAYMENT OF PUBLIC ASSISTANCE.--

A. A noncustodial parent is liable to the human services department in the amount of the public assistance lawfully and properly furnished to the children, and the spouse or former spouse with whom such children are living, to whom the noncustodial parent owes a duty of support; except that if a support order has been entered, liability for the time period covered by the support order shall not exceed the amount of support provided for in the order.

B. Amounts of support due and owing for periods prior to the granting of public assistance shall be paid to and retained by the human services department to the extent that the amount of assistance granted exceeds the amount of the monthly support obligation.

C. Amounts of support collected that are in excess of the amounts specified in Subsections A and B of this section shall be paid by the human services department to the custodian of the child.

D. No agreement between any custodian of a child and a parent of that child, either relieving the parent of any duty of child or spousal support or responsibility or purporting to settle past, present or future support obligations, either as a settlement or prepayment, shall act to reduce or terminate any rights of the human services department to recover from that parent for support provided, unless the human services department has consented to the agreement in writing.

E. The noncustodial parent shall be given credit for any support actually provided, including housing, clothing, food or funds paid prior to the entry of any order for support. The noncustodial parent has the burden on the issue of any payment.

F. An application for public assistance by any person constitutes an assignment by operation of law of any support rights the person is entitled to from any other person, whether the support rights are owed to the applicant or to any family member for whom the applicant is applying for or receiving assistance. The assignment includes all support rights that have accrued at the time of application for public assistance and continues as an assignment of all support rights the applicant is entitled to for as long as the applicant receives public assistance.

G. By operation of law, an assignment to the human services department of any and all rights of an applicant for or recipient of medical assistance under the medicaid program in New Mexico or supplemental security income through the social security administration:

(1) is deemed to be made of:

(a) any payment for medical care from any person, firm or corporation, including an insurance carrier; and

(b) any recovery for personal injury, whether by judgment or contract for compromise or settlement;

(2) shall be effective to the extent of the amount of medical assistance actually paid by the department under the medicaid program; and

(3) shall be effective as to the rights of any other individuals who are eligible for medical assistance and whose rights can legally be assigned by the applicant or recipient.

An applicant or recipient is required to cooperate fully with the human services department in its efforts to secure the assignment and to execute and deliver any instruments and papers deemed necessary to complete the assignment by that department."

HOUSE BILL 995

CHAPTER 203

RELATING TO WHOLESALE LIQUOR SALES; PROVIDING FOR WHOLESALE LIQUOR SALES TO INDIAN NATIONS, TRIBES AND PUEBLOS; AMENDING CERTAIN SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 60-3A-5 NMSA 1978 (being Laws 1981, Chapter 39, Section 112) is amended to read:

"60-3A-5. EXEMPTIONS FROM ACT.--Nothing in the Liquor Control Act applies to:

- A. the transportation of alcoholic beverages through New Mexico;
- B. the transportation of alcoholic beverages into a United States customs bonded warehouse located in New Mexico;
- C. ethyl alcohol intended for or used for any of the following purposes:
 - (1) scientific, mechanical, industrial, medical, chemical or culinary purposes;
 - (2) use by those authorized to procure the same tax free, as provided by the acts of congress and regulations promulgated thereunder; or
 - (3) in the manufacture of denatured alcohol produced and used as provided by the acts of congress and regulations promulgated thereunder; or
- D. the sale, service, possession or public consumption of alcoholic beverages by any person within the boundaries of lands over which an Indian nation, tribe or pueblo has jurisdiction if the alcoholic beverages are purchased from New

Mexico wholesalers and if the sale, service, possession or public consumption of alcoholic beverages is authorized by the laws of the Indian nation, tribe or pueblo having jurisdiction over those lands and is consistent with the ordinance of the Indian nation, tribe or pueblo certified by the secretary of the interior and published in the federal register according to the laws of the United States."

Section 2

Section 2. Section 60-6A-1 NMSA 1978 (being Laws 1981, Chapter 39, Section 18, as amended) is amended to read:

"60-6A-1. WHOLESALER'S LICENSE.--

A. In any local option district, a person qualified under the provisions of the Liquor Control Act may apply for and be issued a license as a wholesaler of alcoholic beverages.

B. No wholesaler shall sell, offer for sale or ship alcoholic beverages not received at and shipped from the premises specified in the wholesaler's license. As used in this section, "received at and shipped from" means that all alcoholic beverages shall be unloaded at the wholesaler's licensed premises and placed into inventory before being sold and shipped to a licensed retailer.

C. No wholesaler shall sell or offer for sale alcoholic beverages to any person other than the holder of a New Mexico wholesaler's, retailer's, dispenser's, canopy, restaurant or club license, a governmental licensee or its lessee or an enterprise owned, operated or licensed by an Indian nation, tribe or pueblo within the state in conformity with an ordinance duly adopted by the Indian nation, tribe or pueblo having jurisdiction over the situs of the transaction within the area of Indian country, certified by the secretary of the interior, published in the federal register, according to the laws of the United States."

Section 3

Section 3. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 37 WITH EMERGENCY CLAUSE
SIGNED APRIL 6, 1995

CHAPTER 204

RELATING TO CRIMINAL LAW; INCREASING THE PENALTIES FOR PERSONS WHO COMMIT GRAFFITI; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 30-15-1.1 NMSA 1978 (being Laws 1990, Chapter 36, Section 1) is amended to read:

"30-15-1.1. UNAUTHORIZED GRAFFITI ON PERSONAL OR REAL PROPERTY.--

A. Graffiti consists of intentionally and maliciously defacing any real or personal property of another with graffiti or other inscribed material inscribed with ink, paint, spray paint, crayon, charcoal or the use of any object without the consent or reasonable ground to believe there is consent of the owner of the property.

B. Whoever commits graffiti to real or personal property when the damage to the property is one thousand dollars (\$1,000) or less is guilty of a petty misdemeanor and shall be required to perform a mandatory one hundred hours of community service within a continuous six-month period immediately following his conviction and shall be required to make restitution to the property owner for the cost of damages and restoration.

C. Whoever commits graffiti to real or personal property when the damage to the property is greater than one thousand dollars (\$1,000) is guilty of a fourth degree felony and shall be required to perform a mandatory one hundred sixty hours of community service within a continuous eight-month period immediately following his conviction and shall be required to provide restitution to the property owner for the cost of damages and restoration as a condition of probation or following any term of incarceration as a condition of parole.

D. When a single occurrence of graffiti is committed by more than one individual, the court may apportion the amount of restitution owed by each offender in accordance with each offender's degree of culpability."

Section 2

Section 2. Section 32A-2-3 NMSA 1978 (being Laws 1993, Chapter 77, Section 32) is amended to read:

"32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

A. "delinquent act" means an act committed by a child which would be designated as a crime under the law if committed by an adult, including but not limited to the following offenses:

(1) pursuant to municipal traffic codes or the Motor Vehicle Code:

(a) any driving while under the influence of intoxicating liquor or drugs;

(b) any failure to stop in the event of an accident causing death, personal injury or damage to property;

(c) any unlawful taking of a vehicle or motor vehicle;

(d) any receiving or transferring of a stolen vehicle or motor vehicle;

(e) any homicide by vehicle;

(f) any injuring or tampering with a vehicle;

(g) any altering or changing of an engine number or other vehicle identification numbers;

(h) any altering or forging of a driver's license or permit or any making of a fictitious license or permit;

(i) reckless driving;

(j) driving with a suspended or revoked license; or

(k) any offense punishable as a felony;

(2) buying, attempting to buy, receiving, possessing or being served any alcoholic liquor or being present in a licensed liquor establishment, other than a restaurant or a licensed retail liquor establishment, except in the presence of the child's parent, guardian, custodian or adult spouse. As used in this paragraph, "restaurant" means any establishment where meals are prepared and served primarily for on-premises consumption and which has a dining room, a kitchen and the employees necessary for preparing, cooking and serving meals. "Restaurant" does not include establishments, as defined in regulations promulgated by the director of the special investigations division of the department of public safety, that serve only hamburgers, sandwiches, salads and other fast foods;

(3) any violation of the provisions of Sections 17-1-1 through 17-5-9 NMSA 1978 or any regulations adopted by the state game commission that relate to the time, extent, means or manner that game animals, birds or fish may be hunted, taken, captured, killed, possessed, sold, purchased or shipped and for which a fine may be imposed or a civil damage awarded;

(4) any violation of Section 30-29-2 NMSA 1978, regarding the illegal use of a glue, aerosol spray product or other chemical substance;

(5) any violation of the Controlled Substances Act;

(6) escape from the custody of a law enforcement officer or a juvenile probation or parole officer or from any placement made by the department by a child who has been adjudicated a delinquent child; or

(7) any violation of Section 30-15-1.1 NMSA 1978 regarding unauthorized graffiti on personal or real property;

B. "delinquent child" mean a child who has committed a delinquent act;

C. "delinquent offender" means a delinquent child who is subject to juvenile sanctions only and who is not a youthful offender or a serious youthful offender;

D. "detention facility" means a place where a child may be detained under the Children's Code pending court hearing and does not include a facility for the care and rehabilitation of an adjudicated delinquent child;

E. "felony" means an act that would be a felony if committed by an adult;

F. "misdemeanor" means an act that would be a misdemeanor or petty misdemeanor if committed by an adult;

G. "restitution" means financial reimbursement by the child to the victim or community service imposed by the court and is limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical, psychiatric and psychological treatment for injury to a person and lost wages resulting from physical injury, which are a direct and proximate result of a delinquent act. "Restitution" does not include reimbursement for damages for mental anguish, pain and suffering or other intangible losses. As used in this subsection, "victim" means any person who is injured or suffers damage of any kind by an act that is the subject of a complaint or referral to law enforcement officers or juvenile probation authorities. Nothing contained in this definition limits or replaces the provisions of Subsections A and B of Section 32A-2-27 NMSA 1978;

H. "serious youthful offender" means an individual sixteen or seventeen years of age who is charged with and indicted or bound over for trial for first degree murder. A "serious youthful offender" is not a delinquent child, as defined pursuant to the provisions of this section; and

I. "youthful offender" means a delinquent child subject to adult or juvenile sanctions who is:

(1) fifteen to eighteen years of age at the time of the offense and who is adjudicated for at least one of the following offenses:

- (a) second degree murder, as provided in Section 30-2-1 NMSA 1978;
- (b) assault with intent to commit a violent felony, as provided in Section 30-3-3 NMSA 1978;
- (c) kidnapping, as provided in Section 30-4-1 NMSA 1978;
- (d) aggravated battery, as provided in Section 30-3-5 NMSA 1978;
- (e) shooting at a dwelling or occupied building or shooting at or from a motor vehicle, which results in great bodily harm to another person, as provided in Section 30-3-8 NMSA 1978;
- (f) dangerous use of explosives, as provided in Section 30-7-5 NMSA 1978;
- (g) criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978;
- (h) robbery, as provided in Section 30-16-2 NMSA 1978;
- (i) aggravated burglary, as provided in Section 30-16-4 NMSA 1978; or
- (j) aggravated arson, as provided in Section 30-17-6 NMSA 1978;

(2) fifteen to eighteen years of age at the time of the offense and adjudicated for any felony offense and who has had three prior, separate felony adjudications within a two-year time period immediately preceding the instant offense. The felony adjudications relied upon as prior adjudications shall not have arisen out of the same transaction or occurrence or series of events related in time and location. Successful completion of consent decrees are not considered a prior adjudication for the purposes of this paragraph; or

(3) fifteen years of age and adjudicated for first degree murder, as provided in Section 30-2-1 NMSA 1978."

Section 3

Section 3. Section 32A-2-19 NMSA 1978 (being Laws 1993, Chapter 77, Section 48) is amended to read:

"32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT OFFENDER.--

A. At the conclusion of the dispositional hearing, the court may make and include in the dispositional judgment its findings on the following:

(1) the interaction and interrelationship of the child with the child's parents, siblings and any other person who may significantly affect the child's best interest;

(2) the child's adjustment to his home, school and community;

(3) the mental and physical health of all individuals involved;

(4) the wishes of the child as to his custodian;

(5) the wishes of the child's parents as to the child's custody;

(6) whether there exists a relative of the child or other individual who, after study by the department, is found to be qualified to receive and care for the child;

(7) the availability of services recommended in the predisposition report; and

(8) the ability of the parents to care for the child in the home.

B. If a child is found to be delinquent, the court may impose a fine not to exceed the fine that could be imposed if the child were an adult and may enter its judgment making any of the following dispositions for the supervision, care and rehabilitation of the child:

(1) any disposition that is authorized for the disposition of a neglected or abused child, in accordance with the Abuse and Neglect Act;

(2) transfer legal custody to the department, an agency responsible for the care and rehabilitation of delinquent children, which shall receive the child at a facility designated by the secretary of the department as a juvenile reception facility. The department shall thereafter determine the appropriate placement, supervision and rehabilitation program for the child. The judge may include recommendations for placement of the child. Commitments are subject to limitations and modifications set forth in Section 32A-2-23 NMSA 1978. The types of commitments include:

(a) a short-term commitment of one year, of which no more than six months may be in a facility for the long-term care and rehabilitation of adjudicated delinquent children; or

(b) a long-term commitment for no more than two years in a long-term facility for the care and rehabilitation of adjudicated delinquent children;

(3) place the child on probation under those conditions and limitations as the court may prescribe;

(4) place the child in a local detention facility that has been certified in accordance with the provisions of Section 32A-2-4 NMSA 1978 for a period not to exceed fifteen days within a three hundred sixty-five day time period;

(5) if a child is found to be delinquent solely on the basis of Paragraph (3) of Subsection A of Section 32A-2-3 NMSA 1978, the court shall only enter a judgment placing the child on probation or ordering restitution or imposing a fine not to exceed the fine which could be imposed if the child were an adult or any combination of these dispositions; or

(6) if a child is found to be delinquent solely on the basis of Paragraph (2), (4) or (5) of Subsection A of Section 32A-2-3 NMSA 1978, the court may make any disposition provided by this section and may enter its judgment placing the child on probation and, as a condition of probation, transfer custody of the child to the department for a period not to exceed six months without further order of the court; provided that this transfer shall not be made unless the court first determines that the department is able to provide or contract for adequate and appropriate treatment for the child and that the treatment is likely to be beneficial.

C. When the child is an Indian child, the Indian child's cultural needs shall be considered in the dispositional judgment and reasonable access to cultural practices and traditional treatment shall be provided.

D. No child found to be delinquent shall be committed or transferred to a penal institution or other facility used for the execution of sentences of persons convicted of crimes.

E. Whenever the court vests legal custody in an agency, institution or department, it shall transmit with the dispositional judgment copies of the clinical reports, predisposition study and report and other information it has pertinent to the care and treatment of the child.

F. Prior to any child being placed in the custody of the department, the department shall be provided with reasonable oral or written notification and an opportunity to be heard.

G. In addition to any other disposition pursuant to this section or any other penalty provided by law, if a child fifteen years of age or older is adjudicated delinquent on the basis of Paragraph (2), (4) or (5) of Subsection A of Section 32A-2-3 NMSA 1978, the child's driving privileges may be denied or the child's driver's license may be revoked for a period of ninety days. For a second or a subsequent adjudication, the child's driving privileges may be denied or the child's driver's license revoked for a period of one year. Within twenty-four hours of the dispositional judgment, the court may send to the motor vehicle division of the taxation and revenue department the order adjudicating delinquency. Upon receipt of an order from the court adjudicating delinquency, the director of the motor vehicle division of the taxation and revenue department may revoke or deny the delinquent's driver's license or driving privileges. Nothing in this section may prohibit the delinquent from applying for a limited driving privilege pursuant to Section 66-5-35 NMSA 1978, and nothing in this section precludes the delinquent's participation in an appropriate educational, counseling or rehabilitation program.

H. In addition to any other disposition pursuant to this section or any other penalty provided by law, when a child is adjudicated delinquent on the basis of Paragraph (7) of Subsection A of Section 32A-2-3 NMSA 1978, the child shall perform the mandatory community service set forth in Section 30-15-1.1 NMSA 1978. When a child fails to completely perform the mandatory community service, the name and address of the child's parent or legal guardian shall be published in a newspaper of general circulation, accompanied by a notice that he is the parent or legal guardian of a child adjudicated delinquent for committing graffiti."

Section 4

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

SENATE BILL 83

CHAPTER 205

RELATING TO CRIMINAL LAW; EXPANDING THE LIST OF OFFENSES FOR A YOUTHFUL OFFENDER TO INCLUDE AGGRAVATED BATTERY UPON A PEACE OFFICER; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 31-18-15.2 NMSA 1978 (being Laws 1993, Chapter 77, Section 1, as amended) is amended to read:

"31-18-15.2. DEFINITIONS.--As used in the Criminal Sentencing Act:

A. "serious youthful offender" means an individual sixteen or seventeen years of age who is charged with and indicted or bound over for trial for first degree murder; and

B. "youthful offender" means a delinquent child subject to adult or juvenile sanctions who is:

(1) fifteen to eighteen years of age at the time of the offense and who is adjudicated for at least one of the following offenses:

(a) second degree murder, as provided in Section 30-2-1 NMSA 1978;

(b) assault with intent to commit a violent felony, as provided in Section 30-3-3 NMSA 1978;

(c) kidnapping, as provided in Section 30-4-1 NMSA 1978;

(d) aggravated battery, as provided in Subsection C of Section 30-3-5 NMSA 1978;

(e) aggravated battery upon a peace officer, as provided in Subsection C of Section 30-22-25 NMSA 1978;

(f) shooting at a dwelling or occupied building or shooting at or from a motor vehicle, which results in great bodily harm to another person, as provided in Section 30-3-8 NMSA 1978;

(g) dangerous use of explosives, as provided in Section 30-7-5 NMSA 1978;

(h) criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978;

(i) robbery, as provided in Section 30-16-2 NMSA 1978;

(j) aggravated burglary, as provided in Section 30-16-4 NMSA 1978; or

(k) aggravated arson, as provided in Section 30-17-6 NMSA 1978;

(2) fifteen to eighteen years of age at the time of the offense and adjudicated for any felony offense and who has had three prior, separate felony adjudications within a two-year time period immediately preceding the instant offense. The felony adjudications relied upon as prior adjudications shall not have arisen out of

the same transaction or occurrence or series of events related in time and location. Successful completion of consent decrees is not considered a prior adjudication for the purposes of this paragraph; or

(3) fifteen years of age and adjudicated for first degree murder, as provided in Section 30-2-1 NMSA 1978."

Section 2

Section 2. Section 32A-2-3 NMSA 1978 (being Laws 1993, Chapter 77, Section 32) is amended to read:

"32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

A. "delinquent act" means an act committed by a child that would be designated as a crime under the law if committed by an adult, including but not limited to the following offenses:

(1) pursuant to municipal traffic codes or the Motor Vehicle Code:

(a) any driving while under the influence of intoxicating liquor or drugs;

(b) any failure to stop in the event of an accident causing death, personal injury or damage to property;

(c) any unlawful taking of a vehicle or motor vehicle;

(d) any receiving or transferring of a stolen vehicle or motor vehicle;

(e) any homicide by vehicle;

(f) any injuring or tampering with a vehicle;

(g) any altering or changing of an engine number or other vehicle identification numbers;

(h) any altering or forging of a driver's license or permit or any making of a fictitious license or permit;

(i) reckless driving;

(j) driving with a suspended or revoked license; or

(k) any offense punishable as a felony;

(2) buying, attempting to buy, receiving, possessing or being served any alcoholic liquor or being present in a licensed liquor establishment, other than a restaurant or a licensed retail liquor establishment, except in the presence of the child's parent, guardian, custodian or adult spouse. As used in this paragraph, "restaurant" means any establishment where meals are prepared and served primarily for on-premises consumption and that has a dining room, a kitchen and the employees necessary for preparing, cooking and serving meals. "Restaurant" does not include establishments, as defined in regulations promulgated by the director of the special investigations division of the department of public safety, that serve only hamburgers, sandwiches, salads and other fast foods;

(3) any violation of the provisions of Sections 17-1-1 through 17-5-9 NMSA 1978 or any regulations adopted by the state game commission that relate to the time, extent, means or manner that game animals, birds or fish may be hunted, taken, captured, killed, possessed, sold, purchased or shipped and for which a fine may be imposed or a civil damage awarded;

(4) any violation of Section 30-29-2 NMSA 1978, regarding the illegal use of a glue, aerosol spray product or other chemical substance;

(5) any violation of the Controlled Substances Act; or

(6) escape from the custody of a law enforcement officer or a juvenile probation or parole officer or from any placement made by the department by a child who has been adjudicated a delinquent child;

B. "delinquent child" means a child who has committed a delinquent act;

C. "delinquent offender" means a delinquent child who is subject to juvenile sanctions only and who is not a youthful offender or a serious youthful offender;

D. "detention facility" means a place where a child may be detained under the Children's Code pending court hearing and does not include a facility for the care and rehabilitation of an adjudicated delinquent child;

E. "felony" means an act that would be a felony if committed by an adult;

F. "misdemeanor" means an act that would be a misdemeanor or petty misdemeanor if committed by an adult;

G. "restitution" means financial reimbursement by the child to the victim or community service imposed by the court and is limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical, psychiatric and psychological treatment for injury to a person and lost wages resulting from physical injury that are a direct and proximate result of a delinquent act. "Restitution" does not

include reimbursement for damages for mental anguish, pain and suffering or other intangible losses. As used in this subsection, "victim" means any person who is injured or suffers damage of any kind by an act that is the subject of a complaint or referral to law enforcement officers or juvenile probation authorities. Nothing contained in this definition limits or replaces the provisions of Subsections A and B of Section 32A-2-27 NMSA 1978;

H. "serious youthful offender" means an individual sixteen or seventeen years of age who is charged with and indicted or bound over for trial for first degree murder. A "serious youthful offender" is not a delinquent child, as defined pursuant to the provisions of this section; and

I. "youthful offender" means a delinquent child subject to adult or juvenile sanctions who is:

(1) fifteen to eighteen years of age at the time of the offense and who is adjudicated for at least one of the following offenses:

(a) second degree murder, as provided in Section 30-2-1 NMSA 1978;

(b) assault with intent to commit a violent felony, as provided in Section 30-3-3 NMSA 1978;

(c) kidnapping, as provided in Section 30-4-1 NMSA 1978;

(d) aggravated battery, as provided in Subsection C of Section 30-3-5 NMSA 1978;

(e) aggravated battery upon a peace officer, as provided in Subsection C of Section 30-22-25 NMSA 1978;

(f) shooting at a dwelling or occupied building or shooting at or from a motor vehicle, which results in great bodily harm to another person, as provided in Section 30-3-8 NMSA 1978;

(g) dangerous use of explosives, as provided in Section 30-7-5 NMSA 1978;

(h) criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978;

(i) robbery, as provided in Section 30-16-2 NMSA 1978;

(j) aggravated burglary, as provided in Section 30-16-4 NMSA 1978; or

(k) aggravated arson, as provided in Section 30-17-6 NMSA 1978;

(2) fifteen to eighteen years of age at the time of the offense and adjudicated for any felony offense and who has had three prior, separate felony adjudications within a two-year time period immediately preceding the instant offense. The felony adjudications relied upon as prior adjudications shall not have arisen out of the same transaction or occurrence or series of events related in time and location. Successful completion of consent decrees is not considered a prior adjudication for the purposes of this paragraph; or

(3) fifteen years of age and adjudicated for first degree murder, as provided in Section 30-2-1 NMSA 1978."
HOUSE BILL 126

CHAPTER 206

RELATING TO CHILDREN; AMENDING AND ENACTING SECTIONS OF THE CHILDREN'S CODE; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 32A-1-1 NMSA 1978 (being Laws 1993, Chapter 77, Section 10) is amended to read:

"32A-1-1. SHORT TITLE.--Chapter 32A NMSA 1978 may be cited as the "Children's Code"."

Section 2

Section 2. Section 32A-1-4 NMSA 1978 (being Laws 1993, Chapter 77, Section 13) is amended to read:

"32A-1-4. DEFINITIONS.--As used in the Children's Code:

A. "adult" means an individual who is eighteen years of age or older;

B. "child" means an individual who is less than eighteen years old;

C. "court", when used without further qualification, means the children's court division of the district court and includes the judge, special master or commissioner appointed pursuant to the provisions of the Children's Code or supreme court rule;

D. "court appointed special advocate" or "CASA" means a person appointed as a CASA, pursuant to the provisions of the Children's Court Rules and Forms, who assists the court in determining the best interests of the child by investigating the case and submitting a report to the court;

E. "custodian" means a person, other than a parent or guardian, who exercises physical control, care or custody of the child, including any employee of a residential facility or any persons providing out-of-home care;

F. "department" means the children, youth and families department, unless otherwise specified;

G. "foster parent" means a person, including a relative of the child, licensed or certified by the department or a child placement agency to provide care for children in the custody of the department or agency;

H. "guardian" means the person having the duty and authority of guardianship;

I. "guardianship" means the duty and authority to make important decisions in matters having a permanent effect on the life and development of a child and to be concerned about the child's general welfare and includes but is not necessarily limited in either number or kind to:

(1) the authority to consent to marriage, to enlistment in the armed forces of the United States or to major medical, psychiatric and surgical treatment;

(2) the authority to represent the child in legal actions and to make other decisions of substantial legal significance concerning the child;

(3) the authority and duty of reasonable visitation of the child;

(4) the rights and responsibilities of legal custody when the physical custody of the child is exercised by the child's parents, except when legal custody has been vested in another person; and

(5) when the rights of the child's parents have been terminated as provided for in the laws governing termination of parental rights or when both of the child's parents are deceased, the authority to consent to the adoption of the child and to make any other decision concerning the child that the child's parents could have made;

J. "guardian ad litem" means an attorney appointed by the children's court to represent and protect the best interests of the child in a court proceeding;

provided that no party or employee or representative of a party to the proceeding shall be appointed to serve as a guardian ad litem;

K. "Indian child" means an unmarried person who is:

(1) less than eighteen years old;

(2) a member of an Indian tribe or is eligible for membership in an Indian tribe; and

(3) the biological child of a member of an Indian tribe;

L. "Indian child's tribe" means:

(1) the Indian tribe in which an Indian child is a member or eligible for membership; or

(2) in the case of an Indian child who is a member or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has more significant contacts;

M. "judge", when used without further qualification, means the judge of the court;

N. "legal custody" means a legal status created by the order of the court or other court of competent jurisdiction that vests in a person, department or agency the right to determine where and with whom a child shall live; the right and duty to protect, train and discipline the child and to provide the child with food, shelter, education and ordinary and emergency medical care; the right to consent to major medical, psychiatric, psychological and surgical treatment and to the administration of legally prescribed psychotropic medications pursuant to the Children's Mental Health and Developmental Disabilities Act; and the right to consent to the child's enlistment in the armed forces of the United States, all subject to the powers, rights, duties and responsibilities of the guardian of the child and subject to any existing parental rights and responsibilities. An individual granted legal custody of a child shall exercise the rights and responsibilities as custodian personally, unless otherwise authorized by the court entering the order;

O. "parent" or "parents" includes a biological or adoptive parent;

P. "person" means an individual or any other form of entity recognized by law;

Q. "tribal court" means:

(1) a court established and operated pursuant to a code or custom of an Indian tribe; or

(2) any administrative body of an Indian tribe that is vested with judicial authority;

R. "tribal court order" means a document issued by a tribal court that is signed by an appropriate authority, including a judge, governor or tribal council member, and that orders an action that is within the tribal court's jurisdiction; and

S. "tribunal" means any judicial forum other than the court."

Section 3

Section 3. Section 32A-1-6 NMSA 1978 (being Laws 1993, Chapter 77, Section 15) is amended to read:

"32A-1-6. CHILDREN'S COURT ATTORNEY.--

A. The "office of children's court attorney" is established in each judicial district. Except as provided by Subsection C, D or E of this section, each district attorney is the ex-officio children's court attorney for the judicial district of the district attorney.

B. Except as provided by Subsection C, D or E of this section, the children's court attorney may represent the state in any matter arising under the Children's Code when the state is the petitioner or complainant. The children's court attorney shall represent the petitioner in matters arising under the Children's Code when, in the discretion of the judge, the matter presents legal complexities requiring representation by the children's court attorney, whether or not the state is petitioner or complainant, but not in those matters when there is a conflict of interest between the petitioner or complainant and the state. A petitioner or complainant may be represented by counsel in any matter arising under the Children's Code.

C. In cases involving civil abuse or civil neglect and the periodic review of their dispositions, the attorney selected by and representing the department is the children's court attorney. The attorney selected by and representing the department shall provide the district attorney of the appropriate judicial district with a copy of any abuse or neglect petition filed in that judicial district. Upon the request of the district attorney, the attorney selected by and representing the department shall provide the district attorney with reports, investigations and pleadings relating to any abuse or neglect petition.

D. In cases involving families in need of services, the periodic review of their dispositions and voluntary placements, the attorney selected by and representing

the department is the children's court attorney. The attorney selected by and representing the department shall provide the district attorney of the appropriate judicial district with a copy of any family in need of court-ordered services petition filed in that judicial district. Upon the request of the district attorney, the attorney selected by and representing the department shall provide the district attorney with reports, investigations and pleadings relating to any family in need of court-ordered services petition.

E. In cases involving a child subject to the provisions of the Children's Mental Health and Developmental Disabilities Act that also involves civil abuse, civil neglect or a family in need of court-ordered services, the attorney selected by and representing the department is the children's court attorney. In cases involving a child subject to the provisions of the Children's Mental Health and Developmental Disabilities Act that does not also involve civil abuse, civil neglect or a family in need of court-ordered services, the district attorney is the ex-officio children's court attorney.

F. In those counties where the children's court attorney has sufficient staff and the workload requires it, the children's court attorney may delegate children's court functions to a staff attorney."

Section 4

Section 4. Section 32A-1-7 NMSA 1978 (being Laws 1993, Chapter 77, Section 16) is amended to read:

"32A-1-7. GUARDIAN AD LITEM--POWERS AND DUTIES.--

A. A guardian ad litem shall zealously represent the child's best interests with respect to matters arising pursuant to the provisions of the Children's Code.

B. A guardian ad litem shall represent the child during any appellate proceedings.

C. Any party may petition the court for an order to remove a guardian ad litem on the grounds that the guardian ad litem has a conflict of interest or is unwilling or unable to zealously represent the child's best interest.

D. When a child's circumstances render the following duties and responsibilities reasonable and appropriate, the guardian ad litem shall:

(1) meet with and interview the child prior to custody hearings, adjudicatory hearings, dispositional hearings, judicial reviews and any other hearings scheduled in accordance with the provisions of the Children's Code;

(2) present the child's declared position to the court;

(3) communicate with health care, mental health care and other professionals involved with the child's case;

(4) review medical and psychological reports relating to the child and the respondents;

(5) contact the child prior to any proposed change in the child's placement;

(6) contact the child after changes in the child's placement;

(7) attend local substitute care review board hearings concerning the child and if unable to attend the hearings, forward to the board a letter setting forth the child's status during the period since the last local substitute care review board review and include an assessment of the department's permanency and treatment plans;

(8) report to the court on the child's adjustment to placement, the department's and respondent's compliance with prior court orders and treatment plans and the child's degree of participation during visitations; and

(9) represent and protect the cultural needs of the child.

E. A guardian ad litem may retain separate counsel to represent the child in a tort action on a contingency fee basis or any other cause of action in proceedings that are outside the jurisdiction of the children's court. When a guardian ad litem retains separate counsel to represent the child, the guardian ad litem shall provide the court with written notice within ten days of retaining the separate counsel. A guardian ad litem shall not retain or subsequently obtain any pecuniary interest in an action filed on behalf of the child outside of the jurisdiction of the children's court without permission of the children's court, pursuant to rules promulgated by the supreme court.

F. In the event of a change of venue, the originating guardian ad litem shall remain on the case until a new guardian ad litem is appointed by the court in the new venue and the new guardian ad litem has communicated with the former guardian ad litem."

Section 5

Section 5. Section 32A-1-8 NMSA 1978 (being Laws 1993, Chapter 77, Section 17) is amended to read:

"32A-1-8. JURISDICTION OF THE COURT--TRIBAL COURT JURISDICTION.--

A. The court has exclusive original jurisdiction of all proceedings under the Children's Code in which a person is eighteen years of age or older and was a

child at the time the alleged act in question was committed or is a child alleged to be:

- (1) a delinquent child;
- (2) a child of a family in need of services;
- (3) a neglected child;
- (4) an abused child;
- (5) a child subject to adoption; or
- (6) a child subject to placement for a developmental disability or a mental disorder.

B. The court has exclusive original jurisdiction to emancipate a minor.

C. During abuse or neglect proceedings in which New Mexico is the home state, pursuant to the provisions of the Child Custody Jurisdiction Act, the court shall have jurisdiction over both parents to determine the best interest of the child and to decide all matters incident to the court proceedings.

D. Nothing in this section shall be construed to in any way abridge the rights of any Indian tribe to exercise jurisdiction over child custody matters as defined by and in accordance with the federal Indian Child Welfare Act of 1978.

E. A tribal court order pertaining to an Indian child in an action under the Children's Code shall be recognized and enforced by the district court for the judicial district in which the tribal court is located. A tribal court order pertaining to an Indian child that is not subject to the provisions of the Children's Mental Health and Developmental Disabilities Act and that accesses state resources shall be recognized and enforced pursuant to the provisions of intergovernmental agreements entered into by the Indian child's tribe and the department or another state agency."

Section 6

Section 6. Section 32A-1-12 NMSA 1978 (being Laws 1993, Chapter 77, Section 21) is amended to read:

"32A-1-12. SUMMONS--ISSUANCE AND CONTENT--WAIVER OF SERVICE.--

A. After a petition has been filed, summonses shall be issued and served pursuant to children's court rule.

B. The summons shall require the persons to whom directed to appear personally before the court at the time fixed by the summons to answer the allegations of the petition. The summons shall advise the parties of their right to counsel under the Children's Code and shall have attached to it a copy of the petition.

C. The court may endorse upon the summons an order directing the parent, guardian, custodian or other person having the physical custody or control of the child to bring the child to the hearing.

D. If it appears from any sworn statement presented to the court that the child needs to be placed in detention, the judge may endorse on the summons an order that an officer serving the summons shall at once take the child into custody and take the child to the place of detention designated by the court, subject, however, to all of the provisions of the Children's Code relating to detention criteria and post-detention proceedings and the rights of the child in regard thereto.

E. A party other than the child may waive service of summons by written stipulation or by voluntary appearance at the hearing. If the child is present at the hearing, the child's counsel, with the consent of the parent, guardian or custodian, may waive service of summons in the child's behalf."

Section 7

Section 7. Section 32A-1-13 NMSA 1978 (being Laws 1993, Chapter 77, Section 22) is amended to read:

"32A-1-13. SUMMONS--SERVICE.--

A. If a party to be served with a summons can be found within the state, the summons shall be served upon the party as provided by the Rules of Civil Procedure for the District Courts at least forty-eight hours before the hearing, except that for a child party to the action pursuant to Chapter 32A, Article 4 NMSA 1978, service shall be on the child's guardian ad litem and not personally pursuant to children's court rule.

B. If a party to be served is within the state and cannot be found but the party's address is known, service of the summons may be made by mailing a copy of the summons to the party by certified mail at least fifteen days before the hearing.

C. If after reasonable effort a party to be served cannot be found, or address ascertained, within or without the state, the court may order service of the summons by publication in accordance with the provisions of Rule 1-004 of the

Rules of Civil Procedure for the District Courts, in which event the hearing shall not be less than five days after the date of last publication.

D. The court may authorize the payment from court funds of the costs of service and of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing."

Section 8

Section 8. Section 32A-1-17 NMSA 1978 (being Laws 1993, Chapter 77, Section 26) is amended to read:

"32A-1-17. APPEALS.--

A. Any party may appeal from a judgment of the court to the court of appeals in the manner provided by law. The appeal shall be heard by the court of appeals upon the files, records and transcript of the evidence of the court. The name of the child shall not appear in the record on appeal.

B. The appeal to the court of appeals does not stay the judgment appealed from, but the court of appeals may order a stay upon application and hearing consistent with the provisions of the Children's Code if suitable provision is made for the care and custody of the child. If the order appealed from grants the legal custody of the child to or withholds it from one or more of the parties to the appeal, the appeal shall be heard at the earliest practicable time.

C. If the court of appeals does not dismiss the petition and order the child released, it shall affirm the court's judgment or it shall modify the court's judgment and remand the child to the jurisdiction of the court for disposition consistent with the appellate court's decision on the appeal. Any party may appeal to the supreme court in the manner provided by law.

D. A child who has filed notice of appeal shall be furnished a transcript of the proceedings, or as much of it as is requested, without cost upon the filing of an affidavit that the child or the person who is legally responsible for the care and support of the child is financially unable to purchase the transcript.

E. Appeals from the court to the court of appeals shall proceed in accordance with time limits to be established by the supreme court.

F. Appeals from a tribal court order shall proceed pursuant to tribal law to an appropriate tribal court."

Section 9

Section 9. Section 32A-1-18 NMSA 1978 (being Laws 1993, Chapter 77, Section 27) is amended to read:

"32A-1-18. PROCEDURAL MATTERS.--

A. When it appears from the facts during the course of any proceeding under the Children's Code that some finding or remedy other than or in addition to those indicated by the petition or motion are appropriate, the court may, either on motion by the children's court attorney or that of counsel for the child, amend the petition or motion and proceed to hear and determine the additional or other issues, findings or remedies as though originally properly sought.

B. Upon application of a party, the court shall issue, and upon its own motion the court may issue, subpoenas requiring attendance and testimony of witnesses and the production of records, documents or other tangible objects at any hearing.

C. Subject to the laws relating to the procedures therefor and the limitations thereon, the court may punish a person for contempt of court for disobeying an order of the court or for obstructing or interfering with the proceedings of the court or the enforcement of its orders.

D. In any proceeding under the Children's Code, either on motion of a party or on the court's own motion, the court may make an order restraining the conduct of any party over whom the court has obtained jurisdiction if:

(1) the court finds that the person's conduct is or may be detrimental or harmful to the child and will tend to defeat the execution of any order of the court; and

(2) due notice of the motion and the grounds therefor and an opportunity to be heard thereon have been given to the person against whom the order is directed.

E. In any proceeding under the Children's Code, the court may allow a party or witness to the proceeding to participate by the use of electronic communications, consistent with the rights of all parties to the proceeding and pursuant to rules promulgated by the supreme court."

Section 10

Section 10. Section 32A-2-3 NMSA 1978 (being Laws 1993, Chapter 77, Section 32) is amended to read:

"32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

A. "delinquent act" means an act committed by a child that would be designated as a crime under the law if committed by an adult, including but not limited to the following offenses:

(1) pursuant to municipal traffic codes or the Motor Vehicle Code:

(a) any driving while under the influence of intoxicating liquor or drugs;

(b) any failure to stop in the event of an accident causing death, personal injury or damage to property;

(c) any unlawful taking of a vehicle or motor vehicle;

(d) any receiving or transferring of a stolen vehicle or motor vehicle;

(e) any homicide by vehicle;

(f) any injuring or tampering with a vehicle;

(g) any altering or changing of an engine number or other vehicle identification numbers;

(h) any altering or forging of a driver's license or permit or any making of a fictitious license or permit;

(i) reckless driving;

(j) driving with a suspended or revoked license; or

(k) any offense punishable as a felony;

(2) buying, attempting to buy, receiving, possessing or being served any alcoholic liquor or being present in a licensed liquor establishment, other than a restaurant or a licensed retail liquor establishment, except in the presence of the child's parent, guardian, custodian or adult spouse. As used in this paragraph, "restaurant" means any establishment where meals are prepared and served primarily for on-premises consumption and that has a dining room, a kitchen and the employees necessary for preparing, cooking and serving meals. "Restaurant" does not include establishments, as defined in regulations promulgated by the director of the special investigations division of the department of public safety, that serve only hamburgers, sandwiches, salads and other fast foods;

(3) any felony violation of the provisions of Sections 17-1-1 through 17-5-9 NMSA 1978 or any regulations adopted by the state game commission that relate to the time, extent, means or manner that game animals, birds or fish may be hunted, taken, captured, killed, possessed, sold, purchased or shipped and for which a fine may be imposed or a civil damage awarded;

(4) any violation of Section 30-29-2 NMSA 1978, regarding the illegal use of a glue, aerosol spray product or other chemical substance;

(5) any violation of the Controlled Substances Act; or

(6) escape from the custody of a law enforcement officer or a juvenile probation or parole officer or from any placement made by the department by a child who has been adjudicated a delinquent child;

B. "delinquent child" means a child who has committed a delinquent act;

C. "delinquent offender" means a delinquent child who is subject to juvenile sanctions only and who is not a youthful offender or a serious youthful offender;

D. "detention facility" means a place where a child may be detained under the Children's Code pending court hearing and does not include a facility for the care and rehabilitation of an adjudicated delinquent child;

E. "felony" means an act that would be a felony if committed by an adult;

F. "misdemeanor" means an act that would be a misdemeanor or petty misdemeanor if committed by an adult;

G. "restitution" means financial reimbursement by the child to the victim or community service imposed by the court and is limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical, psychiatric and psychological treatment for injury to a person and lost wages resulting from physical injury, which are a direct and proximate result of a delinquent act. "Restitution" does not include reimbursement for damages for mental anguish, pain and suffering or other intangible losses. As used in this subsection, "victim" means any person who is injured or suffers damage of any kind by an act that is the subject of a complaint or referral to law enforcement officers or juvenile probation authorities. Nothing contained in this definition limits or replaces the provisions of Subsections A and B of Section 32A-2-27 NMSA 1978;

H. "serious youthful offender" means an individual sixteen or seventeen years of age who is charged with and indicted or bound over for trial for first degree murder. A "serious youthful offender" is not a delinquent child as defined pursuant to the provisions of this section; and

I "youthful offender" means a delinquent child subject to adult or juvenile sanctions who is:

(1) fifteen to eighteen years of age at the time of the offense and who is adjudicated for at least one of the following offenses:

(a) second degree murder, as provided in Section 30-2-1 NMSA 1978;

(b) assault with intent to commit a violent felony, as provided in Section 30-3-3 NMSA 1978;

(c) kidnapping, as provided in Section 30-4-1 NMSA 1978;

(d) aggravated battery, as provided in Section 30-3-5 NMSA 1978;

(e) shooting at a dwelling or occupied building or shooting at or from a motor vehicle, which results in great bodily harm to another person, as provided in Section 30-3-8 NMSA 1978;

(f) dangerous use of explosives, as provided in Section 30-7-5 NMSA 1978;

(g) criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978;

(h) robbery, as provided in Section 30-16-2 NMSA 1978;

(i) aggravated burglary, as provided in Section 30-16-4 NMSA 1978; or

(j) aggravated arson, as provided in Section 30-17-6 NMSA 1978;

(2) fifteen to eighteen years of age at the time of the offense and adjudicated for any felony offense and who has had three prior, separate felony adjudications within a three-year time period immediately preceding the instant offense. The felony adjudications relied upon as prior adjudications shall not have arisen out of the same transaction or occurrence or series of events related in time and location. Successful completion of consent decrees are not considered a prior adjudication for the purposes of this paragraph; or

(3) fifteen years of age and adjudicated for first degree murder, as provided in Section 30-2-1 NMSA 1978."

Section 11

Section 11. Section 32A-2-5 NMSA 1978 (being Laws 1993, Chapter 77, Section 34) is amended to read:

"32A-2-5. JUVENILE PROBATION AND PAROLE SERVICES--
ESTABLISHMENT--JUVENILE PROBATION AND PAROLE OFFICERS--
POWERS AND DUTIES.--

A. Juvenile probation and parole services shall be provided by the department.

B. To carry out the objectives and provisions of the Delinquency Act, but subject to its limitations, the department has the power and duty to:

- (1) receive and examine complaints and allegations that a child is a delinquent child for the purpose of considering beginning a proceeding pursuant to the provisions of the Delinquency Act;
- (2) make case referrals for services as appear appropriate or desirable;
- (3) make predisposition studies and assessments and submit reports and recommendations to the court;
- (4) supervise and assist a child placed on probation or parole or under supervision by court order or by the juvenile parole board;
- (5) give notice to any individual who has been the subject of a petition filed pursuant to the provisions of the Delinquency Act of the sealing of that individual's records in accordance with that act;
- (6) informally dispose of up to three misdemeanor charges brought against a child within two years;
- (7) give notice to the children's court attorney of the receipt of any felony complaint and of any recommended adjustment of such felony complaint;
- (8) identify an Indian child for the purpose of contacting the Indian child's tribe in delinquency cases; and
- (9) contact an Indian child's tribe to consult and exchange information for the purpose of preparing a predisposition report when commitment or placement of an Indian child is contemplated or has been ordered and indicate in the report the name of the person contacted in the Indian child's tribe and the results of the contact.

C. A juvenile probation and parole officer does not have the powers of a law enforcement officer. A juvenile probation and parole officer may take into physical custody and place in detention a child who is under supervision as a delinquent child when there is reasonable cause to believe that the child has violated the conditions of his probation or that the child may leave the jurisdiction of the court. Taking a child into custody under this subsection is subject to and shall proceed in accordance with the provisions of the Delinquency Act relating to custody and detention procedures and criteria."

Section 12

Section 12. Section 32A-2-17 NMSA 1978 (being Laws 1993, Chapter 77, Section 46) is amended to read:

"32A-2-17. PREDISPOSITION STUDIES--REPORTS AND EXAMINATIONS.--

A. After a petition has been filed and either a finding with respect to the allegations of the petition has been made or a notice of intent to admit the allegations of the petition has been filed, the court may direct that a predisposition study and report to the court be made in writing by the department or an appropriate agency designated by the court concerning the child, the family of the child, the environment of the child and any other matters relevant to the need for treatment or to appropriate disposition of the case. The following predisposition reports shall be provided to the parties and the court five days before actual disposition or sentencing:

(1) the adult probation and parole division of the corrections department shall prepare a predisposition report for serious youthful offenders;

(2) the department shall prepare a predisposition report for serious youthful offenders who are convicted of an offense other than first degree murder;

(3) the department shall prepare a predisposition report for youthful offenders concerning the youthful offender's amenability to treatment and if:

(a) the court determines that a juvenile disposition is appropriate, the department shall prepare a subsequent predisposition report; or

(b) the court makes the findings necessary to impose an adult sentence pursuant to Section 32A-2-20 NMSA 1978, the adult probation and parole division of the corrections department shall prepare a subsequent predisposition report; and

(4) the department shall prepare a predisposition report for delinquent offenders, upon the court's request.

B. Where there are indications that the child may be mentally disordered or developmentally disabled, the court, on motion by the children's court attorney or that of counsel for the child, may order the child to be examined at a suitable place by a physician, a licensed psychologist or a licensed, independent social worker prior to a hearing on the merits of the petition. An examination made prior to the hearing or as a part of the predisposition study and report shall be conducted on an outpatient basis, unless the court finds that placement in a hospital or other appropriate facility is necessary.

C. The court, after a hearing, may order examination by a physician, a licensed psychologist or a licensed, independent social worker of a parent or custodian whose ability to care for or supervise a child is an issue before the court.

D. The court may order that a child adjudicated as a delinquent child be transferred to the facility designated by the secretary of the department for a period of not more than fifteen days within a three hundred sixty-five day time period for purposes of diagnosis, with direction that the court be given a report indicating what disposition appears most suitable when the interests of the child and the public are considered.

E. Once the child is committed, the department shall determine when the child is released. The release shall be any time after commitment, but not more than fifteen days after commitment. Upon petition by the department to the court, the judge may extend the commitment for an additional fifteen days upon good cause shown."

Section 13

Section 13. Section 32A-2-19 NMSA 1978 (being Laws 1993, Chapter 77, Section 48) is amended to read:

"32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT OFFENDER.--

A. At the conclusion of the dispositional hearing, the court may make and include in the dispositional judgment its findings on the following:

(1) the interaction and interrelationship of the child with the child's parent, siblings and any other person who may significantly affect the child's best interests;

(2) the child's adjustment to his home, school and community;

(3) the mental and physical health of all individuals involved;

(4) the wishes of the child as to his custodian;

(5) the wishes of the child's parent as to the child's custody;

(6) whether there exists a relative of the child or other individual who, after study by the department, is found to be qualified to receive and care for the child;

(7) the availability of services recommended in the predisposition report; and

(8) the ability of the parents to care for the child in the home.

B. If a child is found to be delinquent, the court may impose a fine not to exceed the fine that could be imposed if the child were an adult and may enter its judgment making any of the following dispositions for the supervision, care and rehabilitation of the child:

(1) any disposition that is authorized for the disposition of a neglected or abused child, in accordance with the Abuse and Neglect Act;

(2) transfer legal custody to the department, an agency responsible for the care and rehabilitation of delinquent children, which shall receive the child at a facility designated by the secretary of the department as a juvenile reception facility. The department shall thereafter determine the appropriate placement, supervision and rehabilitation program for the child. The judge may include recommendations for placement of the child. Commitments are subject to limitations and modifications set forth in Section 32A-2-23 NMSA 1978. The types of commitments include:

(a) a short-term commitment of one year;

(b) a long-term commitment for no more than two years in a long-term facility for the care and rehabilitation of adjudicated delinquent children; or

(c) if the child is a youthful offender, a commitment to age twenty-one, unless sooner discharged;

(3) place the child on probation under those conditions and limitations as the court may prescribe;

(4) place the child in a local detention facility that has been certified in accordance with the provisions of Section 32A-2-4 NMSA 1978 for a period not to exceed fifteen days within a three hundred sixty-five day time period;

(5) if a child is found to be delinquent solely on the basis of Paragraph (3) of Subsection A of Section 32A-2-3 NMSA 1978, the court shall only enter a

judgment placing the child on probation or ordering restitution or imposing a fine not to exceed the fine that could be imposed if the child were an adult or any combination of these dispositions; or

(6) if a child is found to be delinquent solely on the basis of Paragraph (2), (4) or (5) of Subsection A of Section 32A-2-3 NMSA 1978, the court may make any disposition provided by this section and may enter its judgment placing the child on probation and, as a condition of probation, transfer custody of the child to the department for a period not to exceed six months without further order of the court; provided that this transfer shall not be made unless the court first determines that the department is able to provide or contract for adequate and appropriate treatment for the child and that the treatment is likely to be beneficial.

C. When the child is an Indian child, the Indian child's cultural needs shall be considered in the dispositional judgment and reasonable access to cultural practices and traditional treatment shall be provided.

D. No child found to be delinquent shall be committed or transferred to a penal institution or other facility used for the execution of sentences of persons convicted of crimes.

E. Whenever the court vests legal custody in an agency, institution or department, it shall transmit with the dispositional judgment copies of the clinical reports, predisposition study and report and other information it has pertinent to the care and treatment of the child.

F. Prior to any child being placed in the custody of the department, the department shall be provided with reasonable oral or written notification and an opportunity to be heard.

G. In addition to any other disposition pursuant to this section or any other penalty provided by law, if a child fifteen years of age or older is adjudicated delinquent on the basis of Paragraph (2), (4) or (5) of Subsection A of Section 32A-2-3 NMSA 1978, the child's driving privileges may be denied or the child's driver's license may be revoked for a period of ninety days. For a second or a subsequent adjudication, the child's driving privileges may be denied or the child's driver's license revoked for a period of one year. Within twenty-four hours of the dispositional judgment, the court may send to the motor vehicle division of the taxation and revenue department the order adjudicating delinquency. Upon receipt of an order from the court adjudicating delinquency, the director of the motor vehicle division of the taxation and revenue department may revoke or deny the delinquent's driver's license or driving privileges. Nothing in this section may prohibit the delinquent from applying for a limited driving privilege pursuant to Section 66-5-35 NMSA 1978, and nothing in this section precludes the

delinquent's participation in an appropriate educational, counseling or rehabilitation program."

Section 14

Section 14. Section 32A-2-20 NMSA 1978 (being Laws 1993, Chapter 77, Section 49) is amended to read:

"32A-2-20. DISPOSITION OF A YOUTHFUL OFFENDER.--

A. The court has the discretion to invoke either an adult sentence or juvenile sanctions on a youthful offender. The children's court attorney shall file a notice of intent to invoke an adult sentence within ten working days of the filing of the petition, provided that the court may extend the time for filing of the notice of intent to invoke an adult sentence, for good cause shown, prior to the adjudicatory hearing. A preliminary hearing by the court or a hearing before a grand jury shall be held, within ten days after the filing of the intent to invoke an adult sentence, to determine whether probable cause exists to support the allegations contained in the petition.

B. If the children's court attorney has filed a notice of intent to invoke an adult sentence and the child is adjudicated as a youthful offender, the court shall make the following findings in order to invoke an adult sentence:

(1) the child is not amenable to treatment or rehabilitation as a child in available facilities; and

(2) the child is not eligible for commitment to an institution for the developmentally disabled or mentally disordered.

C. In making the findings set forth in Subsection B of this section, the judge shall consider the following factors:

(1) the seriousness of the alleged offense;

(2) whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;

(3) whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted;

(4) the sophistication and maturity of the child as determined by consideration of the child's home, environmental situation, emotional attitude and pattern of living;

(5) the record and previous history of the child;

(6) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child by the use of procedures, services and facilities currently available; and

(7) any other relevant factor, provided that factor is stated on the record.

D. If the court invokes an adult sentence, the court may sentence the child to less than, but shall not exceed, the mandatory adult sentence. A youthful offender given an adult sentence shall be treated as an adult offender and shall be transferred to the legal custody of an agency responsible for incarceration of persons sentenced to adult sentences. This transfer terminates the jurisdiction of the court over the child with respect to the delinquent acts alleged in the petition.

E. If a juvenile disposition is appropriate, the court shall follow the provisions set forth in Section 32A-2-19 NMSA 1978. A youthful offender may be subject to extended commitment in the care of the department until the age of twenty-one, pursuant to the provisions of Section 32A-2-23 NMSA 1978.

F. A sixteen or seventeen year old child charged with first degree murder, but convicted of an offense less than first degree murder, is subject to the dispositions set forth in this section."

Section 15

Section 15. Section 32A-2-21 NMSA 1978 (being Laws 1993, Chapter 77, Section 50) is amended to read:

"32A-2-21. DISPOSITION OF A MENTALLY DISORDERED OR DEVELOPMENTALLY DISABLED CHILD IN A DELINQUENCY PROCEEDING.-

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A. If in a hearing at any stage of a proceeding on a delinquency petition the evidence indicates that the child is or may be developmentally disabled or mentally disordered, the court may:

(1) order the child detained if appropriate under the criteria established pursuant to the provisions of the Delinquency Act; and

(2) initiate proceedings for the involuntary placement of the child as a mentally disordered or developmentally disabled minor pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act.

B. If the child is placed for residential treatment or habilitation pursuant to the Children's Mental Health and Developmental Disabilities Act, the department shall retain legal custody during the period of involuntary placement or until further order of the court.

C. If a child is committed to a psychiatric hospital for treatment or habilitation and in the event that the department should be required to pay more than four hundred dollars (\$400) per day because of the individualized treatment plan, the annual costs over four hundred dollars (\$400) per child per day will be reported annually by the department to the legislative finance committee.

D. The child may remain in the residential treatment or habilitation facility pending the disposition of the delinquency petition.

E. When a child in departmental custody needs involuntary placement for residential mental health or developmental disability services as a result of a mental disorder or developmental disability, the department shall request the children's court attorney to petition for that child's placement pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act.

F. A child subject to the provisions of the Delinquency Act who receives treatment in a residential treatment or habilitation program shall enjoy all the substantive and procedural rights set forth in the Children's Mental Health and Developmental Disabilities Act.

G. A child's competency to stand trial or participate in his own defense may be raised by any party at any time during a proceeding. If the court determines that a child is incompetent to stand trial or participate in his own defense, the court may dismiss the petition without prejudice and initiate proceedings pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act."

Section 16

Section 16. Section 32A-2-22 NMSA 1978 (being Laws 1993, Chapter 77, Section 51) is amended to read:

"32A-2-22. CONTINUANCE UNDER SUPERVISION WITHOUT JUDGMENT--
CONSENT DECREE--DISPOSITION.--

A. At any time after the filing of a delinquency petition and before the entry of a judgment, the court may, on motion of the children's court attorney or that of counsel for the child, suspend the proceedings and continue the child under supervision in the child's own home under terms and conditions negotiated with probation services and agreed to by all the parties affected. The court's order

continuing the child under supervision under this section shall be known as a "consent decree".

B. If the child objects to a consent decree, the court shall proceed to findings, adjudication and disposition of the case. If the child does not object but an objection is made by the children's court attorney after consultation with probation services, the court shall, after considering the objections and the reasons given, proceed to determine whether it is appropriate to enter a consent decree and may, in its discretion, enter the consent decree.

C. A consent decree shall remain in force for six months unless the child is discharged sooner by probation services. Prior to the expiration of the six-month period and upon the application of probation services or any other agency supervising the child under a consent decree, the court may extend the decree for an additional six months in the absence of objection to extension by the child. If the child objects to the extension, the court shall hold a hearing and make a determination on the issue of extension.

D. If either prior to discharge by probation services or expiration of the consent decree the child allegedly fails to fulfill the terms of the decree, the children's court attorney may file a petition to revoke the consent decree. Proceedings on the petition shall be conducted in the same manner as proceedings on petitions to revoke probation. If the child is found to have violated the terms of the consent decree, the court may:

(1) extend the period of the consent decree; or

(2) make any other disposition that would have been appropriate in the original proceeding.

E. A child who is discharged by probation services or who completes a period under supervision without reinstatement of the original delinquency petition shall not again be proceeded against in any court for the same offense alleged in the petition or an offense based upon the same conduct and the original petition shall be dismissed with prejudice. Nothing in this subsection precludes a civil suit against the child for damages arising from the child's conduct.

F. A judge who pursuant to this section elicits or examines information or material about a child that would be inadmissible in a hearing on the allegations of the petition shall not, over the objection of the child, participate in any subsequent proceedings on the delinquency if:

(1) a consent decree is denied and the allegations in the petition remain to be decided in a hearing where the child denies the allegations; or

(2) a consent decree is granted but the delinquency petition is subsequently reinstated.

G. If a consent decree has been entered pursuant to the filing of a delinquency petition based on Paragraph (2), (4) or (5) of Subsection A of Section 32A-2-3 NMSA 1978 for a child who is fifteen years of age or older, a condition of the consent decree agreement may be the denial of the child's driving privileges or the revocation of the child's driver's license for a period of ninety days. For the second or subsequent adjudication, the child's driving privileges may be denied or the child's driver's license revoked for a period of one year. Within twenty-four hours of the entry by the court of a decree consenting to the revocation or denial of the child's driver's license or driving privileges, the court shall send the decree to the motor vehicle division of the taxation and revenue department. Upon receipt of the decree from the court consenting to the denial or revocation of the child's driving privilege or driver's license, the director of the motor vehicle division of the taxation and revenue department shall revoke or deny the delinquent child's driver's license or driving privileges. Nothing in this section shall prohibit the delinquent child from applying for a limited driving privilege pursuant to Section 66-5-35 NMSA 1978, and nothing in this section precludes the delinquent child's participation in an appropriate educational, counseling or rehabilitation program.

H. The court shall not order more than one consent decree for a child within a two-year period."

Section 17

Section 17. Section 32A-2-23 NMSA 1978 (being Laws 1993, Chapter 77, Section 52) is amended to read:

"32A-2-23. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--MODIFICATION--TERMINATION OR EXTENSION OF COURT ORDERS.--

A. A judgment transferring legal custody of an adjudicated delinquent child to an agency responsible for the care and rehabilitation of delinquent children divests the court of jurisdiction at the time of transfer of custody, unless the transfer of legal custody is for a commitment not exceeding fifteen days pursuant to the provisions of Section 32A-2-19 NMSA 1978, in which case the court retains jurisdiction, and:

(1) the juvenile parole board pursuant to the Juvenile Parole Board Act has the exclusive power to parole or release the child;

(2) the supervision of a child after release under Paragraph (1) of this subsection may be conducted by the juvenile parole board in conjunction with the department or any other suitable state agency or under any contractual arrangements the juvenile parole board deems appropriate; and

(3) the period of time a child absconds from parole or probation supervision shall toll all time limits for the requirement of filing a petition to revoke probation or parole and shall toll the computation of the period of probation or parole supervision pursuant to the provisions of the Delinquency Act.

B. A judgment of probation or protective supervision shall remain in force for an indeterminate period not to exceed the term of commitment from the date entered.

C. A child shall be released by an agency and probation or supervision shall be terminated by juvenile probation and parole services or the agency providing supervision when it appears that the purpose of the order has been achieved before the expiration of the period of the judgment. A release or termination and the reasons therefor shall be reported promptly to the court in writing by the releasing authority.

D. Prior to the expiration of a long-term commitment, as provided for in Section 32A-2-19 NMSA 1978, the court may extend the judgment for additional periods of one year until the child reaches the age of twenty-one if the court finds that the extension is necessary to safeguard the welfare of the child or the public interest.

E. Prior to the expiration of a judgment of probation, the court may extend the judgment for an additional period of one year until the child reaches the age of twenty-one if the court finds that the extension is necessary to protect the community or to safeguard the welfare of the child.

F. The court may dismiss a motion if it finds after preliminary investigation that the motion is without substance. If the court is of the opinion that the matter should be reviewed, it may, upon notice to all necessary parties, proceed to a hearing in the manner provided for hearings on petitions alleging delinquency. The court may terminate a judgment if it finds that the child is no longer in need of care, supervision or rehabilitation or it may enter a judgment extending or modifying the original judgment if it finds that action necessary to safeguard the child or the public interest.

G. A child may make a motion to modify a children's court or adult disposition within thirty days of the judge's decision. If the court is of the opinion that the matter should be reviewed, it may, upon notice to all necessary parties, proceed to a hearing in the manner provided for hearings on petitions alleging delinquency."

Section 18

Section 18. Section 32A-3A-4 NMSA 1978 (being Laws 1993, Chapter 77, Section 66) is amended to read:

"32A-3A-4. ASSESSMENT AND REFERRAL PROCESS.--

A. The department, the state department of public education and the department of health shall cooperatively design and implement an assessment and referral process for the purpose of assessing the needs of a family in need of services and making appropriate referrals.

B. The assessment and referral process shall include, to the extent possible given the availability of resources:

- (1) the child;
- (2) the parent, guardian or custodian of the child;
- (3) the department;
- (4) an appropriate school official; and
- (5) a mental health professional.

C. The assessment and referral process may include any appropriate person recommended by the child's family, the department, the state department of public education, the local education agency and the department of health, including:

- (1) the child's teacher;
- (2) the child's school counselor; or
- (3) a physician.

D. When the child involved in the assessment and referral process is an Indian child, the assessment and referral process shall include contact with the Indian child's tribe for the purpose of consulting and exchanging information."

Section 19

Section 19. Section 32A-3B-14 NMSA 1978 (being Laws 1993, Chapter 77, Section 86) is amended to read:

"32A-3B-14. FINDINGS--DISMISSAL--DISPOSITIONAL MATTERS.--

A. The court shall determine if the allegations of the petition are admitted or denied by the parent or child. If the allegations are denied, the court shall proceed to hear evidence on the petition. The court, after hearing all of the

evidence regarding an alleged family in need of court-ordered services, shall make and record its findings.

B. If the court finds, on the basis of a valid admission of the allegations set forth in the petition or on the basis of clear and convincing evidence that is competent, material and relevant in nature, that the child is a child of a family in need of court-ordered services, the court may proceed immediately or at a postponed hearing to make disposition of the case. If the court does not find that the child is a child of a family in need of court-ordered services, the court shall dismiss the petition.

C. In that part of the hearings regarding dispositional issues, all relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value, even though not competent had it been offered during the part of the hearings regarding adjudicatory issues.

D. On the court's motion or motion of a party, the court may continue the hearing on the petition for a reasonable time to receive reports and other evidence regarding disposition. The court shall continue the hearing pending the receipt of the plan for family services if that document has not been prepared and received. During any continuance granted pursuant to this subsection, the court shall make an appropriate order for legal custody of the child."

Section 20

Section 20. Section 32A-3B-17 NMSA 1978 (being Laws 1993, Chapter 77, Section 89) is amended to read:

"32A-3B-17. DISPOSITION OF DEVELOPMENTALLY DISABLED OR MENTALLY DISORDERED CHILD--IN A PROCEEDING UNDER THE FAMILY IN NEED OF SERVICES ACT.--

A. If during any stage of a proceeding regarding a family in need of court-ordered services petition the evidence indicates that the child is or may be developmentally disabled or mentally disordered, the court may order the department to:

(1) secure an assessment of the child;

(2) prepare appropriate referrals for services for the child; and

(3) if necessary, initiate proceedings for the involuntary placement of the child as mentally disordered or developmentally disabled pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act.

B. When a child in department custody needs involuntary placement for residential mental health or developmental disability services, the department shall file a motion for that child's placement pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act.

C. A court hearing for consideration of an involuntary placement of a child for residential treatment or habilitation, when the child is subject to the provisions of the Family in Need of Services Act, shall be heard by the court as a part of the family in need of court-ordered services proceedings. All parties to the family in need of court-ordered services proceedings shall be provided with notice of the involuntary placement hearing.

D. A guardian ad litem appointed pursuant to the Family in Need of Services Act shall serve as the guardian ad litem for a child for the purposes of the Children's Mental Health and Developmental Disabilities Act. When a child is fourteen years of age or older and his guardian ad litem determines that the child's wishes conflict with the child's best interests, the guardian ad litem shall petition the court for the appointment of an attorney to represent the child pursuant to the Children's Mental Health and Developmental Disabilities Act. Upon receiving the petition, the court shall appoint counsel for the child.

E. When a child is subject to the provisions of the Family in Need of Services Act and is receiving residential treatment or habilitation services, any documentation required pursuant to the Children's Mental Health and Developmental Disabilities Act shall be filed with the court as part of the family in need of court-ordered services proceeding. A review of the child's placement in a residential treatment or habilitation program shall occur in the same manner and within the same time requirements as provided in the Children's Mental Health and Developmental Disabilities Act.

F. The clerk of the court shall maintain a separate section within a child's family in need of services file for documents pertaining to actions taken under the Children's Mental Health and Developmental Disabilities Act.

G. A child subject to the provisions of the Family in Need of Services Act who receives treatment in a residential treatment or habilitation program shall enjoy all the substantive and procedural rights set forth in the Children's Mental Health and Developmental Disabilities Act."

Section 21

Section 21. Section 32A-3B-19 NMSA 1978 (being Laws 1993, Chapter 77, Section 91) is amended to read:

"32A-3B-19. PERIODIC REVIEW OF DISPOSITIONAL JUDGMENTS.--

A. Within six months of any original dispositional order and within six months of any subsequent continuation of the order, the department shall petition the court for a review of the disposition of the family in need of court-ordered services order. The review may be carried out by either of the following:

(1) a judicial review hearing conducted by the court; or

(2) a judicial review hearing conducted by a special master; provided, however, that the court approve any findings made by the special master.

B. The children's court attorney shall give twenty days' written notice to all parties of the time, place and purpose of any judicial review hearing held pursuant to Subsection A of this section.

C. At any judicial review hearing held pursuant to Subsection A of this section, the department and all persons given notice of the judicial review shall have the opportunity to present evidence and to cross-examine witnesses. At the hearing, the department shall not only show that it has made reasonable effort to implement the plan for family services approved by the court in its dispositional order, but shall also present an updated plan for any period of extension of the dispositional order. The parent, guardian or custodian of the child shall demonstrate to the court the family's effort to comply with the plan for family services approved by the court in its dispositional order and, if applicable, that the family's effort to maintain contact with the child was diligent and made in good faith, given the family's circumstances and abilities.

D. The Rules of Evidence shall not apply to hearings held pursuant to this section.

E. At the conclusion of any hearing held pursuant to this section, the court shall make findings of fact and conclusions of law.

F. The court shall determine, during a review of a dispositional or continuation order, whether the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the child's Indian tribe have been followed and whether the child's treatment plan provides for maintaining the child's cultural ties. When placement preferences have not been incorporated into an order, good cause for noncompliance shall be clearly stated and supported.

G. Based on its findings, the court shall order one or more of the following dispositions:

(1) permit the child to remain with the child's parent, guardian or custodian, subject to conditions and limitations the court may prescribe, including protective supervision of the child by the department;

(2) return the child to his parents and place the child under the protective supervision of the department;

(3) transfer or continue legal custody of the child to:

(a) the department, subject to the provisions of Paragraph (6) of this subsection;

(b) a relative or other individual who, after study by the department or other agency designated by the court, is found by the court to be qualified to receive and care for the child with protective supervision by the department; or

(c) to the noncustodial parent, if that is found to be in the child's best interests;

(4) dismiss the action and return the child to the child's parent without supervision;

(5) continue the child in the legal custody of the department with or without any required parental involvement in a treatment plan;

(6) make additional orders regarding the treatment plan or placement of the child to protect the child's best interests, if the court determines the department has failed in implementing any material provision of the treatment plan or abused its discretion in the placement or proposed placement of the child;

(7) if at any judicial review the court finds that the child's parent, guardian or custodian has not complied with the court-ordered treatment plan, the court may order the child's parent, guardian or custodian to show cause why he should not be held in contempt of court and subject to sanctions;

(8) provide for a culturally appropriate treatment plan, access to cultural practices and traditional treatment for an Indian child;

(9) direct the department to show cause why an abuse or neglect action has not been filed; or

(10) if the local education agency has been made a party, direct the local education agency to show cause why it has not met the child's educational needs.

H. Dispositional orders entered pursuant to this section shall remain in force for a period of six months."

Section 22

Section 22. Section 32A-4-5 NMSA 1978 (being Laws 1993, Chapter 77, Section 99) is amended to read:

"32A-4-5. ADMISSIBILITY OF REPORT IN EVIDENCE--IMMUNITY OF REPORTING PERSON--INVESTIGATION OF REPORT.--

A. In any proceeding alleging neglect or abuse under the Children's Code resulting from a report required by Section 32-4-3 NMSA 1978 or in any proceeding in which that report or any of its contents are sought to be introduced in evidence, the report or its contents or any other facts related thereto or to the condition of the child who is the subject of the report shall not be excluded on the ground that the matter is or may be the subject of a physician-patient privilege or similar privilege or rule against disclosure.

B. Anyone reporting an instance of alleged child neglect or abuse or participating in a judicial proceeding brought as a result of a report required by Section 32-4-3 NMSA 1978 is presumed to be acting in good faith and shall be immune from liability, civil or criminal, that might otherwise be incurred or imposed by the law, unless the person acted in bad faith or with malicious purpose.

C. After properly verifying the identity of the public official, any school personnel or other person who has the duty to report child abuse pursuant to Section 32-4-3 NMSA 1978 shall permit a member of a law enforcement agency, including tribal police officers, an employee of the district attorney's office, an investigative interviewer for a program described in Subsection E of this section or an employee of the department, to interview the child with respect to a report without the permission of the child's parent, guardian or custodian. Any person permitting an interview pursuant to this subsection is presumed to be acting in good faith and shall be immune from liability, civil or criminal, that might otherwise be incurred or imposed by law, unless the person acted in bad faith or with malicious purpose.

D. All law enforcement personnel, an employee of the district attorney's office, an investigative interviewer for a program described in Subsection E of this section and all employees of the department shall conduct interviews in a manner and place that protects the child and family from unnecessary trauma and embarrassment.

E. If a community has a program for child abuse investigation that includes an investigation interview of the alleged victim, the investigation may be conducted at a site designated by the community program."

Section 23

Section 23. Section 32A-4-23 NMSA 1978 (being Laws 1993, Chapter 77, Section 117) is amended to read:

"32A-4-23. DISPOSITION OF A MENTALLY DISORDERED OR DEVELOPMENTALLY DISABLED CHILD IN A PROCEEDING UNDER THE ABUSE AND NEGLECT ACT.--

A. If in a hearing, at any stage of a proceeding on a neglect or abuse petition, the evidence indicates that the child is developmentally disabled or mentally disordered, the court shall adjudicate the issue of neglect or abuse under the provisions of the Children's Code.

B. When a child in department custody needs involuntary placement for residential mental health or developmental disability services as a result of a mental disorder or developmental disability, the department shall petition for that child's placement pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act.

C. Any child in department custody who is placed for residential treatment or habilitation pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act shall remain in the legal custody of the department while in residential treatment or habilitation or until further order of the court.

D. A court hearing for consideration of an involuntary placement of a child for residential treatment or habilitation, when the child is subject to the provisions of the Abuse and Neglect Act, shall be heard by the court as part of the abuse or neglect proceedings. All parties to the abuse or neglect proceedings shall be provided with notice of the involuntary placement hearing.

E. A guardian ad litem appointed pursuant to the Abuse and Neglect Act shall serve as a guardian ad litem for a child for the purposes of the Children's Mental Health and Developmental Disabilities Act. When a child is fourteen years of age or older and his guardian ad litem determines that the child's wishes conflict with the child's best interests, the guardian ad litem shall petition the court for the appointment of an attorney to represent the child pursuant to the Children's Mental Health and Developmental Disabilities Act. Upon receiving the petition, the court shall appoint counsel for the child.

F. When a child is subject to the provisions of the Abuse and Neglect Act and is receiving residential treatment or habilitation services, any documentation required pursuant to the Children's Mental Health and Developmental Disabilities Act shall be filed with the court as part of the abuse or neglect proceeding. A review of the child's placement in a residential treatment or habilitation program shall occur in the same manner and within the same time requirements as provided in the Children's Mental Health and Developmental Disabilities Act.

G. The clerk of the court shall maintain a separate section within an abuse or neglect file for documents pertaining to actions taken under the Children's Mental Health and Developmental Disabilities Act.

H. A child subject to the provisions of the Abuse and Neglect Act who receives treatment in a residential treatment or habilitation program shall enjoy all the substantive and procedural rights set forth in the Children's Mental Health and Developmental Disabilities Act."

Section 24

Section 24. Section 32A-4-25 NMSA 1978 (being Laws 1993, Chapter 77, Section 119) is amended to read:

"32A-4-25. PERIODIC REVIEW OF DISPOSITIONAL JUDGMENTS.--

A. Within six months of any original dispositional order and within six months of any subsequent continuation of the order, the department shall petition the court for a review of the disposition of an adjudicated neglected or abused child. Prior to the review, the department shall submit a progress report to the local substitute care review board for that judicial district created under the Citizen Substitute Care Review Act. Prior to any judicial review by the court pursuant to this section, the local substitute care review board may review the dispositional order or the continuation of the order and the department's progress report and report its findings and recommendations to the court. The review may be carried out by either of the following:

(1) a judicial review hearing conducted by the court; or

(2) a judicial review hearing conducted by a special master appointed by the court; provided, however, that the court approve any findings made by the special master.

B. The children's court attorney shall give notice to all parties, the child's guardian ad litem, the child's CASA, a contractor administering the local substitute care review board and the child's foster parent or substitute care provider of the time, place and purpose of any judicial review hearing held pursuant to Subsection A of this section.

C. At any judicial review hearing held pursuant to Subsection A of this section, the department, the child's guardian ad litem and all parties given notice under Subsection B of this section shall have the opportunity to present evidence and to cross-examine witnesses. At the hearing, the department shall show that it has made reasonable effort to implement any treatment plan approved by the court in its dispositional order and shall present a treatment plan consistent with the purposes of the Children's Code for any period of extension of the

dispositional order. The respondent shall demonstrate to the court that efforts to comply with the treatment plan approved by the court in its dispositional order and efforts to maintain contact with the child were diligent and made in good faith. The court shall determine the extent of compliance with the treatment plan and whether progress is being made toward establishing a stable and permanent placement for the child.

D. The Rules of Evidence shall not apply to hearings held pursuant to this section. The court may admit testimony by any person given notice of the hearing who has information about the status of the child or the status of the treatment plan.

E. At the conclusion of any hearing held pursuant to this section, the court shall make findings of fact and conclusions of law.

F. When the child is an Indian child, the court shall determine during review of a dispositional order whether the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the child's Indian tribe were followed and whether the child's treatment plan provides for maintaining the child's cultural ties. When placement preferences have not been followed, good cause for noncompliance shall be clearly stated and supported.

G. Based on its findings, the court shall order one of the following dispositions:

(1) dismiss the action and return the child to his parent without supervision if the court finds that conditions in the home that led to abuse have been corrected and it is now safe for the return of the abused child;

(2) permit the child to remain with his parent, guardian or custodian subject to those conditions and limitations the court may prescribe, including protective supervision of the child by the department;

(3) return the child to his parent and place the child under the protective supervision of the department;

(4) transfer or continue legal custody of the child to:

(a) the noncustodial parent, if that is found to be in the child's best interests;

(b) a relative or other individual who, after study by the department or other agency designated by the court, is found by the court to be qualified to receive and care for the child and is appointed as a permanent guardian of the child; or

(c) the department subject to the provisions of Paragraph (6) of this subsection;

(5) continue the child in the legal custody of the department with or without any required parental involvement in a treatment plan;

(6) make additional orders regarding the treatment plan or placement of the child to protect the child's best interests if the court determines the department has failed in implementing any material provision of the treatment plan or abused its discretion in the placement or proposed placement of the child; or

(7) if during a judicial review the court finds that the child's parent, guardian or custodian has not complied with the court-ordered treatment plan, the court may order:

(a) the child's parent, guardian or custodian to show cause why he should not be held in contempt of court; or

(b) a hearing on the merits of terminating parental rights.

H. Dispositional orders entered pursuant to this section shall remain in force for a period of six months, except for orders that provide for transfer of the child to the child's noncustodial parent or to a permanent guardian.

I. The report of the local substitute care review board submitted to the court pursuant to Subsection A of this section shall become a part of the child's permanent court record."

Section 25

Section 25. Section 32A-4-28 NMSA 1978 (being Laws 1993, Chapter 77, Section 122) is amended to read:

"32A-4-28. TERMINATION OF PARENTAL RIGHTS--ADOPTION DECREE.--

A. In proceedings to terminate parental rights, the court shall give primary consideration to the physical, mental and emotional welfare and needs of the child.

B. The court shall terminate parental rights with respect to a child when:

(1) there has been an abandonment of the child by his parents;

(2) the child has been a neglected or abused child as defined in the Abuse and Neglect Act and the court finds that the conditions and causes of the

neglect and abuse are unlikely to change in the foreseeable future despite reasonable efforts by the department or other appropriate agency to assist the parent in adjusting the conditions that render the parent unable to properly care for the child; provided, the court may find in some cases that efforts by the department or another agency would be unnecessary, when there is a clear showing that the efforts would be futile; or

(3) the child has been placed in the care of others, including care by other relatives, either by a court order or otherwise and the following conditions exist:

(a) the child has lived in the home of others for an extended period of time;

(b) the parent-child relationship has disintegrated;

(c) a psychological parent-child relationship has developed between the substitute family and the child;

(d) if the court deems the child of sufficient capacity to express a preference, the child no longer prefers to live with the natural parent;

(e) the substitute family desires to adopt the child; and

(f) a presumption of abandonment created by the conditions described in Subparagraphs (a) through (e) of this paragraph has not been rebutted.

C. A finding by the court that all of the conditions set forth in Subparagraphs (a) through (e) of Paragraph (3) of Subsection B of this section exist shall create a rebuttable presumption of abandonment.

D. The termination of parental rights involving a child subject to the federal Indian Child Welfare Act of 1978 shall comply with the requirements of that act.

E. When the court finds that parental rights should be terminated; that the requirements for the adoption of a child have been satisfied; that the prospective adoptive parent is a party to the action; and that the good cause exists to waive the filing of a separate petition for adoption, the court may proceed to grant adoption of the child, absent an appeal of the termination of parental rights. The court shall not waive any time requirements set forth in the Adoption Act, unless the termination of parental rights occurred pursuant to the provisions of Paragraph (3) of Subsection B of this section. The court may enter a decree of adoption only after finding that the party seeking to adopt the child has satisfied all of the requirements set forth in the Adoption Act. Unless otherwise stipulated by all parties, an adoption decree shall take effect sixty days after the termination

of parental rights, to allow the department sufficient time to provide counseling for the child and otherwise prepare the child for the adoption. The adoption decree shall conform to the requirements of the Adoption Act and shall have the same force and effect as other adoption decrees entered pursuant to that act. The court clerk shall assign an adoption case number to the adoption decree."

Section 26

Section 26. Section 32A-5-3 NMSA 1978 (being Laws 1993, Chapter 77, Section 130) is amended to read:

"32A-5-3. DEFINITIONS.--As used in the Adoption Act:

A. "adoptee" means any person who is the subject of an adoption petition;

B. "agency" means any person certified, licensed or otherwise specially empowered by law to place a child in a home in this or any other state for the purpose of adoption;

C. "agency adoption" means an adoption when the child is in the custody of any agency;

D. "acknowledged father" means a father who:

(1) acknowledges paternity of the adoptee pursuant to the putative father registry, as provided for in Section 32A-5-20 NMSA 1978;

(2) is named, with his consent, as the adoptee's father on the adoptee's birth certificate;

(3) is obligated to support the adoptee under a written voluntary promise or pursuant to a court order;

(4) has openly held out the adoptee as his own child; or

(5) has established a custodial, personal or financial relationship with the child. The relationship may be established prior to the child's birth;

E. "alleged father" means an individual whom the biological mother has identified as the biological father, but the individual has not acknowledged paternity or registered with the putative father registry, as provided for in Section 32A-5-20 NMSA 1978;

F. "consent" means a document:

(1) signed by a biological parent whereby the parent grants consent to the adoption of the parent's child by another; or

(2) whereby the department or an agency grants its consent to the adoption of a child in its custody;

G. "counselor" means a person certified by the department to conduct adoption counseling in independent adoptions;

H. "department adoption" means an adoption when the child is in the custody of the department;

I. "former parent" means a parent whose parental rights have been terminated or relinquished;

J. "full disclosure" means mandatory and continuous disclosure by the investigator, agency, department or petitioner throughout the adoption proceeding and after finalization of the adoption of all known, nonidentifying information regarding the adoptee, including:

- (1) health history;
- (2) psychological history;
- (3) mental history;
- (4) hospital history;
- (5) medication history;
- (6) genetic history;
- (7) physical descriptions;
- (8) social history;
- (9) placement history; and
- (10) education;

K. "independent adoption" means an adoption when the child is not in the custody of the department or an agency;

L. "investigator" means an individual certified by the department to conduct pre-placement studies and post-placement reports;

M. "office" means a place for the regular transaction of business or performance of particular services;

N. "parental rights" means all rights of a parent with reference to a child, including parental right to control, to withhold consent to an adoption or to receive notice of a hearing on a petition for adoption;

O. "placement" means the selection of a family for an adoptee or matching of a family with an adoptee and physical transfer of the adoptee to the family in all adoption proceedings, except in adoptions filed pursuant to Paragraphs (1) and (2) of Subsection C of Section 32A-5-12 NMSA 1978, in which case placement occurs when the parents consent to the adoption, parental rights are terminated or parental consent is implied;

P. "post-placement report" means a written evaluation of the adoptive family and the adoptee after the adoptee is placed for adoption;

Q. "pre-placement study" means a written evaluation of the adoptive family, the adoptee's biological family and the adoptee;

R. "presumed father" means:

(1) the husband of the biological mother at the time the adoptee was born;

(2) an individual who was married to the mother and either the adoptee was born during the term of the marriage or the adoptee was born within three hundred days after the marriage was terminated by death, annulment, declaration of invalidity or divorce; or

(3) before the adoptee's birth, an individual who attempted to marry the adoptee's biological mother by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid and if the attempted marriage:

(a) could be declared invalid only by a court, the adoptee was born during the attempted marriage or within three hundred days after its termination by death, annulment, declaration of invalidity or divorce; or

(b) is invalid without a court order, the adoptee was born within three hundred days after the termination of cohabitation;

S. "putative father" means the alleged father of the adoptee who has not acknowledged paternity of the adoptee pursuant to the putative father registry, as provided for in Section 32A-5-20 NMSA 1978;

T. "record" means any petition, affidavit, consent or relinquishment form, transcript or notes of testimony, deposition, power of attorney, report, decree, order, judgment, correspondence, document, photograph, invoice, receipt, certificate or other printed, written, videotaped or tape-recorded material pertaining to an adoption proceeding;

U. "relinquishment" means the document by which a parent relinquishes parental rights to the department or an agency to enable placement of the parent's child for adoption;

V. "resident" means a person who, prior to filing an adoption petition, has lived in the state for at least six months immediately preceding filing of the petition for adoption or a person who has become domiciled in the state by establishing legal residence with the intention of maintaining the residency indefinitely; and

W. "stepparent adoption" means an adoption of the adoptee by the adoptee's stepparent when the adoptee has lived with the stepparent for at least one year following the marriage of the stepparent to the custodial parent."

Section 27

Section 27. Section 32A-5-6 NMSA 1978 (being Laws 1993, Chapter 77, Section 133) is amended to read:

"32A-5-6. AUTHORITY OF THE DEPARTMENT.--

A. The department may adopt and promulgate necessary regulations and forms for the administration of the Adoption Act, but the regulations shall not conflict with the provisions of the Adoption Act.

B. The department has the authority to provide or request additional information from an investigator or an attorney representing any person involved in any action filed pursuant to the provisions of the Adoption Act.

C. The department has the authority to intervene in any action filed pursuant to the provisions of the Adoption Act. The intervention shall be effected when legal counsel for the department files a motion for an entry of appearance and an appropriate response.

D. The department shall be served by mail by the attorney for the petitioner with copies of all pleadings filed in any action pursuant to the provisions of the Adoption Act, except for copies of the petition for adoption, the request for placement and the decree of adoption, which shall be served as provided in Section 32A-5-7 NMSA 1978."

Section 28

Section 28. Section 32A-5-7 NMSA 1978 (being Laws 1993, Chapter 77, Section 134) is amended to read:

"32A-5-7. CLERK OF THE COURT--DUTIES.--

A. The clerk of the court shall file pleadings captioned pursuant to the provisions of Section 32A-5-9 NMSA 1978. The clerk of the court shall not file incorrectly captioned pleadings.

B. The clerk of the court shall mail a copy of the request for placement to the department within one working day of the request for placement being filed with the court. The attorney for the person requesting placement shall provide to the clerk of the court a copy of the request for placement and a stamped envelope addressed to the department as specified in department regulation.

C. The clerk of the court shall mail a copy of the petition for adoption within one working day of the petition for adoption being filed with the court. The attorney for the petitioner shall provide to the clerk of the court a copy of the petition for adoption and a stamped envelope addressed to the department as specified in department regulation.

D. The clerk of the court shall mail a copy of the decree of adoption to the department within one working day of the entry of the decree of adoption. The attorney for the petitioner shall provide to the clerk of the court a copy of the decree of adoption and a stamped envelope addressed to the department as specified in department regulation.

E. In any adoption involving an Indian child, the clerk of the court shall provide the secretary of the interior with a copy of any decree of adoption or adoptive placement order and other information as required by the federal Indian Child Welfare Act of 1978. The attorney for the petitioner shall provide to the clerk of the court a copy of an adoption decree, an adoptive placement order, any other information required by the federal Indian Child Welfare Act of 1978 and a stamped envelope addressed to the secretary of the interior.

F. The clerk of the court shall forward an application for a birth certificate in an adoptee's new name:

(1) for a person born in the United States, to the appropriate vital statistics office of the place, if known, where the adoptee was born; or

(2) for all other persons, to the state registrar of vital statistics."

Section 29

Section 29. Section 32A-5-8 NMSA 1978 (being Laws 1993, Chapter 77, Section 135) is amended to read:

"32A-5-8. CONFIDENTIALITY OF RECORDS.--

A. Unless the petitioner agrees to be contacted or agrees to the release of the petitioner's identity to the parent and the parent agrees to be contacted or agrees to the release of the parent's identity to the petitioner, the attorneys, the court, the agency and the department shall maintain confidentiality regarding the names of the parties, unless the information is already otherwise known. After the petition is filed and prior to the entry of the decree, the records in adoption proceedings shall be open to inspection only by the attorney for the petitioner, the department or the agency, any attorney appointed as a guardian ad litem for the adoptee, any attorney retained by the adoptee or other persons upon order of the court for good cause shown.

B. All records, whether on file with the court, an agency, the department, an attorney or other provider of professional services in connection with an adoption, are confidential and may be disclosed only pursuant to the provisions of the Adoption Act. All information and documentation provided for the purpose of full disclosure is confidential. Documentation provided for the purpose of full disclosure shall remain the property of the person making full disclosure when a prospective adoptive parent decides not to accept a placement. Immediately upon refusal of the placement, the prospective adoptive parent shall return all full disclosure documentation to the person providing full disclosure. A prospective adoptive parent shall not disclose any confidential information received during the full disclosure process, except as necessary to make a placement decision or to provide information to a child's guardian ad litem or the court.

C. All hearings in adoption proceedings shall be confidential and shall be held in closed court without admittance of any person other than parties and their counsel.

D. Prior to the entry of the decree of adoption, the parent consenting to the adoption or relinquishing parental rights to an agency or the department shall execute an affidavit stating whether the parent will permit contact or the disclosure of the parent's identity to the adoptee or the adoptee's prospective adoptive parents."

Section 30

Section 30. Section 32A-5-12 NMSA 1978 (being Laws 1993, Chapter 77, Section 139) is amended to read:

"32A-5-12. PLACEMENT FOR ADOPTION--RESTRICTIONS--FULL DISCLOSURE.--

A. No petition for adoption shall be granted by the court unless the adoptee was placed in the home of the petitioner for the purpose of adoption:

- (1) by the department;
- (2) by an appropriate public authority of another state;
- (3) by an agency; or
- (4) pursuant to a court order, as provided in Section 32A-5-13

NMSA 1978.

B. The provisions of Subsection A of this section do not apply to a child in the department's custody who is being adopted pursuant to the provisions of the Abuse and Neglect Act.

C. When an adoptee is not in the custody of the department or an agency, the adoption is an independent adoption and the provisions of this section and Section 32A-5-13 NMSA 1978 shall apply, except when the following circumstances exist:

(1) a stepparent of the adoptee seeks to adopt the adoptee and prior to the filing of the adoption petition, the adoptee has lived with the stepparent for at least one year since the marriage of the stepparent to the custodial parent and the family has received counseling, as provided for in Section 32A-5-22 NMSA 1978;

(2) a relative within the fifth degree of consanguinity to the adoptee or that relative's spouse seeks to adopt the adoptee, and, prior to the filing of the adoption petition, the adoptee has lived with the relative or the relative's spouse for at least one year; or

(3) a person designated to care for the adoptee in the will of the adoptee's deceased parent seeks to adopt the adoptee, and, prior to the filing of the adoption petition, the adoptee has lived with that person for at least one year.

D. All placements shall be made by the department, an agency or the parent of the adoptee pursuant to Section 32A-5-13 NMSA 1978.

E. In all adoptions, prior to any placement being made, the person making the placement shall provide full disclosure."

Section 31

Section 31. Section 32A-5-13 NMSA 1978 (being Laws 1993, Chapter 77, Section 140) is amended to read:

"32A-5-13. INDEPENDENT ADOPTIONS--REQUEST FOR PLACEMENT--
PLACEMENT ORDER--CERTIFICATION.--

A. When a placement order is required, the petitioner shall file a request with the court to allow the placement. The request shall be filed at least thirty days prior to an adoptive placement in an independent adoption proceeding. An order permitting the placement shall be obtained prior to actual placement.

B. A pre-placement study approving the petitioner as an appropriate adoptive parent shall be filed with the court prior to issuance of a placement order, except as provided in Subsection C of Section 32A-5-12 NMSA 1978.

C. In order for a person to be certified to conduct pre-placement studies, the person shall meet the standards promulgated by the department. If the child is an Indian child, the person shall meet the standards set forth in the federal Indian Child Welfare Act of 1978.

D. The pre-placement study shall be conducted by an agency or a person certified by the department to conduct the study. A person or agency that wants to be certified to perform pre-placement studies shall file documents verifying their qualifications with the department. The department shall publish a list of persons or agencies certified to conduct a pre-placement study. If necessary to defray additional costs associated with compiling the list, the department may assess and charge a reasonable administrative fee to the person or agency listed.

E. When a person or agency that wants to be certified to perform pre-placement studies files false documentation with the department, the person or agency shall be subject to the provisions of Section 32A-5-42 NMSA 1978.

F. A request for placement shall be filed and verified by the petitioner and shall allege:

(1) the full name, age and place and duration of residence of the petitioner and, if married, the place and date of marriage;

(2) the date and place of birth of the adoptee, if known, or the anticipated date and place of birth of the adoptee;

(3) a detailed statement of the circumstances and persons involved in the proposed placement;

(4) if the adoptee has been born, the address where the adoptee is residing at the time of the request for placement;

(5) if the adoptee has been born, the places where the adoptee has lived within the past three years and the names and addresses of the persons with

whom the adoptee has lived. If the adoptee is in the custody of an agency or the department, the address shall be the address of the agency or the county office of the department from which the child was placed;

(6) the existence of any court orders that are known to the petitioner and that regulate custody, visitation or access to the adoptee, copies of which shall be attached to the request for placement as exhibits; if copies of any such court orders are unavailable at the time of filing the request for placement, the copies shall be filed prior to the issuance of the order of placement;

(7) that the petitioner desires to establish a parent and child relationship between the petitioner and the adoptee and that the petitioner is a fit and proper person able to care and provide for the adoptee's welfare;

(8) the relationship, if any, of the petitioner to the adoptee;

(9) whether the adoptee is subject to the federal Indian Child Welfare Act of 1978, and, if so, the petition shall allege the actions taken to comply with the federal Indian Child Welfare Act of 1978 and all other allegations required pursuant to that act;

(10) whether the adoption is subject to the Interstate Compact on the Placement of Children and what specific actions have been taken to comply with the Interstate Compact on the Placement of Children; and

(11) the name, address and telephone number of the agency or investigator who has agreed to do the pre-placement study.

G. The request for placement shall be served on all parties entitled to receive notice of the filing of a petition for adoption, as provided in Section 32A-5-27 NMSA 1978.

H. A hearing and the court decision on the request for placement shall occur within thirty days of the filing of the request. For good cause shown, the court may shorten the time to twenty days in which to schedule the hearing and issue a court decision. In the event of exigent circumstances, including premature birth, the court may shorten the time to five days in which to schedule the hearing and issue a court decision.

I. As part of any court order authorizing placement under this section, the court shall find whether the pre-placement study complies with Section 32A-5-14 NMSA 1978 and that the time requirements concerning placement set forth in this section have been met."

Section 32

Section 32. Section 32A-5-14 NMSA 1978 (being Laws 1993, Chapter 77, Section 141) is amended to read:

"32A-5-14. PRE-PLACEMENT STUDY.--

A. The pre-placement study shall be performed as prescribed by department regulation and shall include at a minimum the following:

- (1) an individual interview with each petitioner;
- (2) a joint interview with both petitioners; if a joint interview is not conducted, an explanation shall be provided in the pre-placement study;
- (3) a home visit, which shall include an interview with the petitioner's children and any other permanent residents of the petitioner's home;
- (4) an interview with the adoptee, if age appropriate;
- (5) an individual interview with each of the adoptee's parents; if a parent is not interviewed, an explanation shall be provided in the pre-placement study;
- (6) full disclosure to the petitioner;
- (7) exploration of the petitioners' philosophy concerning discussion of adoption issues with the adoptee;
- (8) the initiation of a criminal records check of each petitioner;
- (9) a medical certificate dated not more than one year prior to any adoptive placement assessing the petitioner's health as it relates to the petitioner's ability to care for the adoptee;
- (10) a minimum of three letters of reference from individuals named by the petitioner or memoranda of the dates and contents of personal contacts with the references;
- (11) a statement of the capacity and readiness of the petitioner for parenthood and the petitioner's emotional and physical health and ability to shelter, feed, clothe and educate the adoptee;
- (12) verification of the petitioner's employment, financial resources and marital status;
- (13) a report of a medical examination performed on the adoptee within one year prior to the proposed adoptive placement;

(14) a statement of the results of any prior pre-placement study or initiation of a pre-placement study, if any, of the petitioners done by any person; and

(15) the investigator shall attach a copy of proof of certification by the department for the investigator to conduct pre-placement studies, or if the preparer of the pre-placement study is out-of-state, the preparer shall attach a statement setting forth qualifications that are equivalent to those required of an investigator pursuant to the provisions of Section 32A-5-13 NMSA 1978 and department regulations.

B. The pre-placement study shall be completed at the cost of the petitioner.

C. Unless directed by the court, a pre-placement study is not required in cases in which the child is being adopted by a stepparent, a relative or a person named in the child's deceased parent's will pursuant to Section 32A-5-12 NMSA 1978.

D. The pre-placement study shall be filed with the court."

Section 33

Section 33. Section 32A-5-15 NMSA 1978 (being Laws 1993, Chapter 77, Section 142) is amended to read:

"32A-5-15. TERMINATION OF PARENTAL RIGHTS.--

A. The physical, mental and emotional welfare and needs of the child shall be the primary consideration for the termination of parental rights. The court may terminate the rights of the child's parents as provided by the Adoption Act.

B. The court shall terminate parental rights with respect to a child when:

(1) the child has been abandoned by the parents;

(2) the child has been a neglected or abused child and the court finds that the conditions and causes of the neglect and abuse are unlikely to change in the foreseeable future; or

(3) the child has been placed in the care of others, including care by other relatives, either by a court order or otherwise, and the following conditions exist:

(a) the child has lived in the home of others for an extended period of time;

(b) the parent-child relationship has disintegrated;

(c) a psychological parent-child relationship has developed between the substitute family and the child;

(d) if the court deems the child of sufficient capacity to express a preference, the child no longer prefers to live with the natural parent;

(e) the substitute family desires to adopt the child; and

(f) a presumption of abandonment created by the conditions described in Subparagraphs (a) through (e) of this paragraph has not been rebutted.

C. A finding by the court that all of the conditions set forth in Subparagraph (a) through (e) of Paragraph (3) of Subsection B of this section exist shall create a rebuttable presumption of abandonment.

D. The termination of parental rights involving an Indian child shall comply with the requirements of the federal Indian Child Welfare Act of 1978."

Section 34

Section 34. Section 32A-5-17 NMSA 1978 (being Laws 1993, Chapter 77, Section 144) is amended to read:

"32A-5-17. PERSONS WHOSE CONSENTS OR RELINQUISHMENTS ARE REQUIRED.--

A. Consent to adoption or relinquishment of parental rights to the department or an agency licensed by the state of New Mexico shall be required of the following:

(1) the adoptee, if ten years of age or older, except when the court finds that the adoptee does not have the mental capacity to give consent;

(2) the adoptee's mother;

(3) the adoptee's adoptive father;

(4) the presumed father of the adoptee;

(5) the adoptee's acknowledged father;

(6) the department or the agency to whom the adoptee has been relinquished that has placed the adoptee for adoption or the department or the agency that has custody of the adoptee; provided, however, that the court may grant the adoption without the consent of the department or the agency if the court finds the

adoption is in the best interests of the adoptee and that the withholding of consent by the department or the agency is unreasonable; and

(7) the guardian of the adoptee's parent when, pursuant to provisions of the Probate Code, that guardian has express authority to consent to adoption.

B. In any adoption involving an Indian child, consent to adoption by the petitioner or relinquishment of parental rights shall be obtained from an "Indian custodian", as required pursuant to the provisions of the federal Indian Child Welfare Act of 1978.

C. A consent or relinquishment executed by a parent who is a minor shall not be subject to avoidance or revocation solely by reason of the parent's minority."

Section 35

Section 35. Section 32A-5-22 NMSA 1978 (being Laws 1993, Chapter 77, Section 149) is amended to read:

"32A-5-22. PERSONS REQUIRED TO RECEIVE COUNSELING--CONTENT AND FORM OF COUNSELING.--

A. Counseling required pursuant to the provisions of this section shall occur prior to:

(1) consent to the adoption; or

(2) the relinquishment of parental rights.

For good cause, the court may waive any or all counseling requirements.

B. Counseling shall be required for the following persons:

(1) the adoptee, if the adoptee is ten years of age or older;

(2) the adoptee's parent who is consenting to the adoption or relinquishing parental rights; and

(3) in a stepparent adoption, when the stepparent and the custodial parent have been married for more than one year, but less than two years:

(a) the custodial parent whose parental rights are not being terminated, but who is consenting to adoption of the adoptee by the stepparent; and

(b) the petitioning stepparent.

C. The content of the counseling shall be as follows:

(1) an adoptee who is ten years of age or older shall be counseled regarding:

(a) the adoptee's understanding of the adoption process, the consequences of the adoption and alternatives to the adoption;

(b) the adoptee's feelings and wishes regarding the adoption;

(c) the adoptee's readiness for the adoption; and

(d) any other issues relevant to the adoption, given the specific circumstances of the adoption;

(2) the adoptee's parent who is consenting to the adoption or relinquishing his parental rights shall be counseled regarding alternatives to and the consequences of adoption; and

(3) in a stepparent adoption, the custodial parent consenting to the adoption of the custodial parent's child by the stepparent and the petitioning stepparent shall be counseled regarding alternatives to adoption, the consequences of the adoption, child custody and child support.

D. The form of the counseling shall be as follows:

(1) adults required to receive counseling shall be counseled individually without the presence of any other person for a minimum of one counseling session; and

(2) for adoptees ten years of age or older and minor biological parents, there shall be a minimum of two separate counseling sessions with at least one of the sessions to be conducted without the presence of the adoptee's parent or guardian, the minor biological parent's parent or guardian or the petitioner.

E. All counseling sessions shall be conducted in the primary language of the person receiving the counseling.

F. A counseling narrative shall be prepared as prescribed by department regulation and shall be attached to the consent or relinquishment form for filing with the court.

G. Counseling may be provided by a counselor, the department or an agency.

H. A person required to receive counseling who is residing outside of New Mexico may receive counseling from a person who possesses qualifications equivalent to a person certified to perform counseling by the state of New Mexico. A person providing counseling in another state or country shall attach a statement specifying that person's qualification to perform counseling to the counseling narrative. A person providing counseling in New Mexico shall attach a copy of that person's certification to the counseling narrative."

Section 36

Section 36. Section 32A-5-23 NMSA 1978 (being Laws 1993, Chapter 77, Section 150) is amended to read:

"32A-5-23. PERSONS WHO MAY TAKE CONSENTS OR RELINQUISHMENTS.--

A. A consent to adoption or relinquishment of parental rights shall be signed before and approved by:

(1) a judge who has jurisdiction over adoption proceedings, within or without this state, and who is in the jurisdiction in which the child is present or in which the parent resides at the time it is signed; or

(2) an individual appointed by the department to take consents or relinquishments or by an agency licensed by the state, but only when the consenting or relinquishing parent is represented by independent legal counsel and a guardian ad litem has been appointed for any adoptee whose consent is required.

B. No parent may relinquish parental rights to the department or an agency without the department's or the agency's consent.

C. The consent or relinquishment shall be filed with the court in which the petition for adoption has been filed before adjudication of the petition."

Section 37

Section 37. Section 32A-5-25 NMSA 1978 (being Laws 1993, Chapter 77, Section 152) is amended to read:

"32A-5-25. PETITION--TIME OF FILING.--

A. A petition for adoption shall be filed within sixty days of the adoptee's placement into the proposed adoptive home if the adoptee is under the age of one year. If the adoptee is over the age of one year at the time of placement, the petition shall be filed within one hundred twenty days of the placement. For good cause shown, the court may extend those time limits up to an additional one hundred eighty days if a request for

extension is filed prior to the expiration of the initial time limits. o further extensions of time shall be granted after the one hundred eighty day extension period, unless an addendum to the pre-placement study is filed in addition to an affidavit establishing good cause for the delay in filing the adoption petition.

B. If a petition is not filed in a timely manner, any person having knowledge of the proceeding shall notify the department, which may proceed as if the adoptee were a neglected child."

Section 38

Section 38. Section 32A-5-26 NMSA 1978 (being Laws 1993, Chapter 77, Section 153) is amended to read:

"32A-5-26. PETITION--CONTENT.--A petition for adoption shall be filed and verified by the petitioner and shall allege:

A. the full name, age and place and duration of residence of the petitioner and, if married, the place and date of marriage; the date and place of any prior marriage, separation or divorce; and the name of any present or prior spouse;

B. the date and place of birth of the adoptee, if known;

C. the places where the adoptee has lived within the past three years and the names and addresses of the persons with whom the adoptee has lived, unless the adoptee is in the custody of an agency or the department, in which case the petitioner shall state the name and address of the agency or the department's county office from which the child was placed;

D. the birth name of the adoptee, any other names by which the adoptee has been known and the adoptee's proposed new name; provided that, in the case of an agency adoption, if the petitioner and the biological parents have not agreed to the release of the adoptee's identity to the other person, the birth name and any other names by which the adoptee has been known shall be filed with the court as separate documents at the time the petition is filed;

E. where the adoptee is residing at the time of the filing of the petition and, if the adoptee is not living with the petitioner, when the adoptee will commence living with the petitioner;

F. that the petitioner desires to establish a parent and child relationship with the adoptee and that the petitioner is a fit and proper person able to care and provide for the adoptee's welfare;

G. the existence of any court orders, including placement orders, that are known to the petitioner and that regulate custody, visitation or access to the adoptee, copies of which shall accompany and be attached to the petition as exhibits;

H. the relationship, if any, of the petitioner to the adoptee;

I. the name and address of the placing agency, if any;

J. the names and addresses of all persons from whom consents or relinquishments are required, attaching copies of those obtained and alleging the facts that excuse or imply the consents or relinquishments of the others; provided that if the petitioner has not agreed to the release of his identity to the parent or if the parent has not agreed to the release of his identity to the petitioner, the names and addresses of all persons from whom consents or relinquishments are required shall be filed with the court as separate documents at the time the petition for adoption is filed;

K. whether the adoption will be an open adoption, pursuant to the provisions of Section 32A-5-35 NMSA 1978;

L. when consent of the child's father is alleged to be unnecessary, the results of a search of the putative father registry;

M. whether the adoptee is an Indian child and, if so, the petition shall allege:

(1) the tribal affiliation of the adoptee's parents;

(2) what specific actions have been taken and by whom to notify the parents' tribe and the results of the contact, including the names, addresses, titles and telephone numbers of the persons contacted. Copies of any correspondence with the Indian tribe shall be attached as exhibits to the petition; and

(3) what specific efforts were made to comply with the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the appropriate Indian tribe;

N. whether the adoption is subject to the Interstate Compact on the Placement of Children and, if so, a copy of the interstate compact form indicating approval shall be attached as an exhibit to the petition;

O. whether the adoptee is foreign born and, if so, copies of the child's passport and United States visa and of all documents demonstrating that the adoptee is legally free for adoption; and

P. the name, address and telephone number of the agency or individual who has agreed to conduct the post-placement report in accordance with Section 32A-

5-31 NMSA 1978, if different than the agency or individual who prepared the pre-placement study in accordance with Section 32A-5-13 NMSA 1978."

Section 39

Section 39. Section 32A-5-30 NMSA 1978 (being Laws 1993, Chapter 77, Section 157) is amended to read:

"32A-5-30. REMOVAL OF ADOPTEE FROM THE COUNTY.--During the pendency of an adoption proceeding, the adoptee shall not be removed from the county where the petitioner resides at the time of filing a petition for adoption for a period longer than fifteen days without the permission of the court in which the adoption is pending."

Section 40

Section 40. Section 32A-5-32 NMSA 1978 (being Laws 1993, Chapter 77, Section 159) is amended to read:

"32A-5-32. STEPPARENT ADOPTIONS.--

A. Any person may adopt his spouse's child in accordance with the provisions of the Adoption Act.

B. When the adoptee has lived with his stepparent for at least one year following the stepparent's marriage to the custodial parent:

(1) placement shall not be required pursuant to Section 32A-5-12 NMSA 1978;

(2) a pre-placement study or post-placement report shall not be required unless ordered by the court;

(3) when the stepparent and the custodial parent have been married for less than two years, counseling shall be required for the stepparent and the custodial parent;

(4) the noncustodial parent shall receive counseling unless counseling is waived;

(5) the adoptee, if ten years of age or older, shall receive counseling;

(6) a criminal records check shall be conducted on a stepparent pursuant to the provisions of Section 32A-5-14 NMSA 1978;

(7) a report of fees and charges shall not be prepared, unless ordered by the court pursuant to Section 32A-5-34 NMSA 1978;

(8) the court may waive the ninety-day period between the filing of the petition for adoption and issuance of the decree of adoption; and

(9) when adopted, the adoptee shall take the name designated in the adoption petition, so long as the petitioner's spouse and the adoptee, if ten years of age or older, consent to the name.

C. When an adoptee has not lived with the stepparent for more than one year following the stepparent's marriage to the custodial parent, the adoption shall proceed as an independent adoption."

Section 41

Section 41. Section 32A-5-35 NMSA 1978 (being Laws 1993, Chapter 77, Section 162) is amended to read:

"32A-5-35. OPEN ADOPTIONS.--

A. The parents of the adoptee and the petitioner may agree to contact between the parents and the petitioner or contact between the adoptee and one or more of the parents or contact between the adoptee and relatives of the parents. An agreement shall, absent a finding to the contrary, be presumed to be in the best interests of the child and shall be included in the decree of adoption. The contact may include exchange of identifying or nonidentifying information or visitation between the parents or the parents' relatives and the petitioner or visitation between the parents or the parents' relatives and the adoptee.

B. The court may appoint a guardian ad litem for the adoptee. The court shall appoint a guardian ad litem for the adoptee when visitation between the biological family and the adoptee is contemplated. In all adoptions other than those in which the child is placed by the department, the court may assess the parties for the cost of services rendered by the guardian ad litem.

C. In determining whether the agreement is in the adoptee's best interests, the court shall consider the adoptee's wishes, but the wishes of the adoptee shall not control the court's findings as to the best interests of the adoptee.

D. Every agreement entered into pursuant to provisions of this section shall contain a clause stating that the parties agree to the continuing jurisdiction of the court and to the agreement and understand and intend that any disagreement or litigation regarding the terms of the agreement shall not affect the validity of the relinquishment of parental rights, the adoption or the custody of the adoptee.

E. The court shall retain jurisdiction after the decree of adoption is entered for the purpose of hearing motions brought to enforce or modify an agreement entered into pursuant to the provisions of this section. The court shall not grant a request to modify the agreement unless the moving party establishes that there has been a change of circumstances and the agreement is no longer in the adoptee's best interests."

Section 42

Section 42. Section 32A-5-36 NMSA 1978 (being Laws 1993, Chapter 77, Section 163) is amended to read:

"32A-5-36. ADJUDICATION--DISPOSITION--DECREE OF ADOPTION.--

A. The court shall conduct hearings on the petition for adoption so as to determine the rights of the parties in a manner that protects confidentiality. The petitioner and the adoptee shall attend the hearing unless the court for good cause waives a party's appearance. Good cause may include burdensome travel requirements.

B. The petitioner shall file all documents required pursuant to the Adoption Act and serve the department with copies of the same simultaneously with the request for hearing on the petition for adoption.

C. If any person who claims to be the biological father of the adoptee has appeared before the court and filed a written petition or response seeking custody and assuming financial responsibility of the adoptee, the court shall hear evidence as to the merits of the petition. If the court determines by a preponderance of the evidence that the person is not the biological father of the adoptee or that the child was conceived through an act of rape or incest, the petition shall be dismissed and the person shall no longer be a party to the adoption. If the court determines that the person is the biological father of the adoptee, the court shall further determine whether the person qualifies as a presumed or acknowledged father whose consent is necessary for adoption, pursuant to Section 32A-5-17 NMSA 1978. If the court determines that the person is the biological father, but does not qualify as a presumed or acknowledged father, the court shall adjudicate the person's rights pursuant to the provisions of the Adoption Act.

D. If the mother or father of the adoptee has appeared before the court and filed a written petition that alleges the invalidity of the mother's or father's own consent or relinquishment for adoption previously filed in the adoption proceeding, the court shall hear evidence as to the merits of the petition. If the court determines that the allegations have not been proved by a preponderance of the evidence, the petition shall be dismissed. If the court determines that the allegations of the petition are true, the consent or relinquishment for adoption shall be held invalid, and the court shall determine, in the best interests of the adoptee, the person who shall have custody of the child.

E. The petitioner shall present and prove each allegation set forth in the petition for adoption by clear and convincing evidence.

F. The court shall grant a decree of adoption if it finds that the petitioner has proved by clear and convincing evidence that:

(1) the court has jurisdiction to enter a decree of adoption affecting the adoptee;

(2) the adoptee has been placed with the petitioner for a period of ninety days if the adoptee is under the age of one year at the time of placement or for a period of one hundred eighty days if the adoptee is one year of age or older at the time of placement, unless, for good cause shown, the requirement is waived by the court;

(3) all necessary consents, relinquishments, terminations or waivers have been obtained;

(4) the post-placement report required by Section 32A-5-31 NMSA 1978 has been filed with the court;

(5) service of the petition for adoption has been made or dispensed with as to all persons entitled to notice pursuant to provisions of Section 32A-5-27 NMSA 1978;

(6) at least ninety days have passed since the filing of the petition for adoption, except the court may shorten or waive this period of time in cases in which the child is being adopted by a stepparent, a relative or a person named in the child's deceased parent's will pursuant to provisions of Section 32A-5-12 NMSA 1978;

(7) the petitioner is a suitable adoptive parent and the best interests of the adoptee are served by the adoption;

(8) if visitation between the biological family and the adoptee is contemplated, that the visitation is in the child's best interests;

(9) if the adoptee is foreign born, the child is legally free for adoption;

(10) the results of the criminal records check required pursuant to provisions of Section 32A-5-14 NMSA 1978 have been received and considered;

(11) if the adoptee is an Indian child, the requirements set forth in the federal Indian Child Welfare Act of 1978 have been met;

(12) when the child is an Indian child, the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of

the appropriate Indian tribes have been followed, or if not followed, good cause for noncompliance has been clearly stated and supported, as required by the federal Indian Child Welfare Act of 1978 and provision has been made to ensure that the Indian child's cultural ties to the Indian child's tribe are protected and fostered; and

(13) if the adoption involves the interstate placement of the adoptee, the requirements of the Interstate Compact on the Placement of Children have been met.

G. In addition to the findings required by Subsection F of this section, the court in any decree of adoption shall make findings with respect to each allegation of the petition.

H. If the court determines that any of the requirements for a decree of adoption pursuant to provisions of Subsections E and F of this section have not been met or that the adoption is not in the best interests of the adoptee, the court shall deny the petition and determine, in the best interests of the adoptee, the person who shall have custody of the child.

I. The decree of adoption shall include the new name of the adoptee and shall not include any other name by which the adoptee has been known or the names of the former parents. The decree of adoption shall order that from the date of the decree, the adoptee shall be the child of the petitioner and accorded the status set forth in Section 32A-5-37 NMSA 1978.

J. A decree of adoption shall be entered within six months of the filing of the petition if the adoptee is under the age of one year at the time of placement or twelve months if the adoptee is one year of age or older at the time of placement, except that the time may be extended by the court upon request of any of the parties or upon the court's own motion for good cause shown.

K. A decree of adoption may not be attacked upon the expiration of one year from the entry of the decree; provided, however, that in any adoption involving an Indian child, the Indian child's parent or Indian custodian may petition the court pursuant to the provisions of the federal Indian Child Welfare Act of 1978 to invalidate the adoption.

L. In any adoption involving an Indian child, the clerk of the court shall provide the secretary of the interior with a copy of any decree of adoption or adoptive placement order and other information as required by the federal Indian Child Welfare Act of 1978."

Section 43

Section 43. Section 32A-5-40 NMSA 1978 (being Laws 1993, Chapter 77, Section 167) is amended to read:

"32A-5-40. POST-DECREE OF ADOPTION ACCESS TO RECORDS.--

A. After the decree of adoption has been entered, all court files containing records of judicial proceedings conducted pursuant to the provisions of the Adoption Act and records submitted to the court in the proceedings shall be kept in separate locked files withheld from public inspection. Upon application to the clerk of the court, the records shall be open to inspection by a former parent if the adoptee is eighteen years of age or older, by an adoptee if the adoptee is eighteen years of age or older at the time application is made for inspection, by the adoptive parent if the adoptee is under eighteen years of age at the time application is made for inspection, by the attorney of any party, by any agency that has exercised guardianship over or legal custody of a child who was the adoptee in the particular proceeding or by the department; provided that the identity of the former parents and of the adoptee shall be kept confidential unless the former parents and the adoptee have consented to the release of identity. In the absence of consent to release identity, the inspection shall be limited to the following nonidentifying information:

(1) the health and medical histories of the adoptee's biological parents;

(2) the health and medical history of the adoptee;

(3) the adoptee's general family background, including ancestral information, without name references or geographical designations;

(4) physical descriptions; and

(5) the length of time the adoptee was in the care and custody of persons other than the petitioner.

B. After the entry of the decree of adoption, at any time, a former parent may file with the court, with the placing agency or with the department:

(1) a consent or refusal or an amended consent or refusal to be contacted;

(2) a release of the former parent's identity to the adoptee if the adoptee is eighteen years of age or older or to the adoptive parent if the adoptee is under eighteen years of age; or

(3) information regarding the former parent's location or changes in background information.

C. The consent or refusal referred to in Subsection B of this section shall be honored by the court, the placing agency or the department, unless for good cause the court orders to the contrary.

D. At any time, an adoptee who is eighteen years of age or older may file with the court, a placing agency or the department:

(1) information regarding the adoptee's location; or

(2) a consent or refusal regarding opening of the adoptee's adoption file to the adoptee's former parents.

E. If mutual authorizations for release of identifying information by the parties are not available, an adoptee who is eighteen years of age or older, the biological parents if the adoptee is eighteen years of age or older or the adoptive parents if the adoptee is under the age of eighteen years may file a motion with the court to obtain the release of identifying information for good cause shown. When hearing the motion, the court shall give primary consideration to the best interests of the adoptee, but shall also give due consideration to the interests of the members of the adoptee's former and adoptive families. In determining whether good cause exists for the release of identifying information, the court shall consider:

(1) the reason the information is sought;

(2) any procedure available for satisfying the petitioner's request without disclosing the name or identity of another individual, including appointment of a confidential intermediary to contact the individual and request specific information;

(3) whether the individual about whom identifying information is sought is alive;

(4) the preference, to the extent known, of the adoptee, the adoptive parents, the former parents and other members of the adoptee's former and adoptive families and the likely effect of disclosure on those individuals;

(5) the age, maturity and expressed needs of the adoptee;

(6) the report or recommendation of any individual appointed by the court to assess the request for identifying information; and

(7) any other factor relevant to an assessment of whether the benefit to the adoptee of releasing the information sought will be greater than the benefit to any other individual of not releasing the information.

F. An adoptee shall have the right, for the purpose of enrolling in the adoptee's tribe of origin, to access information kept by the department. Information

needed by an adoptee to enroll in his tribe of origin may be requested from the department by the following persons:

- (1) the adoptee, after he reaches eighteen years of age;
- (2) when the adoptee is a child, his adoptive parent or guardian; or
- (3) an adoptee's descendant or, if the adoptee's descendant is a child, an adult representative for the descendant.

G. When the department receives a request for information regarding an adoptee's tribe of origin, the department shall examine its records to determine if the adoptee is of Indian descent. If the department establishes that an adoptee is of Indian descent, the department shall:

- (1) provide the requestor with the tribal affiliation of the adoptee's biological parents;
- (2) submit to the tribe information necessary to establish tribal enrollment for the adoptee and to protect any rights flowing from the adoptee's tribal relationship; and
- (3) provide notice to the requestor of the department's submission of information to the adoptee's tribe."

Section 44

Section 44. Section 32A-5-41 NMSA 1978 (being Laws 1993, Chapter 77, Section 168) is amended to read:

"32A-5-41. APPOINTMENT OF CONFIDENTIAL INTERMEDIARY.--

A. The court may appoint a confidential intermediary to ascertain whether an individual is willing to be contacted, is willing to release his name or identity or is willing to meet or otherwise communicate about any condition that may affect the moving party's physical or mental health, upon petition to the court by:

- (1) an adoptee who is eighteen years of age or older;
- (2) an adoptive parent of an adoptee who is less than eighteen years of age; or
- (3) an adoptee's former parent, when the adoptee is eighteen years of age or older.

B. The confidential intermediary shall make a reasonable effort to determine if the individual whose identity is sought by the petitioner has filed a signed document authorizing or refusing to authorize the release of the individual's name or identity.

C. When the confidential intermediary finds a signed authorization for a party to be contacted or for the release of identifying information, the intermediary shall release that information to the petitioner. Upon the petitioner's written request, the intermediary may assist the petitioner in locating the individual who authorized the release of identifying information, in ascertaining whether the individual is willing to meet or communicate with the petitioner and in facilitating a meeting or other communication.

D. When the confidential intermediary finds a signed refusal to authorize the release of identifying information, the intermediary shall report this to the petitioner and the court and shall not attempt to locate or contact the individual who has refused to authorize contact or the release of identifying information. The petitioner may then withdraw the petition or request the release of identifying information for good cause shown, pursuant to the provisions of Section 32A-5-40 NMSA 1978.

E. When the confidential intermediary does not find any documents concerning the release of identifying information or if the intermediary finds a document indicating that an individual whose identity is sought by the petitioner is undecided about whether to release identifying information, the intermediary shall make a reasonable search for and discreetly contact the individual to ascertain whether the individual is willing to release information to the petitioner or willing to meet or communicate with the petitioner, whom the intermediary may describe to the individual only in general, nonidentifying terms. When the individual consents in writing to the release of information, the intermediary shall release the information to the petitioner, and upon the mutual written request and consent of the petitioner and the individual, the intermediary shall facilitate a meeting or other communication between the petitioner and the individual. If the individual refuses to authorize the release of information sought by the petitioner, the intermediary shall report this to the petitioner and the court and the petitioner may withdraw the motion or file a motion with the court for an order to release identifying information for good cause shown, pursuant to provisions of Section 32A-5-40 NMSA 1978.

F. When an individual sought by the confidential intermediary is deceased, the intermediary shall report this to the petitioner and the court and, upon the petitioner's request, the court shall determine on the basis of the factors listed in Section 32A-5-40 NMSA 1978 whether good cause exists to release identifying information about the individual to the petitioner.

G. When an individual sought by the confidential intermediary cannot be located within a year, the intermediary shall report this to the petitioner and the court. The court may authorize an additional search for a specified period of time or determine

on the basis of the factors listed in Section 32A-5-40 NMSA 1978 whether good cause exists to release identifying information about the individual to the petitioner.

H. A confidential intermediary may charge the petitioner for actual expenses incurred in providing a service requested under this section. Upon motion by the intermediary, the court may authorize a reasonable fee in addition to the expenses.

I. A confidential intermediary shall complete training provided by the department or any other entity approved by the court and shall file an oath of confidentiality in every court in which the intermediary expects to serve.

J. The confidential intermediary oath shall state:

"I, _____, signing under penalty of perjury, affirm that I have completed the requisite training for a confidential intermediary in this state.

I will not disclose to the petitioner, directly or indirectly, any identifying information in sealed records except under the conditions specified in this section.

I will conduct a reasonable search for an individual being sought and make a discreet and confidential inquiry as to whether the individual consents to the release of identifying or medical information to the petitioner or to meeting or communicating with the petitioner. I will report to the petitioner or the court the results of my search and inquiry, along with any signed request or consent I receive from the individual.

If the individual and the petitioner request and consent in writing to meet or communicate with each other, I will act in accordance with the instructions of the petitioner or the court to facilitate any meeting or communication between them.

I will not charge or accept any fee for my services except for reimbursement from the petitioner for actual expenses incurred in performing my services or as authorized by the court.

I recognize that unauthorized release of information is a violation of the Adoption Act and subjects me to penalties pursuant to the provisions of Section 32A-5-42 NMSA 1978 and may subject me to being found in contempt of court with penalties, dismissal by the court and civil liability."."

Section 45

Section 45. Section 32A-18-1 NMSA 1978 (being Laws 1993, Chapter 77, Section 224) is amended to read:

"32A-18-1. CULTURAL RECOGNITION.--

A. A person who serves as a judge, prosecutor, guardian ad litem, resource consultant, treatment guardian, court appointed attorney, court appointed special advocate, foster parent, mental health commissioner or mental health treatment service provider for a child subject to an abuse or neglect petition, a family in need of services petition or a mental health placement shall receive periodic training, to the extent of available resources, to develop his knowledge about children, the physical and psychological formation of children and the impact of ethnicity on a child's needs. Institutions that serve children and their families shall, considering available resources, provide similar training to institutional staff.

B. The training shall include study of:

- (1) cross-cultural dynamics and sensitivity;
- (2) child development;
- (3) family composition and dynamics;
- (4) parenting skills and practices;
- (5) culturally appropriate treatment plans; and
- (6) alternative health practices."

Section 46

Section 46. Section 33-1-4.1 NMSA 1978 (being Laws 1993, Chapter 77, Section 230) is amended to read:

"33-1-4.1. VULNERABLE OFFENDERS PROGRAM--PREVENTION OF VICTIMIZATION.--

A. The corrections department may develop and implement a special program for certain male and female offenders who have been identified by the department as being vulnerable offenders who, if not provided with a special program, would be vulnerable to victimization by inmates and subject to unusual or extraordinary mental or physical harassment, intimidation, harm or injury.

B. Vulnerability shall be determined by factors such as age, mental health or special education needs. If an offender is less than twenty-one years of age, there shall be a rebuttable presumption that the offender is vulnerable. A vulnerable offenders program shall not result in the diminution of civil rights for vulnerable offenders."

Section 47

Section 47. A new section of the Children's Code is enacted to read:

"SHORT TITLE.--Sections 47 through 53 of this act may be cited as the "Emancipation of Minors Act". "

Section 48

Section 48. A new section of the Children's Code is enacted to read:

"LEGISLATIVE FINDINGS AND PURPOSE.--It is the purpose of the Emancipation of Minors Act to provide a clear statement defining emancipation and its consequences and to permit an emancipated minor to obtain a court declaration of his status."

Section 49

Section 49. A new section of the Children's Code is enacted to read:

"EMANCIPATED MINORS--DESCRIPTION.--An emancipated minor is any person sixteen years of age or older who:

A. has entered into a valid marriage, whether or not the marriage was terminated by dissolution;

B. is on active duty with any of the armed forces of the United States of America; or

C. has received a declaration of emancipation pursuant to the Emancipation of Minors Act."

Section 50

Section 50. A new section of the Children's Code is enacted to read:

"EMANCIPATION BY DECLARATION.--Any person sixteen years of age or older may be declared an emancipated minor for one or more of the purposes enumerated in the Emancipation of Minors Act if he is willingly living separate and apart from his parents, guardian or custodian, is managing his own financial affairs and the court finds it in the minor's best interest."

Section 51

Section 51. A new section of the Children's Code is enacted to read:

"OVER THE AGE OF MAJORITY--PURPOSES.--An emancipated minor shall be considered as being over the age of majority for one or more of the following purposes:

A. consenting to medical, dental or psychiatric care without parental consent, knowledge or liability;

B. his capacity to enter into a binding contract;

C. his capacity to sue and be sued in his own name;

D. his right to support by his parents;

E. the rights of his parents to his earnings and to control him;

F. establishing his own residence;

G. buying or selling real property;

H. ending all vicarious liability of the minor's parents, guardian or custodian for the minor's torts; provided that nothing in this section shall affect any liability of a parent, guardian, custodian, spouse or employer of a minor imposed by the Motor Vehicle Code or any vicarious liability that arises from an agency relationship; or

I. enrolling in any school or college."

Section 52

Section 52. A new section of the Children's Code is enacted to read:

"PUBLIC ENTITLEMENT OF EMANCIPATED MINORS.--A declared emancipated minor shall not be denied benefits from any public entitlement program to which he may have been entitled in his own right prior to the declaration of emancipation."

Section 53

Section 53. A new section of the Children's Code is enacted to read:

"DECLARATION OF EMANCIPATION--PETITION--CONTENTS--NOTICE--MANDATE.--

A. A minor may petition the children's court of the district in which he resides for a declaration of emancipation as described in the Emancipation of Minors Act. The petition shall be verified and shall set forth with specificity the facts bringing the minor within the provisions of the Emancipation of Minors Act.

B. Before the petition is heard, notice shall be given to the minor's parents, guardian or custodian in accordance with the Rules of Civil Procedure for the District Courts.

C. If the court finds that the minor is sixteen years of age or older and is a person described under Section 48 of this act, the court may grant the petition unless, after having considered all of the evidence introduced at the hearing, it finds that granting the petition would be contrary to the best interests of the minor.

D. If the petition is sustained, the court shall immediately issue a declaration of emancipation containing specific findings of fact and one or more purposes of the emancipation, which shall be filed by the county clerk.

E. If the petition is denied, the minor has a right to file a petition for a writ of mandamus.

F. If the petition is sustained, the parents, guardian or custodian of the minor has a right to file a petition for a writ of mandamus if he appeared in the proceeding and opposed the granting of the petition.

G. A declaration of emancipation granted in accordance with the Emancipation of Minors Act shall be conclusive evidence that the minor is emancipated."

Section 54

Section 54. REPEAL.--Sections 28-6-2 through 28-6-8 NMSA 1978 (being Laws 1981, Chapter 270, Sections 1 through 7) are repealed.

Section 55

Section 55. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE BILL 775

CHAPTER 207

RELATING TO CHILDREN; ENACTING THE CHILDREN'S MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES ACT AS A NEW ARTICLE OF THE CHILDREN'S CODE; REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. A new section of the Children's Code is enacted to read:

"SHORT TITLE.--This act may be cited as the "Children's Mental Health and Developmental Disabilities Act"."

Section 2

Section 2. A new section of the Children's Code is enacted to read:

"DEFINITIONS.--As used in the Children's Mental Health and Developmental Disabilities Act:

A. "aversive stimuli" means anything that, because it is believed to be unreasonably unpleasant, uncomfortable or distasteful to the child, is administered or done to the child for the purpose of reducing the frequency of a behavior, but does not include verbal therapies, physical restrictions to prevent imminent harm to self or others or psychotropic medications that are not used for purposes of punishment;

B. "clinician" means a physician, licensed psychologist, licensed independent social worker or licensed professional clinical counselor;

C. "consistent with the least drastic means principle" means that the habilitation or treatment and the conditions of habilitation or treatment for the child, separately and in combination:

(1) are no more harsh, hazardous or intrusive than necessary to achieve acceptable treatment objectives for the child;

(2) involve no restrictions on physical movement and no requirement for residential care, except as reasonably necessary for the administration of treatment or for the protection of the child or others from physical injury; and

(3) are conducted at the suitable available facility closest to the child's place of residence;

D. "convulsive treatment" means any form of mental health treatment that depends upon creation of a convulsion by any means, including electroconvulsive treatment and insulin coma treatment;

E. "developmental disability" means a severe chronic disability that:

(1) is attributable to a mental or physical impairment or a combination of mental or physical impairments;

(2) is manifested before a person reaches twenty-two years of age;

(3) is expected to continue indefinitely;

(4) results in substantial functional limitations in three or more of the following areas of major life activities:

- (a) self-care;
- (b) receptive and expressive language;
- (c) learning;
- (d) mobility;
- (e) self-direction;
- (f) capacity for independent living; or
- (g) economic self-sufficiency; and

(5) reflects a person's need for a combination and sequence of special, interdisciplinary or generic treatments or other supports and services that are of lifelong or extended duration and that are individually planned or coordinated;

F. "evaluation facility" means a community mental health or developmental disability program, a medical facility having psychiatric or developmental disability services available or, if none of the foregoing is reasonably available or appropriate, the office of a licensed physician or a licensed psychologist, any of which shall be capable of performing a mental status examination adequate to determine the need for involuntary treatment;

G. "experimental treatment" means any mental health or developmental disabilities treatment that presents significant risk of physical harm, but does not include accepted treatment used in the competent practice of medicine and psychology and supported by scientifically acceptable studies;

H. "grave passive neglect" means failure to provide for basic personal or medical needs or for one's own safety to such an extent that it is more likely than not that serious bodily harm will result in the near future;

I. "habilitation" means the process by which professional persons and their staff assist the developmentally disabled child in acquiring and maintaining those skills and behaviors that enable the child to cope more effectively with the demands of his own person and of his environment and to raise the level of his physical, mental and social efficiency. "Habilitation" includes programs of formal, structured education and treatment;

J. "likelihood of serious harm to oneself" means that it is more likely than not that in the near future the child will attempt to commit suicide or will cause serious

bodily harm to himself by violent or other self-destructive means, including grave passive neglect;

K. "likelihood of serious harm to others" means that it is more likely than not that in the near future the child will inflict serious, unjustified bodily harm on another person or commit a criminal sexual offense, as evidenced by behavior causing, attempting or threatening such harm, which behavior gives rise to a reasonable fear of such harm from the child;

L. "mental disorder" means a substantial disorder of the child's emotional processes, thought or cognition that grossly impairs judgment, behavior or capacity to recognize reality, but does not mean developmental disability;

M. "mental health or developmental disabilities professional" means a physician or other professional who, by training or experience, is qualified to work with individuals with mental disorders or developmental disabilities;

N. "physician" or "licensed psychologist", when used for the purpose of hospital admittance or discharge, means a physician or licensed psychologist who has been granted admitting privileges at a hospital licensed by the department of health, if such privileges are required;

O. "psychosurgery" means those operations currently referred to as lobotomy, psychiatric surgery and behavioral surgery and all other forms of brain surgery if the surgery is performed for the following purposes:

(1) modification or control of thoughts, feelings, actions or behavior rather than the treatment of a known and diagnosed physical disease of the brain;

(2) treatment of abnormal brain function or normal brain tissue in order to control thoughts, feelings, actions or behavior; or

(3) treatment of abnormal brain function or abnormal brain tissue in order to modify thoughts, feelings, actions or behavior when the abnormality is not an established cause for those thoughts, feelings, actions or behavior. "Psychosurgery" does not include prefrontal sonic treatment in which there is no destruction of brain tissue;

P. "residential treatment or habilitation program" means diagnosis, evaluation, care, treatment or habilitation rendered inside or on the premises of a mental health or developmental disabilities facility, hospital, clinic, institution, supervisory residence or nursing home when the individual resides on the premises and where one or more of the following measures is available for use:

(1) a mechanical device to restrain or restrict the child's movement;

(2) a secure seclusion area from which the child is unable to exit voluntarily;

(3) a facility or program designed for the purpose of restricting the child's ability to exit voluntarily; or

(4) the involuntary emergency administration of psychotropic medication;

Q. "resource consultant" means a person not affiliated with any residential treatment or habilitation program who, by training or experience, has knowledge of the continuum of children's mental health treatment and developmental disabilities services and who has contracted with the department for the purpose of assisting families in finding and accessing the least restrictive treatments and services for children; and

R. "treatment" means any effort to accomplish a significant change in the mental or emotional condition or behavior of the child."

Section 3

Section 3. A new section of the Children's Code is enacted to read:

"BASIC RIGHTS.--

A. A child subject to the provisions of the Children's Mental Health and Developmental Disabilities Act is entitled to the same basic rights as an adult, except as otherwise provided in that act.

B. A person afforded rights under the Children's Mental Health and Developmental Disabilities Act shall be advised of those rights at that person's first appearance before the court on a petition under that act.

C. A child has the right not to be inappropriately placed in a residential treatment or habilitation program.

D. A child has the right to be placed in a manner consistent with the least drastic means principle.

E. Nothing in the Children's Mental Health and Developmental Disabilities Act shall limit the right of a child to petition the court for a writ of habeas corpus."

Section 4

Section 4. A new section of the Children's Code is enacted to read:

"LEGAL REPRESENTATION OF CHILDREN.--

A. A child shall be represented by an attorney, if the child is fourteen years of age or older, or a guardian ad litem, if the child is under fourteen years of age, at all proceedings under the Children's Mental Health and Developmental Disabilities Act and shall be entitled to obtain advice of an attorney or a guardian ad litem at any time regarding the child's status under that act. A child receiving residential treatment or habilitation program services shall have access to the state's designated protection and advocacy system.

B. When a child has not retained an attorney or a guardian ad litem and is unable to do so, the court shall appoint an attorney or a guardian ad litem to represent the child. When appointing an attorney or a guardian ad litem, the court shall give preference to nonprofit organizations offering representation to mentally ill and developmentally disabled persons. When the parent, guardian or legal custodian of a child is not indigent, the parent, guardian or legal custodian shall be liable for the cost of the child's legal representation.

C. A child shall not be represented or counseled by an attorney or guardian ad litem who, in the previous two years, has advised or represented the child's parent, guardian, legal custodian or residential treatment or habilitation program or who would otherwise have a serious conflict of interest."

Section 5

Section 5. A new section of the Children's Code is enacted to read:

"COMPETENCE.--The fact that a child has been accepted at or admitted to a hospital or institutional facility or has received mental health or developmental disability treatment services shall not constitute a sufficient basis for a finding of incompetence or the denial of a right or benefit of any nature that the child would have otherwise."

Section 6

Section 6. A new section of the Children's Code is enacted to read:

"PERSONAL RIGHTS OF RESIDENTIAL CHILDREN.--A child who receives residential treatment or habilitation services shall have the following rights:

A. subject to restrictions imposed in the best interests of the child by the child's clinician for good cause, each resident child has the right to receive visitors of the child's own choosing daily. Hours during which visitors may be received shall be limited only in the interest of effective treatment and the reasonable efficiency of the supervised residential facility and shall be sufficiently flexible to accommodate the individual needs of the resident child and his visitors. Notwithstanding the above, each resident child has the right to receive visits from his attorney, physician, psychologist, clergyman, guardian ad litem, representative from the state's protection and advocacy system or social

worker in private at any reasonable time, irrespective of visiting hours, provided the visitor shows reasonable cause for visiting at times other than normal visiting hours;

B. writing material and postage stamps shall be reasonably available for the resident child's use in writing letters and other communications. Reasonable assistance shall be provided for writing, addressing and posting letters and other documents upon request. The resident child has the right to send and receive sealed and uncensored mail. The resident child has the right to reasonable private access to telephones and, in cases of personal emergencies when other means of communication are not satisfactory, the child shall be afforded reasonable use of long distance calls; provided that for other than mail or telephone calls to a court, an attorney, a physician, a psychologist, a clergyman, a guardian ad litem, a representative from the state's protection and advocacy system or a social worker, mailing or telephone privileges may be restricted by the child's clinician for good cause shown. A resident child who is indigent shall be furnished writing, postage and telephone facilities without charge;

C. each resident child has the right to follow or abstain from the practice of religion. The residential treatment or habilitation program shall provide appropriate assistance in this connection, including reasonable accommodations for religious worship and transportation to nearby religious services. Children who do not wish to participate in religious practice shall be free from pressure to do so or to accept religious beliefs;

D. each resident child has the right to a humane psychological and physical environment. The child shall be provided a comfortable bed and adequate changes of linen and reasonable storage space for his personal possessions. Except when curtailed for reasons of safety or therapy as documented in the child's record by the child's physician, the child shall be afforded reasonable privacy in his sleeping and personal hygiene practices;

E. each resident child shall have reasonable daily opportunities for physical exercise and outdoor exercise and shall have reasonable access to recreational areas and equipment, including equipment adapted to the child's developmental and physical needs;

F. each resident child has the right to a nourishing, well-balanced, varied and appetizing diet;

G. each resident child has the right to prompt and adequate medical attention for any physical ailments and shall receive a complete physical examination upon admission and at least once every twelve months thereafter; provided that children who have received a complete physical examination within two days prior to the current admission or provide documentation of having had a complete physical examination within the last six months shall not receive a complete physical examination unless the physician deems it necessary;

H. each resident child has the right to a clean, safe and comfortable environment in a structure that complies with generally applicable fire and safety requirements;

I. each resident child has the right to be free from unnecessary or excessive medication. No medication shall be administered unless at the written order of a licensed physician or by a verbal order noted promptly in the patient's medical record and signed by the physician within twenty-four hours. Medication shall be administered only by a licensed physician or person authorized by a licensed physician pursuant to state law or regulation. The attending physician shall be responsible for all medication given or administered to a resident child. Notation of each individual's medication shall be kept in the child's medical records and shall include a notation by the physician of the behavioral or symptomatic baseline data upon which the medication order was made. The attending physician shall review on a regular basis the drug regimen of each resident child under the physician's care. All prescriptions for psychotropic medications shall be written with a termination date that shall not exceed thirty days. Medication shall not be used as a punishment, as a substitute for programs, for the convenience of staff or in quantities that interfere with the child's treatment or habilitation program;

J. each resident child has the right to be free from programs involving aversive stimuli or substantial deprivations; and

K. each resident child has the right to be free from the use of physical, chemical or mechanical restraint used for the convenience of a caregiver or as a substitute for a planned program for behavior support. However, nothing in this subsection shall prohibit the use of:

(1) protective apparatus needed to protect an individual from imminent harm, consistent with the least drastic means principle;

(2) a medical restraint prescribed by a physician or dentist as a health-related protective measure during the conduct of a specific medical, surgical or dental procedure; or

(3) appropriate mechanical supports used to achieve proper body position and balance."

Section 7

Section 7. A new section of the Children's Code is enacted to read:

"RIGHT TO EDUCATION.--A child who is a client in a residential facility shall be provided education and training as necessary to encourage and stimulate developmental progress and achievement. The child shall be educated in regular classes with nondisabled children whenever appropriate. In no event shall a child be

allowed to remain in a residential facility for more than ten days without receiving educational services."

Section 8

Section 8. A new section of the Children's Code is enacted to read:

"RIGHT TO TREATMENT.--Each resident child receiving mental health services shall have the right to prompt treatment pursuant to an individualized treatment plan and consistent with the least drastic means principle."

Section 9

Section 9. A new section of the Children's Code is enacted to read:

"RIGHT TO HABILITATION.--Each resident child receiving developmental disabilities services shall have the right to prompt habilitation services pursuant to an individualized habilitation plan and consistent with the least drastic means principle."

Section 10

Section 10. A new section of the Children's Code is enacted to read:

"INDIVIDUALIZED TREATMENT OR HABILITATION PLANS.--

A. A preliminary treatment plan shall be prepared within seven days of a child's admission to a residential treatment or habilitation program.

B. An individualized treatment or habilitation plan shall be prepared within twenty-one days of a child's admission to a residential treatment or habilitation program.

C. Each child and the child's parent, guardian or legal custodian shall, to the maximum extent possible, be involved in the preparation of the child's own individualized treatment or habilitation plan.

D. Each individualized treatment or habilitation plan shall include:

(1) a statement of the nature of the specific problem and the specific needs of the child;

(2) a statement of the least restrictive conditions necessary to achieve the purposes of treatment or habilitation;

(3) a description of intermediate and long-range goals, with the projected timetable for their attainment;

(4) a statement and rationale for the plan of treatment or habilitation for achieving these intermediate and long-range goals;

(5) specification of staff responsibility and a description of the proposed staff involvement with the child in order to attain these goals;

(6) criteria for release to less restrictive settings for treatment or habilitation, criteria for discharge and a projected date for discharge; and

(7) if the child is an Indian child, an evaluation of the child's cultural needs and access to cultural practices and traditional treatment.

E. A treatment or habilitation plan for a resident child shall include:

(1) mental status examination;

(2) intellectual function assessment;

(3) psychological assessment that may include the use of psychological testing;

(4) educational assessment;

(5) vocational assessment;

(6) social assessment;

(7) medication assessment; and

(8) physical assessment.

F. The individualized treatment or habilitation plan shall be available upon request to the child, the child's parent if the parent has custody of the child, the child's attorney, the child's guardian or legal custodian, the child's guardian ad litem, any mental health or developmental disabilities professional designated by the child or the child's parent, guardian or legal custodian and the child's treatment guardian if one has been appointed. The child's progress in attaining the goals and objectives set forth in his individualized treatment or habilitation plan shall be monitored and noted in his records and revisions in the plan may be made as circumstances require; provided that the persons authorized by this subsection to have access to the individualized plan shall be informed of major changes and shall have the opportunity to participate in the decision. Nothing in this subsection shall require disclosure of information to a child or to the child's parent, guardian or legal custodian when the attending clinician believes that disclosure of that particular information would be damaging to the child and so records in the child's medical record."

Section 11

Section 11. A new section of the Children's Code is enacted to read:

"RESOURCE CONSULTANT.--

A. A resource consultant shall meet with a child, fourteen years of age or older, placed in a residential treatment or habilitation program and shall meet with the child's parent, guardian or legal custodian, if available, within three days of notification that the child has been or will be placed in a residential treatment or habilitation program. A child, when he is fourteen years of age or older, or the child's parent, guardian or legal custodian, when the child is younger than fourteen years of age, may decline to meet with the resource consultant at any time following the resource consultant's initial meeting with the child. The resource consultant shall discuss the reasons for the child's placement for residential treatment with the child and the child's parent, guardian or legal custodian. The resource consultant shall inform the child and the child's parent, guardian or legal custodian of alternatives to the residential treatment or habilitation program and, if requested, shall make all appropriate referrals to any agency or facility that might provide other services or treatment for the child or the child's parent, guardian or legal custodian.

B. The resource consultant shall inform a child's parent, guardian or legal custodian of the parent's, guardian's or legal custodian's rights, as provided in the Children's Mental Health and Developmental Disabilities Act.

C. A person who is referring a child and the child's parent, guardian or legal custodian to a residential treatment or habilitation program shall refer the child and the child's parent, guardian or legal custodian to a resource consultant."

Section 12

Section 12. A new section of the Children's Code is enacted to read:

"EMERGENCY MENTAL HEALTH EVALUATION AND CARE.--

A. A peace officer may detain and transport a child for emergency mental health evaluation and care in the absence of a legally valid order from the court only if:

(1) the peace officer has reasonable grounds to believe the child has just attempted suicide;

(2) the peace officer, based upon personal observation and investigation, has reasonable grounds to believe that the child, as a result of a mental disorder, presents a likelihood of serious harm to himself or others and that immediate detention is necessary to prevent such harm. The peace officer shall convey his beliefs

to the admitting physician or the physician's designee immediately upon the officer's arrival at the evaluation facility;

(3) the peace officer has certification from a clinician that the child, as a result of a mental disorder, presents a likelihood of serious harm to himself or others and that immediate intervention is necessary to prevent the harm; or

(4) the peace officer has an involuntary placement order issued by a tribal court that orders the child to be admitted to an evaluation facility.

B. A peace officer shall immediately transport any child detained under this section to an evaluation facility. In the case of an extreme emergency, the child may be held for a period of up to twenty-four hours in temporary emergency placement in:

(1) a foster home licensed to provide specialized or therapeutic care;

(2) a facility operated by a licensed child welfare services agency that meets standards promulgated by the department for the care of children who present the likelihood of serious harm to themselves or others; or

(3) residential care on an emergency basis.

C. A child shall not be held, for the purposes of emergency mental health evaluation or care, in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged or adjudicated to be delinquent children.

D. The director of an evaluation facility shall accomplish an emergency evaluation upon the request of a child's parent, guardian or legal custodian, a peace officer, a detention facility administrator or the administrator's designee or upon the certification of a clinician. A court order is not required under this section. If an application is made to a court, the court's power to act in furtherance of an emergency admission shall be limited to ordering that:

(1) the child be seen by a clinician prior to transport to an evaluation facility; and

(2) a peace officer transport the child to an evaluation facility.

E. The admitting physician or licensed psychologist shall evaluate whether reasonable grounds exist to detain the child for evaluation and treatment, and, if reasonable grounds are found, the child shall be detained. If the admitting physician or licensed psychologist determines that reasonable grounds do not exist to detain the

child for evaluation and treatment, the child shall not be detained but shall be released to the custody of the child's parent, guardian or legal custodian.

F. Upon arrival at an evaluation facility, the child shall be informed orally and in writing by the evaluation facility of the purpose and possible consequences of the proceedings, the allegations in the petition, the child's right to a hearing within seven days, the child's right to counsel and the child's right to communicate with an attorney or a guardian ad litem and an independent mental health professional of the child's own choosing. A child shall have the right to receive necessary and appropriate treatment.

G. A peace officer who transports any child to an evaluation facility pursuant to the provisions of this section shall not require a court order to be reimbursed by the referring county.

H. If a child is transported to or detained at an evaluation facility and is not released to the child's parent, guardian or legal custodian, the peace officer transporting the child shall give written notice thereof as soon as possible within twenty-four hours to the child's parent, guardian or legal custodian, together with a statement of the reason for taking the child into custody."

Section 13

Section 13. A new section of the Children's Code is enacted to read:

"CONSENT TO PLACEMENT IN A RESIDENTIAL TREATMENT OR
HABILITATION PROGRAM--CHILDREN YOUNGER THAN FOURTEEN YEARS OF
AGE.--

A. A child younger than fourteen years of age shall not receive residential treatment for mental disorders or habilitation for developmental disabilities, except as provided in this section or Section 15 of the Children's Mental Health and Developmental Disabilities Act.

B. A child younger than fourteen years of age may be admitted to a residential treatment or habilitation program with the informed consent of the child's parent, guardian or legal custodian for a period not to exceed sixty days, subject to the requirements of this section.

C. In order to admit a child younger than fourteen years of age to a residential treatment or habilitation program, the child's parent, guardian or legal custodian shall knowingly and voluntarily execute a consent to admission document prior to the child's admission. The consent to admission document shall be in a form designated by the supreme court. The consent to admission document shall include a clear statement of the parent's, guardian's or legal custodian's right to voluntarily consent to or refuse the child's admission; the parent's, guardian's or legal custodian's right to request the child's immediate discharge from the residential treatment program

at any time; and the parent's, guardian's or legal custodian's rights when the parent, guardian or legal custodian requests the child's discharge and the child's physician, licensed psychologist or the director of the residential treatment facility determines that the child needs continued treatment. The facility shall ensure that each statement is clearly explained in the child's and parent's, guardian's or legal custodian's primary language, if that is their language of preference, and in a manner appropriate to the child's and parent's, guardian's or legal custodian's developmental abilities. Each statement shall be initialed by the child's parent, guardian or legal custodian.

D. The parent's, guardian's or legal custodian's executed consent to admission document shall be filed with the child's hospital records within twenty-four hours of the time of admission.

E. Upon the filing of the parent's, guardian's or legal custodian's consent to admission document in the child's hospital records, the director of the residential treatment or habilitation program or the director's designee shall, on the next business day following the child's admission, notify the resource consultant of the admission and provide the resource consultant with the child's name, date of birth and the date and place of admission. The resource consultant shall make reasonable efforts to contact the child's parent, guardian or legal custodian within three days of being notified of the child's admission.

F. Upon the filing of the parent's, guardian's or legal custodian's consent to admission document in the child's hospital records, the director of the residential treatment or habilitation program or the director's designee shall, on the next business day following the child's admission, notify the district court or the special commissioner regarding the admission and provide the child's name, date of birth and the date and place of admission. The court or special commissioner shall, upon receipt of notice regarding a child's admission to a residential treatment or habilitation program, establish a sequestered court file.

G. The director of a residential treatment or habilitation program or the director's designee shall, on the next business day following the child's admission, petition the court to appoint a guardian ad litem for the child. When the court receives the petition, the court shall appoint a guardian ad litem. The court may order the parent to reimburse the state pursuant to the provisions of the Children's Code.

H. Within seven days of a child's admission to a residential treatment or habilitation program, a guardian ad litem, representing the child's best interests and in accordance with the provisions of the Children's Mental Health and Developmental Disabilities Act, shall meet with the child, the child's parent, guardian or legal custodian and the child's clinician. The guardian ad litem shall determine the following:

(1) whether the child's parent, guardian or legal custodian understands and consents to the child's admission to a residential treatment or habilitation program;

(2) whether the admission is in the child's best interests; and

(3) whether the admission is appropriate for the child and is consistent with the least drastic means principle.

I. If a guardian ad litem determines that the child's parent, guardian or legal custodian understands and consents to the child's admission and that the admission is in the child's best interests, is appropriate for the child and is consistent with the least drastic means principle, the guardian ad litem shall so certify on a form designated by the supreme court. The form, when completed by the guardian ad litem, shall be filed in the child's patient record kept by the residential treatment or habilitation program, and a copy shall be forwarded to the court or special commissioner within seven days of the child's admission. The guardian ad litem's statement shall not identify the child by name.

J. Upon reaching the age of majority, a child who was admitted to a residential treatment or habilitation program pursuant to this section may petition the district court for the records of the district court regarding all matters pertinent to the child's admission to a residential treatment or habilitation program. The district court, upon receipt of the petition and upon a determination that the petitioner is in fact a child who was admitted to a residential treatment or habilitation program, shall provide all court records regarding the admission to the petitioner, including all copies in the court's possession.

K. Any parent, guardian or legal custodian who consents to admission of his child to a residential treatment or habilitation program has the right to request the child's immediate discharge from the residential treatment or habilitation program, subject to the provisions of this section. If a child's parent, guardian or legal custodian informs the director, a physician or any other member of the residential treatment or habilitation program staff that the parent, guardian or legal custodian desires the child to be discharged from the program, the director, physician or other staff shall provide for the child's immediate discharge and remit the child to the parent's, guardian's or legal custodian's care. The residential treatment or habilitation program shall also notify the child's guardian ad litem. A child whose parent, guardian or legal custodian requests his immediate discharge shall be discharged, except when the director of the residential treatment program, a physician or a licensed psychologist determines that the child requires continued treatment and that the child meets the criteria for involuntary residential treatment. In that event, the director, physician or licensed psychologist shall, on the first business day following the child's parent's, guardian's or legal custodian's request for release of the child from the program, request that the children's court attorney initiate involuntary residential treatment proceedings. The children's court attorney may petition the court for such proceedings. The child has a right to a hearing regarding his continued treatment within seven days of the request for release.

L. A child who is admitted to a residential treatment or habilitation program pursuant to this section shall have his admission reviewed at the end of the sixty-day

period following the date of the child's initial admission to the program. The child's physician or licensed psychologist shall review the child's residential treatment or habilitation program and determine whether it is in the best interests of the child to continue the admission. If the child's physician or licensed psychologist concludes that continuation of the residential treatment or habilitation program is in the child's best interests, the child's clinician shall so state in a form to be filed in the child's patient records. The residential treatment or habilitation program shall notify the guardian ad litem for the child at least seven days prior to the date that the sixty-day period is to end or, if necessary, request a guardian ad litem pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act. The guardian ad litem shall then personally meet with the child, the child's parent, guardian or legal custodian and the child's clinician and ensure that the child's parent, guardian or legal custodian understands and consents to the child's continued admission to the residential treatment or habilitation program. If the guardian ad litem determines that the child's parent, guardian or legal custodian understands and consents to the child's continued admission to the residential treatment or habilitation program; that the continued admission is in the child's best interest; that the placement continues to be appropriate for the child and consistent with the least drastic means principle; and that the clinician has recommended the child's continued stay in the program; the guardian ad litem shall so certify on a form designated by the supreme court. The disposition of these forms shall be as set forth in this section, with one copy going in the child's patient record and the other being sent to the district court in a manner that preserves the child's anonymity. This procedure shall take place every sixty days following the child's last admission or a guardian ad litem's certification, whichever occurs first.

M. When a guardian ad litem determines that the child's parent, guardian or legal custodian does not understand or consent to the child's admission to a residential treatment or habilitation program; that the admission is not in the child's best interests; that the placement is inappropriate for the child or is inconsistent with the least drastic means principle; or that the child's clinician has not recommended a continued stay by the child in the residential treatment or habilitation program; the child shall be released or involuntary placement procedures shall be initiated.

N. If the child's parent, guardian or legal custodian is unavailable to take custody of the child and immediate discharge of the child would endanger the child, the residential treatment or habilitation program may detain the child until a safe and orderly discharge is possible. If the child's family refuses to take physical custody of the child, the residential treatment or habilitation program shall refer the case to the department for an abuse and neglect or family in need of court-ordered services investigation. The department may take the child into protective custody pursuant to the provisions of the Abuse and Neglect Act or the Family in Need of Services Act."

Section 14

Section 14. A new section of the Children's Code is enacted to read:

"VOLUNTARY RESIDENTIAL TREATMENT OR HABILITATION.--

A. A child fourteen years of age or older shall not receive treatment for mental disorders or habilitation for developmental disabilities on a voluntary residential basis, except as provided in this section.

B. Any child fourteen years of age or older may voluntarily admit himself to a residential treatment or habilitation program, with the informed consent of his parent, guardian or legal custodian, for a period not to exceed sixty days, subject to the requirements of this section.

C. To have a child voluntarily admitted to a residential treatment or habilitation program, the child and the child's parent, guardian or legal custodian shall knowingly and voluntarily execute, prior to admission, a child's voluntary consent to admission document. The document shall include a clear statement of the child's right to voluntarily consent or refuse to consent to his admission; right to request an immediate discharge from the residential treatment program at any time; and the child's rights when he requests a discharge and his physician, licensed psychologist or the director of the residential treatment facility determines the child needs continued treatment. The facility shall ensure that each statement is clearly explained in the child's and parent's, guardian's or legal custodian's primary language, if that is their language of preference, and in a manner appropriate to the child's and parent's, guardian's or legal custodian's developmental abilities and each statement shall be initialed by the child and his parent, guardian or legal custodian.

D. The child's parent, guardian or legal custodian shall obtain an independent attorney for the child and shall notify the residential treatment facility of that attorney's name within seventy-two hours of the child's voluntary admission. Prior to admission, the residential treatment facility shall inform the child's parent, guardian or legal custodian of the duty to obtain an independent attorney for the child within seventy-two hours. If the child's parent, guardian or legal custodian is indigent, the parent, guardian or legal custodian may petition the court to appoint an attorney for the child.

E. The child's executed voluntary consent to admission document shall be filed in the patient's hospital record within twenty-four hours of the time of admission.

F. Upon the filing of the child's consent to admission document in the child's hospital record, the director of the residential treatment or habilitation program or the director's designee shall, on the next business day following the child's admission, notify the resource consultant of the admission and provide the child's name, date of birth, the date and place of admission. The resource consultant shall meet with the child and make reasonable efforts to contact the child's parent, guardian or legal custodian within three days of being notified of the child's admission.

G. Upon the filing of the child's voluntary consent to admission document in the patient's hospital record, the director of the residential treatment or habilitation program or the director's designee shall, on the next business day following the child's admission, notify the district court or the special commissioner of the admission, giving the child's name, date of birth and the date and place of admission. The court or special commissioner shall, upon receipt of notice of a child's voluntary admission to a residential treatment program, establish a sequestered court file.

H. If, within seventy-two hours of the child's voluntary admission, the child has not met with an independent attorney and the child's parent, guardian or legal custodian has not notified the residential treatment or habilitation program of the name of the child's independent attorney, the residential treatment or habilitation program shall, during the next business day, petition the court to appoint an attorney. When the court receives the petition, the court shall appoint an attorney. The court may order the parent to reimburse the state pursuant to the provisions of the Children's Code.

I. If, within seventy-two hours of the child's voluntary admission, the child has met with an independent attorney or the child's parent, guardian or legal custodian has notified the residential treatment or habilitation program of the name of the child's independent attorney, the residential treatment or habilitation program shall, during the next business day, notify the court or the special commissioner of the name of the child's independent attorney.

J. Within seven days of the admission, an attorney, representing the child pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act, shall meet with the child. At the meeting with the child, the attorney shall explain to the child the following:

(1) the child's right to an attorney;

(2) the child's right to terminate his voluntary admission and the procedures to effect termination;

(3) the effect of terminating the child's voluntary admission and options of the physician and other interested parties to the petition for an involuntary admission; and

(4) the child's rights under the provisions of the Children's Mental Health and Developmental Disabilities Act, including the right to:

(a) legal representation;

(b) a presumption of competence;

(c) receive daily visitors of the child's choice;

- (d) receive and send uncensored mail;
- (e) have access to telephones;
- (f) follow or abstain from the practice of religion;
- (g) a humane and safe environment;
- (h) physical exercise and outdoor exercise;
- (i) a nourishing, well-balanced, varied and appetizing diet;
- (j) medical treatment;
- (k) educational services;
- (l) freedom from unnecessary or excessive medication;
- (m) individualized treatment and habilitation; and
- (n) participation in the development of the individualized treatment plan and access to that plan on request.

K. If the attorney determines that the child understands his rights and that the child voluntarily and knowingly desires to remain as a patient in a residential treatment or habilitation program, the attorney shall so certify on a form designated by the supreme court. The form, when completed by the attorney, shall be filed in the child's patient record at the residential treatment or habilitation program facility, and a copy shall be forwarded to the court or special commissioner within seven days of the child's admission. The attorney's statement shall not identify the child by name.

L. Upon reaching the age of majority, a child who was a voluntary admittee to a residential treatment or habilitation program may petition the district court for the records of the court regarding all matters pertinent to his voluntary admission to a residential treatment or habilitation program. The court, upon receipt of the petition and upon a determination that the petitioner was in fact the child who was a voluntary admitted to a residential treatment or habilitation program, shall give all court records regarding the admission to the petitioner, including all copies in the court's possession.

M. Any child voluntarily admitted to a residential treatment or habilitation program has the right to an immediate discharge from the residential treatment or habilitation program upon his request, except as provided in this section. If a child informs the director, physician or any other member of the residential treatment or habilitation program staff that he desires to be discharged from the voluntary program, the director, physician or other staff member shall provide for the child's immediate discharge. The residential treatment or habilitation program shall not require that the

child's request be in writing. Upon the request, the residential treatment or habilitation program shall notify the child's parent, guardian or legal custodian to take custody of the child and remit the child to the parent's, guardian's or legal custodian's care. The residential treatment or habilitation program shall also notify the child's attorney. If the child's parent, guardian or legal custodian is unavailable to take custody of the child and immediate discharge of the child would endanger the child, the residential treatment or habilitation program may detain the child until a safe and orderly discharge is possible. If the child's family refuses to take physical custody of the child, the residential treatment or habilitation program shall refer the case to the department for an abuse and neglect or family in need of court-ordered services investigation. The department may take the child into protective custody pursuant to the provisions of the Abuse and Neglect Act or the Family in Need of Services Act. A child requesting immediate discharge shall be discharged, except in those situations when the director of the residential treatment or habilitation program, a physician or a licensed psychologist determines that the child requires continued treatment and that the child meets the criteria for involuntary residential treatment as otherwise provided under the Children's Mental Health and Developmental Disabilities Act. In that event, the director, physician or licensed psychologist, after making the determination, shall, on the first business day following the child's request for release from the voluntary program, request that the children's court attorney initiate involuntary placement proceedings. The children's court attorney may petition for such a placement. The child has a right to a hearing on his continued treatment within seven days of his request for release.

N. A child who is a voluntary admittee to a residential treatment or habilitation program shall have his voluntary admission reviewed at the end of a sixty-day period from the date of his initial admission to the program. The review shall be accomplished by having the child's physician or licensed psychologist review the child's treatment and determine whether it would be in the best interests of the child to continue the voluntary admission. If the child's physician or licensed psychologist concludes that continuation of treatment is in the child's best interests, the child's clinician shall so state in a form to be filed in the child's patient record. The residential treatment or habilitation program shall notify the attorney for the child at least seven days prior to the date that the sixty-day period is to end or, if necessary, request an attorney pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act. The attorney shall then personally meet with the child and ensure that the child understands his rights as set forth in this section; that the child understands the method for voluntary termination of his admission; and that the child knowingly and voluntarily consents to his continued treatment. If the attorney determines that the child understands these rights and that the child voluntarily and knowingly desires to remain as a patient in the residential treatment or habilitation program and that the clinician has recommended the continued stay in the program, the attorney shall so certify on a form designated by the supreme court. The disposition of these forms shall be as set forth in this section, with one copy going in the child's patient record and the other being sent to the district court in a manner that preserves the child's anonymity. This procedure shall take place every sixty days from the last admission or attorney's certification, whichever comes first.

O. If the attorney determines that the child does not voluntarily desire to remain in the program or if the clinician of the child has not recommended continued stay by the child in the residential treatment or habilitation program, the child shall be released or the involuntary placement procedures set forth in this section and the Children's Mental Health and Developmental Disabilities Act shall be followed."

Section 15

Section 15. A new section of the Children's Code is enacted to read:

"INVOLUNTARY RESIDENTIAL TREATMENT.--

A. No child may receive treatment for mental disorders or habilitation for developmental disabilities on an involuntary residential basis except as provided in this section.

B. Any person who believes that a child, as a result of a mental disorder or developmental disability, is in need of residential mental health or developmental disabilities services may request that a children's court attorney file a petition with the court for the child's involuntary placement. The petition shall include a detailed description of the symptoms or behaviors of the child that support the allegations in the petition, a list of prospective witnesses for involuntary placement and a summary of matters to which they will testify. The petition should also contain a discussion of the alternatives to residential care that have been considered and the reasons for rejecting the alternatives. A copy of the petition shall be served upon the child and a copy of the petition shall be served upon a parent, guardian or legal custodian and upon the child's attorney or guardian ad litem.

C. The court shall, upon receiving the petition, appoint counsel for the child unless the child has retained an attorney or an attorney or guardian ad litem has been appointed pursuant to the provisions of the Children's Mental Health or Developmental Disabilities Act. The attorney or guardian ad litem shall represent the child at all stages of the proceedings.

D. If, after interviewing the child, the child's attorney or guardian ad litem determines that the child understands his rights and desires to waive the child's presence at the hearing on the issue of involuntary placement, the attorney or guardian ad litem shall submit a verified written statement to the court explaining the attorney's or guardian ad litem's understanding of the child's intent. If the court is satisfied that the child has voluntarily and knowingly waived his right to be present at the hearing, the child may be involuntarily placed for residential treatment or habilitation at a hearing at which the child is not present. By waiving the right to be present at the involuntary placement hearing, the child waives no other rights.

E. An involuntary placement hearing shall be held within seven days of the emergency admission of the child to a residential facility under this section or within

seven days from a child's declaration that he desires to terminate his voluntary admission to a residential treatment or habilitation program.

F. At the involuntary placement hearing, the child shall:

- (1) at all times be represented by counsel;
- (2) have the right to present evidence, including the testimony of a mental health and developmental disabilities professional of his own choosing;
- (3) have the right to cross-examine witnesses;
- (4) have the right to a complete record of the proceedings; and
- (5) have the right to an expeditious appeal of an adverse ruling.

G. The parent, guardian or legal custodian of a child involved in an involuntary placement hearing shall have automatic standing as witnesses and shall be allowed to testify by telephone or through a written affidavit if circumstances make personal testimony too burdensome.

H. The court shall include in its findings either a statement of the child's parents', guardian's or custodian's opinion about whether the child should be involuntarily placed in a residential treatment or habilitation program; a statement detailing the efforts made to ascertain the parent's, guardian's or custodian's opinion; or a statement of why it was not in the child's best interests to have the parent or guardian involved.

I. The court shall make an order involuntarily placing the child in residential care only if it is shown by clear and convincing evidence:

- (1) that as a result of mental disorder or developmental disability the child needs the treatment or habilitation services proposed;
- (2) that as a result of mental disorder or developmental disability the child is likely to benefit from the treatment or habilitation services proposed;
- (3) that the proposed involuntary placement is consistent with the treatment or habilitation needs of the child; and
- (4) that the proposed involuntary placement is consistent with the least drastic means principle.

J. If the court determines that the child does not meet the criteria for involuntary placement set forth in this section, it may order the child to undergo nonresidential treatment as may be appropriate and necessary or it may order no

treatment. If the court determines that the child should not be involuntarily placed in residential care and if the child's family refuses to take the child back into the home, the court shall refer the case to the department for an abuse and neglect investigation. The department may take the child into custody pursuant to the provisions of the Abuse and Neglect Act or the Family in Need of Services Act.

K. Every child receiving involuntary residential treatment for a mental disorder or developmental disability under this section shall have a right to periodic review of his involuntary placement at the end of every involuntary placement period. The involuntary placement period shall not exceed sixty days, and any involuntary placement period commencing thereafter shall not exceed six months. At the expiration of an involuntary placement period, the child may continue in residential care only after a new involuntary placement hearing and entry of a new order of involuntary placement for one involuntary placement period.

L. If the person seeking the involuntary placement of a child to residential treatment or habilitation believes that the child is likely to cause serious bodily harm to himself or to others during the period that would be required to hold an involuntary placement hearing as provided in this section, the child may be admitted to residential care on an emergency basis. If the child is admitted on an emergency basis, appointment of counsel and other procedures shall then take place as provided elsewhere in this section.

M. Nothing set forth in the Children's Mental Health and Developmental Disabilities Act prohibits a child, who has been involuntarily placed and thereafter discharged and released, from subsequently voluntarily consenting to admission under the provisions of that act."

Section 16

Section 16. A new section of the Children's Code is enacted to read:

"TREATMENT AND HABILITATION OF CHILDREN--LIABILITY.--

A. Any child shall have the right, with or without parental consent, to consent to and receive individual psychotherapy, group psychotherapy, guidance, counseling or other forms of verbal therapy that do not include any aversive stimuli or substantial deprivations.

B. No psychosurgery or convulsive treatment shall be performed on a child, except by order of a court upon a finding that the treatment is necessary to prevent serious harm to the child. Consent of a child or his parent, guardian or legal custodian to the treatment without a court order shall be invalid and shall not be a defense against any legal action that might be brought against the provider of the treatment.

C. No psychotropic medications or interventions involving aversive stimuli or substantial deprivation shall be administered to any child without proper consent. If the child is capable of understanding the proposed nature of treatment and its consequences and is capable of informed consent, his consent shall be obtained before the treatment is performed.

D. Psychotropic medications or interventions involving aversive stimuli may be administered to a child under the age of fourteen only with the informed consent of the child's parent, guardian or legal custodian. When psychotropic medications or interventions involving aversive stimuli are administered to a child under the age of fourteen, the child's guardian ad litem shall be notified by the residential treatment or habilitation program.

E. Psychotropic medications or interventions involving aversive stimuli may be administered to a child fourteen years of age or older with the informed consent of the child. When psychotropic medications or interventions involving aversive stimuli are administered to a child fourteen years of age or older the child's parent, guardian or legal custodian shall be notified by the residential treatment or habilitation program. If the consent of the child is not obtained, or if the mental health or developmental disabilities professional or physician who is proposing this or any other course of treatment or any other interested person believes that the child is incapable of informed consent, and the treatment provider or another interested person believes that the administration of the drug or program is necessary to protect the child from serious harm, any interested party may request that the children's court attorney petition the court for appointment of a treatment guardian to make a substitute decision for the child. The petition shall be served on the child and the child's attorney. A hearing on the petition shall be held within three court days. At the hearing, the child shall be represented by counsel and shall have the right to be present, to present witnesses and to cross-examine opposing witnesses. If, after the hearing, the court finds that the child is not capable of making treatment decisions, the court may order the appointment of a treatment guardian. When appointing a treatment guardian for the child, the court shall appoint the child's parent or guardian unless the child is in the custody of the department or the court finds that the child's parent or guardian is unable or unwilling to act in the child's best interests. When the child is in the custody of the department, the court shall appoint the child's legal custodian as treatment guardian, unless the court finds that the legal custodian is unable or unwilling to act in the child's best interests. The treatment guardian shall make a decision on behalf of the child whether to accept treatment, depending on whether the treatment appears to be in the child's best interests and is consistent with the least drastic means principle for accomplishing the treatment objective. In making this decision, the treatment guardian shall consult with the child and consider the child's expressed opinions, if any, even if those opinions do not constitute valid consent or rejection of treatment. The treatment guardian shall give consideration to any previous decisions made by the child in similar circumstances when the child was able to make treatment decisions. If a child, who is not a resident of a medical facility and for whom a treatment guardian has been appointed, refuses to comply with the decision of the treatment guardian, the treatment guardian may apply to

the court for an enforcement order. The enforcement order may authorize any peace officer to take the child into custody and to transport the child to an evaluation facility and may authorize the facility to forcibly administer treatment. The treatment guardian shall consult with the physician or other professional who is proposing treatment, the child's attorney and interested friends or relatives of the child as the treatment guardian deems appropriate in making this decision. A child, physician or other professional wishing to appeal the decision of the treatment guardian may do so by filing an appeal with the court within three calendar days of receiving notice of the treatment guardian's decision. In such a decision, the child shall be represented by counsel. The court may overrule the treatment guardian's decision if it finds that decision to be against the best interests of the child.

F. When the court appoints a treatment guardian, it shall specify the length of time during which the treatment guardian may exercise treatment guardian powers, up to a maximum period of one year. If, at the end of the guardianship period, the treatment guardian believes that the child is still incapable of making treatment decisions, the treatment guardian shall petition the court for reappointment or for appointment of a new treatment guardian. The guardianship shall be extended or a new guardian shall be appointed only if the court finds the child is, at the time of the hearing, incapable of understanding and expressing an opinion regarding treatment decisions. The child shall be represented by counsel and shall have the right to be present and to present evidence at all such hearings.

G. If during the period of a treatment guardian's power, the treatment guardian, the child, the treatment provider, a member of the child's family or the child's attorney believes that the child has regained competence to make treatment decisions, that person may petition the court for a termination of the treatment guardianship. If the court finds the child is capable of making treatment decisions, it shall terminate the power of the treatment guardian and restore to the child the power to make treatment decisions.

H. A treatment guardian shall only have those powers enumerated in the Children's Mental Health and Developmental Disabilities Act.

I. If a licensed physician believes that the administration of psychotropic medication is necessary to protect the child from serious harm that could occur while the provisions of this section are being satisfied, the licensed physician may administer the medication on an emergency basis. When medication is administered to a child on an emergency basis, the treating physician shall prepare and place in the child's medical records a report explaining the nature of the emergency and the reason that no treatment less drastic than administration of psychotropic medication without proper consent would have protected the child from serious harm. When medication is administered to a child on an emergency basis, the child's parent, guardian or legal custodian and the child's attorney or guardian ad litem shall be notified by the residential treatment or habilitation program.

J. Liability of persons providing mental health and developmental disability services to children shall be as follows:

(1) no mental health or developmental disability professional or treatment facility is required to detain, treat or provide services to a child when the child does not require detention, treatment or services;

(2) no mental health or developmental disability professional or facility may be held liable solely on the basis of misrepresentations made to them by a child seeking treatment or habilitation services or by a child's parent, provided the professional or the facility's staff acted in good faith;

(3) no mental health or developmental disability professional or facility may be held liable solely on the basis of reliance upon a tribal court order, provided the mental health or developmental professional or the facility's staff acted in good faith;

(4) nothing in the Children's Mental Health and Developmental Disabilities Act shall be construed to relieve any professional or facility from liability for negligence in the diagnosis, treatment or services provided to any child; and

(5) nothing in the Children's Mental Health and Developmental Disabilities Act shall be construed to relieve any professional or facility from duties placed on them by reporting laws relating to the detection of child abuse.

K. A parent shall be responsible for the cost of mental health services provided to the parent's child. This section does not affect the right of any child to receive free mental health or developmental disability services under any publicly supported program or the right of any parent to reimbursement from, or payment on the child's behalf by, any publicly supported program or private insurer; provided that the state shall pay no more than four hundred dollars (\$400) per day for the cost of such services. The state may adjust this rate. However, any adjustment should be based on a cost analysis conducted by the department and reviewed by the legislative finance committee."

Section 17

Section 17. A new section of the Children's Code is enacted to read:

"DISCLOSURE OF INFORMATION.--

A. Except as otherwise provided in the Children's Mental Health and Developmental Disabilities Act, no person shall, without the authorization of the child, disclose or transmit any confidential information from which a person well-acquainted with the child might recognize the child as the described person or any code, number or

other means that could be used to match the child with confidential information regarding him.

B. When evidence exists that a child fourteen years of age or older, whose consent to disclosure of confidential information is sought, is incapable of giving or withholding valid consent and does not have a treatment guardian appointed by a court, the person seeking the authorization shall petition the court for the appointment of a treatment guardian to make a decision for the child. When the child is less than fourteen years of age, the child's parent, guardian or legal custodian is authorized to consent to disclosure on behalf of the child.

C. Authorization from the child shall not be required for the disclosure or transmission of confidential information in the following circumstances:

(1) when the request is from a mental health or developmental disability professional or from an employee or trainee working with mentally disordered or developmentally disabled persons, to the extent their practice, employment or training on behalf of the child requires that they have access to the information;

(2) when the disclosure is necessary to protect against a clear and substantial risk of imminent serious physical injury or death inflicted by the child on himself or another;

(3) when the disclosure of the information to the parent, guardian or legal custodian is essential for the treatment of the child;

(4) when the disclosure of the information is to the primary caregiver of the child and the disclosure is only of information necessary for the continuity of the child's treatment in the judgment of the treating clinician who discloses the information;

(5) when the disclosure is to an insurer contractually obligated to pay part or all of the expenses relating to the treatment of the child at the residential facility. The information disclosed shall be limited to data identifying the child, facility and treating or supervising physician and the dates and duration of the residential treatment. It shall not be a defense to an insurer's obligation to pay that the information relating to the residential treatment of the child, apart from information disclosed pursuant to this section, has not been disclosed to the insurer; or

(6) when the disclosure is to a protection and advocacy representative pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act and the federal Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991.

D. No authorization given for the transmission or disclosure of confidential information shall be effective unless it:

(1) is in writing and signed; and

(2) contains a statement of the child's right to examine and copy the information to be disclosed, the name or title of the proposed recipient of the information and a description of the use that may be made of the information.

E. The child has a right of access to confidential information about himself and has the right to make copies of any information about himself and submit clarifying or correcting statements and other documentation of reasonable length for inclusion with the confidential information. The statements and other documentation shall be kept with the relevant confidential information, shall accompany it in the event of disclosure and shall be governed by the provisions of this section to the extent the statements or other documentation contain confidential information. Nothing in this subsection shall prohibit the denial of access to the records when a physician or other mental health or developmental disabilities professional believes and notes in the child's medical records that the disclosure would not be in the best interests of the child. In all cases, the child has the right to petition the court for an order granting access.

F. Information concerning a child disclosed under this section shall not be released to any other person, agency or governmental entity or placed in files or computerized data banks accessible to any persons not otherwise authorized to obtain information under this section.

G. Nothing in the Children's Mental Health and Developmental Disabilities Act shall limit the confidentiality rights afforded by federal statute or regulation.

H. Nothing in this section shall prohibit a clerk of a district court from providing, to any person authorized under Sections 47-4-1 through 47-4-8 NMSA 1978 to conduct abstracter's business or any person authorized pursuant to Chapter 59A NMSA 1978 to conduct business as a title insurer or title insurance agent within New Mexico, information concerning the appointment of a guardian or conservator pursuant to Sections 45-5-201 through 45-5-432 NMSA 1978; provided that the information shall be limited to:

(1) docket entries;

(2) date of the proceeding, appointment and termination;

(3) duration and type of the guardianship or conservatorship;

(4) limitations, if any, on the powers of the guardian or conservator;

and

(5) the name and other information necessary to identify the ward; provided, however, the disclosure shall not include any diagnostic treatment or other medical information."

Section 18

Section 18. A new section of the Children's Code is enacted to read:

"SPECIAL COMMISSIONER.--The court may conduct the proceedings required by the Children's Mental Health and Developmental Disabilities Act, or may, by general or special order, appoint a special commissioner to do so. The special commissioner shall be a licensed attorney. Upon conclusion of the hearing, the special commissioner shall file his findings and recommendations with the court promptly."

Section 19

Section 19. A new section of the Children's Code is enacted to read:

"CONVALESCENT STATUS.--

A. The head of a residential treatment or habilitation program may release an improved involuntary child on convalescent status when the head of the program believes that the release is in the best interests of the child. Release on convalescent status shall include provisions for continuing responsibility to and of the program. Prior to the expiration of the child's involuntary placement period, the director of the residential treatment or habilitation program shall re-examine the facts relating to the involuntary placement of the child on convalescent status and, if the director determines that in view of the condition of the child involuntary placement is no longer appropriate, the director shall discharge the child.

B. Prior to the discharge, the director of the residential treatment or habilitation program from which the child is given convalescent status may at any time re-admit the child. If there is reason to believe that the child should be returned to the residential treatment or habilitation program, the director may issue an order for the immediate return of the child. The order, if not voluntarily complied with, shall, upon order by a judge of the district court of the county in which the child resides or is present, authorize any peace officer to take the child into custody and transport the child to the residential treatment or habilitation program."

Section 20

Section 20. A new section of the Children's Code is enacted to read:

"TRANSPORTATION.--Whenever a child is to be placed in a residential treatment or habilitation program, or to be returned to the program during placement, the court ordering the placement or authorizing the return of the child may direct the sheriff, the New Mexico state police or other appropriate persons to furnish suitable transportation in order to effect the placement or return by contacting the department for directions as to the destination of the child."

Section 21

Section 21. A new section of the Children's Code is enacted to read:

"VIOLATION OF CHILDREN'S RIGHTS.--Any child who believes that his rights, as established by the Children's Mental Health and Developmental Disabilities Act or by the constitution of the United States or of New Mexico, have been violated shall have a right to petition the court for redress. The child shall be represented by counsel. The court shall grant relief as is appropriate, subject to the provisions of the Tort Claims Act."

Section 22

Section 22. A new section of the Children's Code is enacted to read:

"COST OF CARE.--Children who are indigent may receive care and treatment at state-operated facilities without charge. The governing authorities of the facilities may require payment for the cost of care and treatment from all others pursuant to established fee schedules based on ability to pay."

Section 23

Section 23. A new section of the Children's Code is enacted to read:

"RECOGNITION OF TRIBAL COURT INVOLUNTARY PLACEMENT ORDERS.--

A. Notwithstanding the provisions of any other law to the contrary, an involuntary placement order for a child issued by a tribal court shall be recognized and enforced by the district court for the judicial district in which the tribal court is located. The involuntary placement order shall be filed with the clerk of the district court. The tribal court, as the court of original jurisdiction, shall retain jurisdiction and authority over the child.

B. A child placed in an evaluation facility pursuant to the provisions of Subsection A of this section shall be subject to the continuing jurisdiction of the tribal court; provided that any decisions regarding discharge or release of the child from the evaluation facility shall be made by the administrator of that facility. Prior to discharging or releasing the child, the facility shall:

(a) make custody arrangements with the child's parent, guardian or legal custodian; and

(b) establish a plan for the child's aftercare.

C. When an Indian child is placed in an evaluation facility pursuant to the provisions of this section, any outpatient treatment of the Indian child shall be provided in the same manner as treatment would be provided for any other child.

D. When an Indian child requires emergency treatment or habilitation, that treatment or habilitation shall be provided pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act.

E. An Indian child residing on or off a reservation, as a citizen of this state, shall have the same right to services available to other children of the state."

Section 24

Section 24. A new section of the Children's Code is enacted to read:

"INTERGOVERNMENTAL AGREEMENTS.--Any agency may enter into intergovernmental agreements with tribes to provide for the treatment or habilitation of Indian children."

Section 25

Section 25. REPEAL.--Sections 32A-6-1 through 32A-6-21 NMSA 1978 (being Laws 1993, Chapter 77, Sections 173 through 193) are repealed.

Section 26

Section 26. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE BILL 459

CHAPTER 208

RELATING TO PUBLIC SCHOOL TRANSPORTATION; AMENDING, REPEALING AND ENACTING SECTIONS OF THE PUBLIC SCHOOL CODE PERTAINING TO STATE DEPARTMENT OF PUBLIC EDUCATION AUTHORITY, LOCAL SCHOOL BOARD AUTHORITY, DISBURSEMENT OF THE TRANSPORTATION DISTRIBUTION, SCHOOL BUS REPLACEMENT, SCHOOL BUS SERVICE CONTRACTS AND TRANSPORTATION DISTRIBUTIONS; CREATING A FUND; MAKING AN APPROPRIATION.

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

Section 1

Section 1. Section 22-8-26 NMSA 1978 (being Laws 1967, Chapter 16, Section 76, as amended) is amended to read:

"22-8-26. TRANSPORTATION DISTRIBUTION.--

A. Money in the transportation distribution of the public school fund shall be used only for the purpose of making payments to each school district for the to and from school transportation costs of students in grades kindergarten through twelve attending public school within the school district and of three- and four-year-old children who meet the state board approved criteria and definition of developmentally disabled and for transportation of students to and from their regular attendance centers and the place where vocational education programs are being offered.

B. In the event a school district's transportation allocation exceeds the amount required to meet obligations to provide to and from transportation, three- and four-year-old developmentally disabled transportation and vocation education transportation, the district shall revert remaining transportation funds to the transportation distribution in the department.

C. In the event the sum of the proposed transportation allocations to each school district exceeds the amounts in the transportation distribution, the allocation to each school district shall be reduced in the proportion that the local school district allocation bears to the total statewide transportation distribution.

D. Local school boards, with the approval of the state transportation director, may provide additional transportation services pursuant to Section 22-16-2 NMSA 1978 to meet established program needs."

Section 2

Section 2. Section 22-8-27 NMSA 1978 (being Laws 1967, Chapter 16, Section 77, as amended) is amended to read:

"22-8-27. TRANSPORTATION EQUIPMENT.--

A. The state superintendent shall establish a systematic program for the purchase of necessary school bus transportation equipment.

B. In establishing a system for the replacement of school-district-owned buses, the state superintendent shall provide for the replacement of school buses on a twelve-year cycle. School districts requiring additional buses to accommodate growth in the district or to meet other special needs may petition the state superintendent for additional buses. Under exceptional circumstances, districts may also petition the state superintendent for permission to replace buses prior to the completion of a twelve-year cycle or to utilize buses in excess of twelve years contingent upon satisfactory annual safety inspections.

C. In establishing a system for the utilization of contractor-owned buses by school districts, the state superintendent shall establish a schedule for the payment of rental fees for the use of contractor-owned buses. As with school-district-owned operations, the state superintendent shall establish procedures to ensure the systematic replacement of buses on a twelve-year replacement cycle. School districts requiring additional buses to accommodate growth in the district or to meet other special needs may petition the state superintendent for additional buses. Under exceptional circumstances, districts may also petition the state superintendent for permission to replace buses prior to the completion of a twelve-year cycle or to utilize buses in excess of twelve years contingent upon satisfactory annual safety inspections. Effective with the 1995-96 school year, no school district shall pay rental fees for any one bus for a period in excess of five years. In the event a school bus service contract is terminated, the state superintendent shall calculate the remaining number of years that a bus could be used based on a twelve-year replacement cycle and calculate a value reflecting that use. The local school district shall deduct an amount equal to that value from any remaining amount due on the contract or if no balance remains on the contract, the contractor shall reimburse the school district an amount equal to the value calculated."

Section 3

Section 3. Section 22-8-29 NMSA 1978 (being Laws 1967, Chapter 16, Section 78, as amended) is amended to read:

"22-8-29. TRANSPORTATION DISTRIBUTIONS--REPORTS--PAYMENTS.--

A. Prior to November 15 of each year, each local school board of a school district shall report to the state transportation director, upon forms furnished by the state transportation director, the following information concerning the district's operation on the fortieth day of school:

(1) the number and designation of school bus routes in operation in the school district;

(2) the number of miles traveled by each school bus on each school bus route, showing the route mileage in accordance with the type of road surface traveled;

3) the number of students transported on the fortieth day of school;

(4) the projected number of students to be transported in the next school year;

(5) the percentage of unpaved or unimproved roads utilized by school buses in the school district; and

(6) the seating capacity, age and mileage of each bus utilized in the district for student transportation.

B. Each local school board of a school district maintaining a school bus route shall make further reports to the state transportation director at other times specified by the state transportation director.

C. The state transportation director shall certify to the state superintendent that the allocations from the transportation distributions to each school district are based upon the transportation distribution formula established in the Public School Code. The allocations for the first six months of a school year shall be based upon the tentative transportation budget of the school district for the current fiscal year. Allocations to a school district for the remainder of the school year shall adjust the amount received by the school district so that it equals the amount the school district is entitled to receive for the entire school year based upon the November 15 report and subject to audit and verification.

D. The department shall make periodic installment payments to school districts during the school year from the transportation distributions, based upon the allocations certified by the state transportation director."

Section 4

Section 4. Section 22-16-1 NMSA 1978 (being Laws 1967, Chapter 16, Section 219) is amended to read:

"22-16-1. STATE TRANSPORTATION DIVISION--DIRECTOR.--

A. The "state transportation division" is created within the department of education.

B. The state superintendent shall appoint a director of the state transportation division to be known as the "state transportation director".

C. The state board may delegate to the state superintendent its administrative functions relating to public school transportation."

Section 5

Section 5. Section 22-16-2 NMSA 1978 (being Laws 1967, Chapter 16, Section 220, as amended) is amended to read:

"22-16-2. STATE TRANSPORTATION DIVISION--DUTIES.--Subject to the policies of the state board, the state transportation division of the department of education shall:

- A. establish standards for school bus transportation;
- B. establish standards for school bus design and operation pursuant to provisions of Section 22-16-11 NMSA 1978;
- C. establish procedures pertaining to the resolution of transportation issues in areas where local school districts are engaged in school district boundary disputes;
- D. enforce those regulations adopted by the state board relating to school bus transportation;
- E. audit records of school bus contractors or school district-owned bus operations in accordance with regulations promulgated by the state transportation director; and
- F. establish standards and certify for safety, vehicles that are defined as school buses by the Motor Vehicle Code."

Section 6

Section 6. Section 22-16-3 NMSA 1978 (being Laws 1967, Chapter 16, Section 221, as amended) is amended to read:

"22-16-3. SCHOOL BUS SERVICE CONTRACTS.--

- A. A school district may provide transportation services to students through the use of school bus service contracts. School districts may enter into school bus service contracts with individual school bus owner-operators or with school bus fleet owners or with both. A school district shall not enter into any school bus fleet service contract with any person who is simultaneously employed by that school district as an individual school bus owner-operator.
- B. All contracts entered into by a school district to provide school bus service to students attending public school within the school district shall be approved by the local school board. The contracts shall be in writing on forms approved by the state board.
- C. In addition to approving the form of the contract, the state board shall, by regulation, establish the parameters of school bus service contracts to include recognition of fuel costs, operation and maintenance costs and employee salary and benefits costs. In entering into school bus service contracts, school districts shall give preference to in-state service providers and the use of multiple providers. Upon request, the department shall provide assistance to local school districts in the negotiation and award of school bus service contracts.

D. A school district may enter into a school bus service contract for a term not to exceed five years. A school bus service contract may provide, at the expiration of the term of the contract, for annual renewal of the school bus service contract on the same terms and conditions at the option of the local school board.

E. In the event a contract with a school bus operator is terminated, the buses owned by the operator that are used pursuant to his school bus service contract shall be appraised by three qualified appraisers appointed by the local school board and approved by the state transportation director. The operator succeeding to the contract shall purchase, with the approval of the operator whose contract was terminated, all of the buses owned by the former operator at their appraised value."

Section 7

Section 7. Section 22-16-4 NMSA 1978 (being Laws 1967, Chapter 16, Section 222, as amended) is amended to read:

"22-16-4. SCHOOL BUS ROUTES--LIMITATIONS--EXCEPTIONS--MINIMUM REQUIREMENTS.--

A. Bus routes shall be established by the local school district.

B. Except as provided in Subsections C and D of this section, no school bus route shall be maintained for distances less than:

(1) one mile one way for students in grades kindergarten through six;

(2) one and one-half miles one way for students in grades seven through nine; and

(3) two miles one way for students in grades ten through twelve.

C. In school districts having hazardous walking conditions as determined by the local school board and confirmed by the state transportation director, students of any grade may be transported a lesser distance than that provided in Subsection B of this section. General standards for determining hazardous walking conditions shall be established by the state transportation division of the department of education with the approval of the state board, but the standards shall be flexibly and not rigidly applied by the local school board and the state transportation director to prevent accidents and help ensure student safety.

D. Exceptional children whose handicaps require transportation and three- and four-year-old children who meet the state board approved criteria and definition of developmentally disabled may be transported a lesser distance than that provided in Subsection B of this section."

Section 8

Section 8. Section 22-16-6 NMSA 1978 (being Laws 1967, Chapter 16, Section 224, as amended) is amended to read:

"22-16-6. REIMBURSEMENT OF PARENTS OR GUARDIANS.--A local school board may, subject to regulations adopted by the state board, provide per capita or per mile reimbursement to a parent or guardian in cases where regular school bus transportation is impractical because of distance, road conditions or sparseness of population or in cases where the local school board has authorized a parent to receive reimbursement for travel costs incurred by having a child attend a school outside the child's attendance zone."

Section 9

Section 9. Section 22-16-11 NMSA 1978 (being Laws 1978, Chapter 35, Section 469, as amended) is amended to read:

"22-16-11. REGULATIONS RELATIVE TO SCHOOL BUSES.--

A. The state transportation director, appointed as provided in Section 22-16-1 NMSA 1978, shall adopt and enforce regulations adopted by the state board not inconsistent with the Motor Vehicle Code to govern the design and operation of all school buses, used for the transportation of school children, when owned and operated by any school district or privately owned and operated under contract with any school district in this state, and the regulations shall by reference be made a part of any such contract with a school district. Every school district, its officers and employees and every person employed under contract by a school district shall be subject to the regulations.

B. Any officer or employee of any school district who violates any of the regulations or fails to include obligation to comply with the regulations in any contract executed by him on behalf of a school district is guilty of misconduct and subject to removal from office or employment. Any person operating a school bus, under contract with a school district, who fails to comply with any of the regulations is guilty of breach of contract, and the contract may be canceled after notice and hearing by the state transportation director acting in conjunction with the responsible officers of the school district.

C. Any driver of a school bus who fails to comply with any of the regulations is guilty of a misdemeanor."

Section 10

Section 10. A new section of the Public School Code is enacted to read:

"CALCULATION OF TRANSPORTATION ALLOCATION.--

A. The department of education shall calculate the transportation allocation for each school district in the following manner:

(1) group local school districts on the basis of the average square miles served per student transported in the prior year;

(2) in each group, calculate the prior year's average operational expenditure per student transported in each district;

(3) calculate the average for the group by taking the total prior year's expenditure for the group and dividing it by the number of students in the group;

(4) multiply the group average operational expenditure per student by the number of students transported on the fortieth day of the current year. Designate the product "A";

(5) add "A" to the mileage supplement. The sum of A and the mileage supplement is "B";

(6) for the 1995-96 and the 1996-97 school years, "B" shall not be less than ninety-five percent or more than one hundred fifteen percent of the district's previous year's operational allocation, provided that if "B" is less than ninety-five percent, "B" is deemed to equal ninety-five percent and if B is greater than one hundred fifteen percent, "B" is deemed equal to one hundred fifteen percent. Calculate "B" accordingly; and

(7) multiply B by the transportation distribution adjustment factor.

B. For the 1997-98, 1998-99 and 1999-2000 school years, the transportation allocation for each school district shall not be less than ninety-five percent or more than one hundred fifteen percent of the 1996-97 school year's transportation allocation.

C. For districts transporting less than seventy-five students, the department of education may utilize alternative calculation methods to determine the transportation allocation pursuant to regulation of the state board."

Section 11

Section 11. A new section of the Public School Code is enacted to read:

"GROUPING OF DISTRICTS--CALCULATION OF AVERAGE SQUARE MILES SERVED PER STUDENT TRANSPORTED.--

A. The department of education shall group school districts into not more than twelve groups. Groupings shall be made on the basis of the average square miles served per student transported in the district in the prior year on the fortieth day of school; provided, districts transporting less than seventy-five students may be excluded from the groupings regardless of the average square miles per student transported.

B. The average square miles served per student transported shall be calculated by dividing the total square mileage served by the district by the total number of students transported on the fortieth day of school in the following manner:

"average square miles per student transported = total square miles served by the district ÷ the total students transported in the prior year on the fortieth day of school".

Section 12

Section 12. A new section of the Public School Code is enacted to read:

"CALCULATION OF AVERAGE OPERATIONAL EXPENDITURE PER STUDENT.--The department of education shall determine the average operational expenditure per student. The average operational expenditure per student shall be determined by dividing a district's prior year's operational expenditure less the prior year's total mileage supplement by the total number of students transported in the prior year in the district in the following manner:

"(total district transportation operational expenditure - prior year mileage supplement) ÷ number of students transported in the district = average operational expenditure per student".

Section 13

Section 13. A new section of the Public School Code is enacted to read:

"TRANSPORTATION DISTRIBUTION ADJUSTMENT FACTOR.--

A. The state superintendent shall establish a transportation distribution adjustment factor. The adjustment factor shall be calculated as follows:

(1) calculate the unadjusted transportation allocation for each district, previously designated as "B";

(2) the sum total of "B" in all districts added together equals "C";
and

(3) subtract "C" from the total operational transportation distribution for the current year and divide the result by "C" and then add 1 in the following manner:

"[(total operational transportation distribution - C) ÷ C] + 1". The result is the transportation distribution adjustment factor.

B. As used in this section, "total operational transportation distribution" means the total legislative appropriation for the transportation distribution minus amounts included for capital outlay expenses."

Section 14

Section 14. A new section of the Public School Code is enacted to read:

"MILEAGE SUPPLEMENT.--The department of education shall calculate a mileage supplement for each local school district. The mileage supplement shall be calculated in the following manner:

A.

(1) determine the percentage of miles traveled over unpaved roads in relation to the total miles traveled in the area served by the district; and

(2) multiply the percentage of total miles traveled over unpaved roads by one-fourth and multiply that product by the average operational expenditure per student in the district as calculated in Section 12 of this act;

B.

(1) determine the percentage of miles traveled over unimproved roads in relation to the total miles traveled in the area served by the district; and

(2) multiply the percentage of total miles traveled over unimproved roads by one-half and multiply that product by the average operational expenditure per student in the district; and

C. add the total obtained in Subsection A of this section to the total obtained in Subsection B of this section and multiply that product by the number of students transported in the district on the fortieth day of school. This is the mileage supplement."

Section 15

Section 15. A new section of the Public School Finance Act is enacted to read:

"TRANSPORTATION RESERVE FUND.--

A. The "transportation reserve fund" is created in the state treasury. Money in the fund is appropriated to the department for the purpose of supplementing

disbursements from the transportation distribution in order to ensure, to the extent of the amount undistributed in the fund, that the maximum figures for such distribution shall not be reduced.

B. At least thirty days before the money is needed, the state superintendent shall notify the state treasurer in writing of the amount that will be needed for distribution.

C. Distribution from the fund shall be in same manner and on the same basis as the transportation distribution."

Section 16

Section 16. REPEAL.--Sections 22-8-28 and 22-16-5 NMSA 1978 (being Laws 1976 (S.S.), Chapter 20, Section 2 and Laws 1967, Chapter 16, Section 223, as amended) are repealed.

Section 17

Section 17. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE BILL 153

CHAPTER 209

RELATING TO PUBLIC OFFICER EXPENSES; LIMITING THE GOVERNOR'S CONTINGENT AND OTHER EXPENSES AND REQUIRING AN ANNUAL REPORT.

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

Section 1

Section 1. Section 10-8-5 NMSA 1978 (being Laws 1978, Chapter 184, Section 4, as amended) is amended to read:

"10-8-5. RESTRICTIONS--REGULATIONS.--

A. The secretary may promulgate rules and regulations for state agencies and local public bodies for the purpose of carrying out the provisions of the Per Diem and Mileage Act. Public officials of public post-secondary educational institutions and employees of public post-secondary educational institutions shall be subject to the rules and regulations of their governing boards.

B. Public funds may be advanced to any public officer or employee before the travel occurs only with prior written approval of the secretary, the secretary's designee, the local public body or the governing board or its designee. This restriction shall not prohibit the use of authorized credit cards in connection with purchases necessary to the use of vehicles owned by the state, a local public body or a public post-secondary educational institution or for food, lodging or transportation as permitted by the department of finance and administration or the governing board. Public funds shall be paid out under the Per Diem and Mileage Act only upon vouchers duly presented with any required receipts attached thereto. For employees authorized to receive public funds in advance of travel, payment shall be received only upon vouchers submitted with attached authorization for each travel period. For public officers or employees using authorized credit cards, vouchers with required receipts for each month's travel expenses shall be submitted as a condition to receiving authorization to use the credit card for the next month's travel. Travel expenses may also be advanced if the travel is to be performed under provisions of federal or private contracts and the funds used are not derived from taxes or revenues paid to the state or any of its political subdivisions.

C. Money expended by the governor from the appropriations made for his office and contingent and other expenses are not subject to any of the foregoing provisions of this section and are not subject to audit; provided that the governor shall only use contingent and other expenses for purposes connected with obligations of the office. An expenditure report on the use of the governor's contingent and other expenses shall be submitted annually to the department of finance and administration.

D. The secretary may reduce the rates set for the per diem and mileage for any class of public officials and for employees of state agencies, except public officials of public post-secondary educational institutions, at any time he deems it to be in the public interest, and such reduction shall not be construed to permit payment of any other compensation, perquisite or allowance. The secretary shall exercise this power of reduction in a reasonable manner and shall attempt to achieve a standard rate for all public officers and employees of the same classification. The secretary may, at the request of any state agency and for good cause shown, reduce the rates of per diem and mileage for that state agency. The governing body of any local public body may eliminate or may reduce the rates set for the per diem and mileage for all or any class of public officials and employees of the local public body at any time the local public body deems it to be in the public interest, and such reduction shall not be construed to permit payment of any other compensation, perquisite or allowance. The local public body shall exercise this power of reduction in a reasonable manner and shall attempt to achieve a standard rate for all public officers and employees of the same classification. The secretary may, in extraordinary circumstances and with the prior approval of the state board of finance in public meeting, allow actual expenses rather than the per diem rates set in the Per Diem and Mileage Act.

E. The governing board or its designee may reduce the rates set for the per diem and mileage for public officials of public post-secondary educational

institutions and for employees of public post-secondary educational institutions at any time the governing board deems it to be in the public interest, and such reduction shall not be construed to permit payment of any other compensation, perquisite or allowance. The governing board shall exercise this power of reduction in a reasonable manner and shall attempt to achieve a standard rate for public officers and employees of public post-secondary educational institutions. The governing board may reduce the rates of per diem and mileage for its public post-secondary educational institution and may, in extraordinary circumstances and in public meeting, allow actual expenses rather than the per diem rates set in the Per Diem and Mileage Act.

F. No reimbursement for out-of-state travel shall be paid to any elected public officer, including any member of the legislature, if after the last day to do so that officer has not filed a declaration of candidacy for reelection to his currently held office or has been defeated for reelection to his currently held office in a primary election or any general election.

G. Subsection F of this section does not apply to any elected public officer who is ineligible to succeed himself after serving his term in office.

H. Subsection F of this section does not apply to legislators whose travel has been approved by a three-fourths' vote of the New Mexico legislative council at a regularly called meeting.

I. Any person who is not an employee, appointee or elected official of a county or municipality and who is reimbursed under the provisions of the Per Diem and Mileage Act in an amount that singly or in the aggregate exceeds one thousand five hundred dollars (\$1,500) in any one year shall not be entitled to further reimbursement under the provisions of that act until the person furnishes in writing to his department head or, in the case of a department head or board or commission member, to the governor or, in the case of a member of the legislature, to the New Mexico legislative council an itemized statement on each separate instance of travel covered within the reimbursement, the place to which traveled and the executive, judicial or legislative purpose served by the travel."

HOUSE BILL 266

CHAPTER 210

RELATING TO PROBATE; UPDATING PROVISIONS OF THE UNIFORM PROBATE CODE; PROVIDING FOR DURABLE POWERS OF ATTORNEY; AUTHORIZING STATUTORY FORM POWERS OF ATTORNEY; REQUIRING PRUDENT INVESTMENTS BY TRUSTEES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. A new section of the Uniform Probate Code, Section 45-1-110 NMSA 1978, is enacted to read:

"45-1-110. TIME OF TAKING EFFECT--PROVISIONS FOR TRANSITION.--
Except as provided elsewhere in this Code, on the effective date of this Code or of any amendment to this Code:

A. the Code or the amendment applies to governing instruments executed by decedents dying thereafter;

B. the Code or the amendment applies to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this Code or the amendment;

C. every personal representative or other fiduciary holding an appointment under this Code on that date, continues to hold the appointment but has only the powers conferred by this Code or the amendment and is subject to the duties imposed with respect to any act occurring or done thereafter;

D. an act done before the effective date in any proceeding and any accrued right is not impaired by this Code or the amendment. If a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provisions shall remain in force with respect to that right; and

E. any rule of construction or presumption provided in this Code or the amendment applies to governing instruments executed before the effective date unless there is a clear indication of a contrary intent."

Section 2

Section 2. Section 45-1-201 NMSA 1978 (being Laws 1993, Chapter 174, Section 4) is amended to read:

"45-1-201. DEFINITIONS.--

A. As used in the Uniform Probate Code, unless the context otherwise requires:

(1) "agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning

another's health care and an individual authorized to make decisions for another under a natural death act;

(2) "application" means a written request to the probate court for an order of informal probate or appointment pursuant to Sections 45-3-301 through 45-3-311 NMSA 1978;

(3) "beneficiary", as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a "beneficiary of a beneficiary designation", refers to a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD) or of a pension, profit-sharing, retirement or similar benefit plan or other nonprobate transfer at death; and, as it relates to a "beneficiary designated in a governing instrument", includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee or taker in default of a power of appointment or a person in whose favor a power of attorney or a power held in any individual, fiduciary or representative capacity is exercised;

(4) "beneficiary designation" refers to a governing instrument naming a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD) or of a pension, profit-sharing, retirement or similar benefit plan or other nonprobate transfer at death;

(5) "child" includes an individual entitled to take as a child pursuant to the Uniform Probate Code by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild or any more remote descendant;

(6) "claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort or otherwise and liabilities of the estate that arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. "Claims" does not include estate or inheritance taxes or demands or disputes regarding title of a decedent, an incapacitated person or a minor ward to specific assets alleged to be included in the estate;

(7) "conservator" means a person who is appointed by a court to manage the property or financial affairs or both of an incapacitated person or a minor ward;

(8) "descendant" of an individual means all of his descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in the Uniform Probate Code;

(9) "devise", when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will;

(10) "devisee" means a person designated in a will to receive a devise. For the purposes of Chapter 45, Article 3 NMSA 1978, in the case of a devise to an existing trust or trustee or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees;

(11) "distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For the purposes of this paragraph, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets;

(12) "estate" includes the property of the decedent, trust or other person whose affairs are subject to the Uniform Probate Code as originally constituted and as it exists from time to time during administration;

(13) "exempt property" means that property of a decedent's estate that is described in Section 45-2-403 NMSA 1978;

(14) "fiduciary" includes a personal representative, guardian, guardian ad litem, conservator and trustee;

(15) "foreign personal representative" means a personal representative appointed by another jurisdiction;

(16) "formal proceedings" means proceedings conducted before a judge with notice to interested persons;

(17) "governing instrument" means a deed, will, trust, insurance or annuity policy, account with POD designation, security registered in beneficiary form (TOD), pension, profit-sharing, retirement or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney or a dispositive, appointive or nominative instrument of any similar type;

(18) "guardian" means a person who has qualified to provide for the care, custody or control of the person of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem;

(19) "guardian ad litem" means a person appointed by the district court to represent and protect the interests of a minor or an incapacitated person in connection with litigation or any other court proceeding;

(20) "heirs", except as controlled by Section 45-2-711 NMSA 1978, means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent;

(21) "incapacitated person" means an individual described in Section 45-5-101 NMSA 1978;

(22) "informal proceedings" means those proceedings conducted without notice to interested persons before the probate court for probate of a will or appointment of a personal representative, except as provided for in Section 45-3-306 NMSA 1978;

(23) "interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against a trust estate or the estate of a decedent, a minor ward or an incapacitated person. "Interested person" also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding. "Interested person" does not apply to the provisions of Chapter 45, Article 5 NMSA 1978;

(24) "issue" of a person means all of his descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in the Uniform Probate Code;

(25) "lease" includes an oil, gas or other mineral lease;

(26) "letters" includes letters testamentary, letters of guardianship, letters of administration and letters of conservatorship;

(27) "minor" means a person who has not reached eighteen years of age;

(28) "mortgage" means any conveyance, agreement or arrangement in which property is encumbered or used as security;

(29) "nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his death;

(30) "organization" means a corporation, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency or any other legal or commercial entity;

(31) "parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent pursuant to the Uniform Probate Code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent or grandparent;

(32) "payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision or any other person authorized or obligated by law or a governing instrument to make payments;

(33) "person" means an individual or an organization;

(34) "personal representative" includes executor, administrator, successor personal representative, special administrator and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator;

(35) "petition" means a written request to the probate court for an order after notice;

(36) "proceeding" includes action at law and suit in equity;

(37) "property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership;

(38) "protected person" is as defined in Section 45-5-101 NMSA 1978;

(39) "protective proceeding" means a proceeding described in Section 45-5-101 NMSA 1978;

(40) "security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for or any warrant or right to subscribe to or purchase any of the foregoing;

(41) "settlement", in reference to a decedent's estate, includes the full process of administration, distribution and closing;

(42) "special administrator" means a personal representative as described by Sections 45-3-614 through 45-3-618 NMSA 1978;

(43) "state" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States;

(44) "successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative;

(45) "successors" means persons, other than creditors, who are entitled to property of a decedent under his will or the Uniform Probate Code;

(46) "supervised administration" refers to the proceedings described in Article III, Part 5 of the Uniform Probate Code;

(47) "survive" means that an individual has neither predeceased an event, including the death of another individual, nor is deemed to have predeceased an event pursuant to Section 45-2-104 or 45-2-702 NMSA 1978. "Survive" includes its derivatives, such as "survives", "survived", "survivor" and "surviving";

(48) "testacy proceeding" means a proceeding to establish a will or determine intestacy;

(49) "testator" includes an individual of either sex;

(50) "trust" includes an express trust, private or charitable, with additions thereto, wherever and however created. "Trust" also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts and excludes resulting trusts, conservatorship, personal representatives, trust accounts as defined in Article VI of the Uniform Probate Code, custodial arrangements, including those created under the Uniform Gifts to Minors Act or the Uniform Transfer to Minors Act, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions or employee benefits of any kind and any arrangement under which a person is nominee or escrowee for another;

(51) "trustee" includes an original, additional or successor trustee, whether or not appointed or confirmed by court;

(52) "ward" means a person for whom a guardian has been appointed; and

(53) "will" includes codicil and any testamentary instrument that merely appoints a personal representative, revokes or revises another will, nominates a guardian or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession. "Will" does not include a holographic will.

B. The definitions in Subsection A of this section are made subject to additional definitions contained in subsequent articles that are applicable to specific articles."

Section 3

Section 3. Section 45-1-402 NMSA 1978 (being Laws 1975, Chapter 257, Section 1-402) is amended to read:

"45-1-402. NOTICE--WAIVER.--A person, including a guardian ad litem, conservator or other fiduciary, may waive notice either by a writing signed by him and filed in the proceeding or by appearance in the proceeding. A person for whom a guardianship or other protective order is sought, a ward or a protected person may not waive notice."

Section 4

Section 4. Section 45-2-111 NMSA 1978 (being Laws 1993, Chapter 174, Section 13) is amended to read:

"45-2-111. ALIENAGE.--

A. No individual is disqualified to take as an heir because the individual or an individual through whom he claims is or has been an alien.

B. Aliens shall have full power and authority to acquire or hold real property and personal property by deed, will, inheritance or otherwise and to alienate, sell, assign and transfer any property to their heirs or other persons, whether the heirs or other persons are, or are not, citizens of the United States.

C. When an alien having title or interest in any real property dies, the real property shall descend and vest in the same manner as if the alien were a citizen of the United States. The heir of an alien, whether the heir is an alien or not, shall have the same rights and resources and shall, in all respects, be treated on the same footing as a native citizen of the United States with respect to the personal estate of an alien dying intestate, and all persons interested in the estate, under the laws of New Mexico, whether aliens or not."

Section 5

Section 5. Section 45-2-301 NMSA 1978 (being Laws 1993, Chapter 174, Section 17) is amended to read:

"45-2-301. ENTITLEMENT OF SPOUSE--PREMARITAL WILL.--

A. If a testator's surviving spouse married the testator after the testator executed his will, the surviving spouse is entitled to receive, as an intestate share, no less than the value of the share of the estate he would have received if the testator had died intestate as to that portion of the testator's estate, if any, that neither is devised to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse nor is devised to a descendant of such a child or passes pursuant to Section 45-2-603 or 45-2-604 NMSA 1978 to such a child or to a descendant of such a child, unless:

(1) it appears from the will or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse;

(2) the will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or

(3) the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

B. In satisfying the share provided by this section, devises made by the will to the testator's surviving spouse, if any, are applied first, and other devises, other than a devise to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse or a devise or substitute gift pursuant to Section 45-2-603 or 45-2-604 NMSA 1978 to a descendant of such a child, abate as provided in Section 45-3-902 NMSA 1978."

Section 6

Section 6. Section 45-2-302 NMSA 1978 (being Laws 1993, Chapter 174, Section 18) is amended to read:

"45-2-302. OMITTED CHILDREN.--

A. Except as provided in Subsection B of this section, if a testator fails to provide in his will for any of his children born or adopted after the execution of the will, the omitted after-born or after-adopted child receives a share in the estate as follows:

(1) if the testator had no child living when he executed the will, an omitted after-born or after-adopted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate, unless the will

devised all or substantially all of the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will; or

(2) if the testator had one or more children living when he executed the will and the will devised property or an interest in property to one or more of the then-living children, an omitted after-born or after-adopted child is entitled to share in the testator's estate as follows:

(a) the portion of the testator's estate in which the omitted after-born or after-adopted child is entitled to share is limited to devises made to the testator's then-living children under the will;

(b) the omitted after-born or after-adopted child is entitled to receive the share of the testator's estate, as limited in Subparagraph (a) of Paragraph (2) of Subsection A of this section, that the child would have received had the testator included all omitted after-born and after-adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child;

(c) to the extent feasible, the interest granted an omitted after-born or after-adopted child under this section must be of the same character, whether equitable or legal, present or future, as that devised to the testator's then-living children under the will; and

(d) in satisfying a share provided by Paragraph (2) of Subsection A of this section, devises to the testator's children who were living when the will was executed abate ratably. In abating the devices of the then-living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator.

B. Subsection A of this section does not apply if:

(1) it appears from the will that the omission was intentional; or

(2) the testator provided for the omitted after-born or after-adopted child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

C. If at the time of execution of the will the testator fails to provide in his will for a living child solely because he believes the child to be dead, the child is entitled to share in the estate as if the child were an omitted after-born or after-adopted child.

D. In satisfying a share provided by Paragraph (1) of Subsection A of this section, devises made by the will abate pursuant to Section 45-3-902 NMSA 1978."

Section 7

Section 7. Section 45-2-402 NMSA 1978 (being Laws 1993, Chapter 174, Section 20) is amended to read:

"45-2-402. FAMILY ALLOWANCE.--A decedent's surviving spouse is entitled to a family allowance of thirty thousand dollars (\$30,000). If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a family allowance amounting to thirty thousand dollars (\$30,000) divided by the number of minor and dependent children of the decedent. The family allowance is exempt from and has priority over all claims against the estate. Family allowance is in addition to any share passing to the surviving spouse or minor or dependent children by intestate succession or by the decedent's will, unless otherwise provided by the decedent in the will or other governing instrument."

Section 8

Section 8. Section 45-2-403 NMSA 1978 (being Laws 1993, Chapter 174, Section 21) is amended to read:

"45-2-403. PERSONAL PROPERTY ALLOWANCE.--In addition to the family allowance, the decedent's surviving spouse who is a devisee under the will is entitled from the estate to a value, not exceeding ten thousand dollars (\$10,000) in excess of any security interests therein, in household furniture, automobiles, furnishings, appliances and personal effects. If there is no surviving spouse, the decedent's children who are devisees under the will or, if there is no will, who are intestate heirs are entitled jointly to the same value. If encumbered chattels are selected and the value in excess of security interests plus that of other exempt property is less than ten thousand dollars (\$10,000) or if there is not ten thousand dollars (\$10,000) worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the ten thousand dollar (\$10,000) value. Rights to specific property for the family allowance and assets needed to make up a deficiency in the property have priority over all claims against the estate, but the right to any assets to make up a deficiency of exempt property abates as necessary to permit earlier payment of the family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by intestate succession or by the decedent's will, unless otherwise provided by the decedent in the will or other governing instrument."

Section 9

Section 9. Section 45-2-406 NMSA 1978 (being Laws 1993, Chapter 174, Section 24) is amended to read:

"45-2-406. MODIFICATION OF EXEMPTIONS.--With respect to the estate of a decedent, the allowances granted pursuant to Sections 45-2-402 and 45-2-403 NMSA

1978 are in lieu of the exemptions provided in Sections 42-10-1, 42-10-2, 42-10-9 and 42-10-10 NMSA 1978."

Section 10

Section 10. A new section of the Uniform Probate Code, Section 45-2-407 NMSA 1978, is enacted to read:

"45-2-407. WAIVER OF RIGHTS.--

A. The rights of the surviving spouse to family allowance and personal property allowance, or either of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement or waiver signed by the surviving spouse.

B. A surviving spouse's waiver is not enforceable if the surviving spouse proves that:

(1) the surviving spouse did not execute the waiver voluntarily; or

(2) the waiver was unconscionable when it was executed and, before execution of the waiver, the surviving spouse:

(a) was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent;

(b) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the decedent beyond the disclosure provided; and

(c) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the decedent.

C. An issue of unconscionability or voluntariness of a waiver is for decision by the court as a matter of law.

D. Unless it provides to the contrary, a waiver of "all rights", or equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights of family allowance and personal property allowance by each spouse in the property of the other and a renunciation by each of all benefits that would otherwise pass to each from the other by intestate succession or by virtue of any will executed before the waiver or property settlement."

Section 11

Section 11. Section 45-2-502 NMSA 1978 (being Laws 1993, Chapter 174, Section 26) is amended to read:

"45-2-502. EXECUTION--WITNESSED WILLS.--Except as provided in Sections 45-2-506 and 45-2-513 NMSA 1978, a will must be:

A. in writing;

B. signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and

C. signed by at least two individuals, each of whom signed in the presence of the testator and of each other after each witnessed the signing of the will as described in Subsection B of this section."

Section 12

Section 12. Section 45-2-504 NMSA 1978 (being Laws 1993, Chapter 174, Section 27) is amended to read:

"45-2-504. SELF-PROVED WILL.--

A. A will may be simultaneously executed, attested and made self-proved by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

"I, _____, the testator, sign my name to this instrument this day of _____, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind and under no constraint or undue influence.

Testator

We, _____, _____, the witnesses, sign our names to this instrument, and being first duly sworn, do hereby declare to the undersigned authority that the testator signs and executes this instrument as his will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence of the testator, and in the presence of each other hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is eighteen years of age or older, of sound mind and under no constraint or undue influence.

Witness

Witness

The State of _____
County of _____

Subscribed, sworn to and acknowledged before me by _____, the testator, and
subscribed and sworn to before me by and _____, witnesses, this day of _____.
(Seal)

(Signed) _____

(Official capacity of officer)".

B. An attested will may be made self-proved at any time after its execution
by the acknowledgment thereof by the testator and the affidavits of the witnesses, each
made before an officer authorized to administer oaths under the laws of the state in
which the acknowledgment occurs and evidenced by the officer's certificate, under
official seal, attached or annexed to the will in substantially the following form:

"The State of _____

County of _____

We, _____, and _____, the testator and the witnesses, respectively, whose
names are signed to the attached or foregoing instrument, being first duly sworn, do
hereby declare to the undersigned authority that the testator signed and executed the
instrument as the testator's will and that he signed willingly (or willingly directed another
to sign for him), and that he executed it as his free and voluntary act for the purposes
therein expressed, and that each of the witnesses, in the presence of the testator, and
in the presence of each other signed the will as witness, and that to the best of our
knowledge the testator was at that time eighteen years of age or older, of sound mind
and under no constraint or undue influence.

Testator

Witness

Witness

Subscribed, sworn to and acknowledged before me by _____, the testator, and
subscribed and sworn to before me by _____ and _____, witnesses, this _____ of
_____.
(Seal)

(Signed) _____

(Official capacity of officer)".

C. A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will if necessary to prove the will's due execution."

Section 13

Section 13. A new section of the Uniform Probate Code, Section 45-2-517 NMSA 1978, is enacted to read:

"45-2-517. PENALTY CLAUSE FOR CONTEST.--A provision in a governing instrument purporting to penalize an interested person for contesting a governing instrument or instituting other proceedings relating to a governing instrument or an estate is unenforceable if probable cause exists for instituting proceedings."

Section 14

Section 14. Section 45-2-603 NMSA 1978 (being Laws 1993, Chapter 174, Section 42) is amended to read:

"45-2-603. ANTILAPSE--DECEASED DEVISEE--CLASS GIFTS.--

A. As used in this section:

(1) "alternative devise" means a devise that is expressly created by the will and, under the terms of the will, can take effect instead of another devise on the happening of one or more events, including survival of the testator or failure to survive the testator, whether an event is expressed in condition-precedent, condition-subsequent or any other form. A residuary clause constitutes an alternative devise with respect to a nonresiduary devise only if the will specifically provides that, upon lapse or failure, the nonresiduary devise, or nonresiduary devises in general, pass under the residuary clause;

(2) "class member" includes an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had he survived the testator;

(3) "devise" includes an alternative devise, a devise in the form of a class gift and an exercise of a power of appointment;

(4) "devisee" includes:

(a) a class member if the devise is in the form of a class gift;

(b) an individual or class member who was deceased at the time the testator executed his will as well as an individual or class member who was then living but who failed to survive the testator; and

(c) an appointee under a power of appointment exercised by the testator's will;

(5) "stepchild" means a child of the surviving, deceased or former spouse of the testator or of the donor of a power of appointment and not of the testator or donor;

(6) "surviving devisee" or "surviving descendant" means a devisee or a descendant who neither predeceased the testator nor is deemed to have predeceased the testator pursuant to the provisions of Section 45-2-702 NMSA 1978; and

(7) "testator" includes the donee of a power of appointment if the power is exercised in the testator's will.

B. If a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply:

(1) except as provided in Paragraph (4) of this subsection, if the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. They take by representation the property to which the devisee would have been entitled had the devisee survived the testator;

(2) except as provided in Paragraph (4) of this subsection, if the devise is in the form of a class gift, other than a devise to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives" or "family" or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased devisee. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of the deceased devisees. Each surviving devisee takes the share to which he would have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee take by representation the share to which the deceased devisee would have

been entitled had the deceased devisee survived the testator. For the purposes of this paragraph, "deceased devisee" means a class member who failed to survive the testator and left one or more surviving descendants;

(3) for the purposes of Section 45-2-601 NMSA 1978, words of survivorship, such as in a devise to an individual "if he survives me" or in a devise to "my surviving children" are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section;

(4) if the will creates an alternative devise with respect to a devise for which a substitute gift is created by Paragraph (1) or (2) of this subsection, the substitute gift is superseded by the alternative devise only if an expressly designated devisee of the alternative devise is entitled to take under the will; and

(5) unless the language creating a power of appointment expressly excludes the substitution of the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of appointment can be substituted for the appointee pursuant to the provisions of this section whether or not the descendant is an object of the power.

C. If, pursuant to the provisions of Subsection B of this section, substitute gifts are created and not superseded with respect to more than one devise and the devises are alternative devises, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(1) except as provided in Paragraph (2) of this subsection, the devised property passes under the primary substitute gift; and

(2) if there is a younger-generation devise, the devised property passes under the younger-generation substitute gift and not under the primary substitute gift.

D. As used in Subsections C and D of this section:

(1) "primary devise" means the devise that would have taken effect had all the deceased devisees of the alternative devises who left surviving descendants survived the testator;

(2) "primary substitute gift" means the substitute gift created with respect to the primary devise;

(3) "younger-generation devise" means a devise that:

(a) is to a descendant of a devisee of the primary devise;

(b) is an alternative devise with respect to the primary devise;

(c) is a devise for which a substitute gift is created; and

(d) would have taken effect had all the deceased devisees who left surviving descendants survived the testator except the deceased devisee or devisees of the primary devise; and

(4) "younger-generation substitute gift" means the substitute gift created with respect to the younger-generation devise."

Section 15

Section 15. Section 45-2-702 NMSA 1978 (being Laws 1993, Chapter 174, Section 50) is amended to read:

"45-2-702. REQUIREMENT OF SURVIVAL BY ONE HUNDRED TWENTY HOURS.--

A. For the purposes of the Uniform Probate Code, except as provided in Subsection D of this section, an individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by one hundred twenty hours is deemed to have predeceased the event.

B. Except as provided in Subsection D of this section, for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by one hundred twenty hours is deemed to have predeceased the event.

C. Except as provided in Subsection D of this section:

(1) if it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by one hundred twenty hours, one-half of the property passes as if one had survived by one hundred twenty hours and one-half as if the other had survived by one hundred twenty hours; and

(2) if there are more than two co-owners and it is not established by clear and convincing evidence that at least one of them survived the others by one hundred twenty hours, the property passes in the proportion that one bears to the whole number of co-owners.

For the purposes of this subsection, "co-owners with right of survivorship" includes joint tenants and other co-owners of property or accounts held under

circumstances that entitles one or more to the whole of the property or account on the death of the other or others.

D. Survival by one hundred twenty hours is not required if:

(1) the governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;

(2) the governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event by a specified period, but survival of the event or specified period must be established by clear and convincing evidence;

(3) the imposition of a one-hundred-twenty-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity pursuant to the provisions of Paragraph (1) of Subsection A, Paragraph (1) of Subsection B or Paragraph (1) of Subsection C of Section 45-2-901 NMSA 1978 or to become invalid pursuant to the provisions of Paragraph (2) of Subsection A, Paragraph (2) of Subsection B or Paragraph (2) of Subsection C of Section 45-2-901 NMSA 1978, but survival must be established by clear and convincing evidence; or

(4) the application of a one-hundred-twenty-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition, but survival must be established by clear and convincing evidence.

E. A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument who, under this section, is not entitled to the payment or item of property or for having taken any other action in good faith reliance on the beneficiary's apparent entitlement under the terms of the governing instrument before the payor or other third party received written notice of a claimed lack of entitlement under this section. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under this section.

Written notice of a claimed lack of entitlement pursuant to the provisions of this subsection must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's

estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

F. A person who purchases property for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit to the person who is entitled to it under this section.

G. If this section or any part of this section is pre-empted by federal law with respect to a payment, an item of property or any other benefit covered by this section, a person who, not for value, receives the payment, item of property or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit to the person who would have been entitled to it were this section or part of this section not pre-empted."

Section 16

Section 16. Section 45-2-703 NMSA 1978 (being Laws 1993, Chapter 174, Section 51) is amended to read:

"45-2-703. CHOICE OF LAW AS TO MEANING AND EFFECT OF GOVERNING INSTRUMENT.--The meaning and legal effect of a governing instrument is determined by the local law of the state selected in the governing instrument unless the application of that law is contrary to the provisions relating to allowances described in Chapter 45, Article 2, Part 4 NMSA 1978 or any other public policy of this state otherwise applicable to the disposition."

Section 17

Section 17. Section 45-2-706 NMSA 1978 (being Laws 1993, Chapter 174, Section 54) is amended to read:

"45-2-706. LIFE INSURANCE--RETIREMENT PLAN--ACCOUNT WITH POD DESIGNATION--TRANSFER-ON-DEATH REGISTRATION--DECEASED BENEFICIARY.--

A. As used in this section:

(1) "alternative beneficiary designation" means a beneficiary designation that is expressly created by the governing instrument and, under the terms of the governing instrument, can take effect instead of another beneficiary designation on the happening of one or more events, including survival of the decedent or failure to survive the decedent, whether an event is expressed in condition-precedent, condition-subsequent or any other form;

(2) "beneficiary" means the beneficiary of a beneficiary designation under which the beneficiary must survive the decedent and includes:

(a) a class member if the beneficiary designation is in the form of a class gift; and

(b) an individual or class member who was deceased at the time the beneficiary designation was executed as well as an individual or class member who was then living but who failed to survive the decedent, but excludes a joint tenant of a joint tenancy with the right of survivorship and a party to a joint and survivorship account;

(3) "beneficiary designation" includes an alternative beneficiary designation and a beneficiary designation in the form of a class gift;

(4) "class member" includes an individual who fails to survive the decedent but who would have taken under a beneficiary designation in the form of a class gift had he survived the decedent;

(5) "stepchild" means a child of the decedent's surviving, deceased or former spouse and not of the decedent; and

(6) "surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who neither predeceased the decedent nor is deemed to have predeceased the decedent pursuant to the provisions of Section 45-2-702 NMSA 1978.

B. If a beneficiary fails to survive the decedent and is a grandparent, a descendant of a grandparent or a stepchild of the decedent, the following apply:

(1) except as provided in Paragraph (4) of this subsection, if the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the decedent;

(2) except as provided in Paragraph (4) of this subsection, if the beneficiary designation is in the form of a class gift, other than a beneficiary designation to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives" or "family" or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which he would have been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For the purposes of this paragraph, "deceased beneficiary" means a class member who failed to survive the decedent and left one or more surviving descendants;

(3) for the purposes of Section 45-2-701 NMSA 1978, words of survivorship, such as in a beneficiary designation to an individual "if he survives me" or in a beneficiary designation to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section; and

(4) if a governing instrument creates an alternative beneficiary designation with respect to a beneficiary designation for which a substitute gift is created by Paragraph (1) or (2) of this subsection, the substitute gift is superseded by the alternative beneficiary designation only if an expressly designated beneficiary of the alternative beneficiary designation is entitled to take.

C. If, pursuant to the provisions of Subsection B of this section, substitute gifts are created and not superseded with respect to more than one beneficiary designation and the beneficiary designations are alternative beneficiary designations, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(1) except as provided in Paragraph (2) of this subsection, the property passes under the primary substitute gift; and

(2) if there is a younger-generation beneficiary designation, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

D. As used in Subsections C and D of this section:

(1) "primary beneficiary designation" means the beneficiary designation that would have taken effect had all the deceased beneficiaries of the alternative beneficiary designations who left surviving descendants survived the decedent;

(2) "primary substitute gift" means the substitute gift created with respect to the primary beneficiary designation;

(3) "younger-generation beneficiary designation" means as a beneficiary designation that:

(a) is to a descendant of a beneficiary of the primary beneficiary designation;

(b) is an alternative beneficiary designation with respect to the primary beneficiary designation;

(c) is a beneficiary designation for which a substitute gift is created; and

(d) would have taken effect had all the deceased beneficiaries who left surviving descendants survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary designation; and

(4) "younger-generation substitute gift" means the substitute gift created with respect to the younger-generation beneficiary designation.

E. A payor is protected from liability in making payments under the terms of the beneficiary designation until the payor has received written notice of a claim to a substitute gift under this section. Payment made before the receipt of written notice of a claim to a substitute gift under this section discharges the payor, but not the recipient, from all claims for the amounts paid. A payor is liable for a payment made after the payor has received written notice of the claim. A recipient is liable for a payment received whether or not written notice of the claim is given.

The written notice of the claim must be mailed to the payor's main office or home by registered or certified mail, return receipt requested, or served upon the payor in the same manner as a summons in a civil action. Upon receipt of written notice of the claim, a payor may pay any amount owed by it to the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds and, upon its determination under this section, shall order disbursement in accordance with the determination. Payment made to the court discharges the payor from all claims for the amounts paid.

F. A person who purchases property for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated pursuant to the provisions of this section to return the payment, item of property or benefit nor is liable pursuant to the provisions of this section for the amount of the payment or the value of the item of property or benefit.

But a person who, not for value, receives a payment, item of property or any other benefit to which the person is not entitled pursuant to the provisions of this section is obligated to return the payment, item of property or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit to the person who is entitled to it pursuant to the provisions of this section.

G. If this section or any part of this section is pre-empted by federal law with respect to a payment, an item of property or any other benefit covered by this section, a person who, not for value, receives the payment, item of property or any other benefit to which the person is not entitled pursuant to the provisions of this section is obligated to return the payment, item of property or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit to the person who would have been entitled to it were this section or part of this section not pre-empted."

Section 18

Section 18. Section 45-2-707 NMSA 1978 (being Laws 1993, Chapter 174, Section 55) is amended to read:

"45-2-707. SURVIVORSHIP WITH RESPECT TO FUTURE INTERESTS UNDER TERMS OF TRUST--SUBSTITUTE TAKERS.--

A. As used in this section:

(1) "alternative future interest" means an expressly created future interest that can take effect in possession or enjoyment instead of another future interest on the happening of one or more events, including survival of an event or failure to survive an event, whether an event is expressed in condition-precedent, condition-subsequent or any other form. A residuary clause in a will does not create an alternative future interest with respect to a future interest created in a nonresiduary devise in the will, whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary clause;

(2) "beneficiary" means the beneficiary of a future interest and includes a class member if the future interest is in the form of a class gift;

(3) "class member" includes an individual who fails to survive the distribution date but who would have taken under a future interest in the form of a class gift had he survived the distribution date;

(4) "distribution date", with respect to a future interest, means the time when the future interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but can occur at a time during the course of a day;

(5) "future interest" includes an alternative future interest and a future interest in the form of a class gift;

(6) "future interest under the terms of a trust" means a future interest that was created by a transfer creating a trust or to an existing trust or by an exercise of a power of appointment to an existing trust, directing the continuance of an existing trust, designating a beneficiary of an existing trust or creating a trust; and

(7) "surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who neither predeceased the distribution date nor is deemed to have predeceased the distribution date pursuant to the provisions of Section 45-2-702 NMSA 1978.

B. A future interest under the terms of a trust is contingent on the beneficiary's surviving the distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following apply:

(1) except as provided in Paragraph (4) of this subsection, if the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date;

(2) except as provided in Paragraph (4) of this subsection, if the future interest is in the form of a class gift, other than a future interest to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives" or "family" or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which he would have been entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for the ceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. For the purposes of this paragraph, "deceased beneficiary" means a class member who failed to survive the distribution date and left one or more surviving descendants;

(3) for the purposes of Section 45-2-701 NMSA 1978, words of survivorship attached to a future interest are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. Words of survivorship include words of survivorship that relate to the distribution date or to an earlier or an unspecified time, whether those words of survivorship are expressed in condition-precedent, condition-subsequent or any other form; and

(4) if a governing instrument creates an alternative future interest with respect to a future interest for which a substitute gift is created by Paragraph (1) or (2) of this subsection, the substitute gift is superseded by the alternative future interest only if an expressly designated beneficiary of the alternative future interest is entitled to take in possession or enjoyment.

C. If, pursuant to the provisions of Subsection B of this section, substitute gifts are created and not superseded with respect to more than one future interest and the future interests are alternative future interests, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(1) except as provided in Paragraph (2) of this subsection, the property passes under the primary substitute gift; and

(2) if there is a younger-generation future interest, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

(3) As used in this subsection:

(1) "primary future interest" means the future interest that would have taken effect had all the deceased beneficiaries of the alternative future interests who left surviving descendants survived the distribution date;

(2) "primary substitute gift" means the substitute gift created with respect to the primary future interest;

(3) "younger-generation future interest" means a future interest that:

(a) is to a descendant of a beneficiary of the primary future interest;

(b) is an alternative future interest with respect to the primary future interest;

(c) is a future interest for which a substitute gift is created; and

(d) would have taken effect had all the deceased beneficiaries who left surviving descendants survived the distribution date except the deceased beneficiary or beneficiaries of the primary future interest; and

(4) "younger-generation substitute gift" means the substitute gift created with respect to the younger-generation future interest.

D. Except as provided in Subsection E of this section, if after the application of Subsections B and C of this section, there is no surviving taker, the property passes in the following order:

(1) if the trust was created in a nonresiduary devise in the transferor's will or in codicil to the transferor's will, the property passes under the residuary clause in the transferor's will; for purposes of this section, the residuary clause is treated as creating a future interest under the terms of a trust; and

(2) if no taker is produced by the application of Paragraph (1) of this subsection, the property passes to the transferor's heirs pursuant to the provisions of Section 45-2-711 NMSA 1978.

E. If, after the application of Subsections B and C of this section, there is no surviving taker and if the future interest was created by the exercise of a power of appointment:

(1) the property passes under the donor's gift-in-default clause, if any, which clause is treated as creating a future interest under the terms of a trust; and

(2) if no taker is produced by the application of Paragraph (1) of this subsection, the property passes as provided in Subsection E of this section. For purposes of Subsection E of this section, "transferor" means the donor if the power was a nongeneral power and means the donee if the power was a general power."

Section 19

Section 19. Section 45-2-709 NMSA 1978 (being Laws 1993, Chapter 174, Section 57) is amended to read:

"45-2-709. REPRESENTATION--PER CAPITA AT EACH GENERATION--PER STIRPES.--

A. As used in this section:

(1) "deceased child" or "deceased descendant" means a child or a descendant who either predeceased the distribution date or is deemed to have predeceased the distribution date pursuant to the provisions of Section 45-2-702 NMSA 1978;

(2) "distribution date", with respect to an interest, means the time when the interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but can occur at a time during the course of a day; and

(3) "surviving ancestor", "surviving child" or "surviving descendant" means an ancestor, a child or a descendant who neither predeceased the distribution date nor is deemed to have predeceased the distribution date pursuant to the provisions of Section 45-2-702 NMSA 1978.

B. If an applicable statute or a governing instrument calls for property to be distributed "by representation" or "per capita at each generation", the property is divided into as many equal shares as there are:

(1) surviving descendants in the generation nearest to the designated ancestor that contains one or more surviving descendants; and

(2) deceased descendants in the same generation who left surviving descendants, if any.

Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the distribution date.

C. If a governing instrument calls for property to be distributed "per stirpes", the property is divided into as many equal shares as there are:

(1) surviving children of the designated ancestor; and

(2) deceased children who left surviving descendants. Each surviving child is allocated one share.

The share of each deceased child, if any, with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

D. For the purposes of Subsections B and C of this section, an individual who is deceased and left no surviving descendant is disregarded and an individual who leaves a surviving ancestor who is a descendant of the designated ancestor is not entitled to a share."

Section 20

Section 20. Section 45-2-711 NMSA 1978 (being Laws 1993, Chapter 174, Section 59) is amended to read:

"45-2-711. FUTURE INTERESTS IN HEIRS AND LIKE.--If an applicable statute or a governing instrument calls for a present or future distribution to or creates a present or future interest in a designated individual's "heirs", "heirs at law", "next of kin",

"relatives" or "family" or language of similar import, the property passes to those persons, including the state, and in such shares as would succeed to the designated individual's intestate estate under the intestate succession law of the designated individual's domicile if the designated individual died when the disposition is to take effect in possession or enjoyment. If the designated individual's surviving spouse is living but is remarried at the time the disposition is to take effect in possession or enjoyment, the surviving spouse is not an heir of the designated individual."

Section 21

Section 21. Section 45-2-801 NMSA 1978 (being Laws 1993, Chapter 174, Section 60) is amended to read:

"45-2-801. DISCLAIMER OF PROPERTY INTERESTS.--

A. A person or the representative of a person to whom an interest in or with respect to property or an interest therein devolves by whatever means may disclaim it in whole or in part by delivering or filing a written disclaimer pursuant to the provisions of this section. The right to disclaim exists notwithstanding:

(1) any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction; or

(2) any restriction or limitation on the right to disclaim contained in the governing instrument.

For purposes of this subsection, the "representative of a person" includes a personal representative of a decedent, a conservator of a disabled person, a guardian of a minor or incapacitated person and an agent acting on behalf of the person within the authority of a power of attorney.

B. The following rules govern the time when a disclaimer must be filed or delivered:

(1) if the property or interest has devolved to the disclaimant under a testamentary instrument or by the laws of intestacy, the disclaimer must be filed, if of a present interest, not later than nine months after the death of the deceased owner or deceased donee of a power of appointment and, if of a future interest, not later than nine months after the event determining that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested. The disclaimer must be filed in the court of the county in which proceedings for the administration of the estate of the deceased owner or deceased donee of the power have been commenced. A copy of the disclaimer must be delivered in person or mailed by registered or certified mail, return receipt requested, to any personal representative or other fiduciary of the decedent or donee of the power;

(2) if a property or interest has devolved to the disclaimant under a nontestamentary instrument or contract, the disclaimer must be delivered or filed, if of a present interest, not later than nine months after the effective date of the nontestamentary instrument or contract and, if of a future interest, not later than nine months after the event determining that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested. If the person entitled to disclaim does not know of the existence of the interest, the disclaimer must be delivered or filed not later than nine months after the person learns of the existence of the interest. The effective date of a revocable instrument or contract is the date on which the maker no longer has power to revoke it or to transfer to himself or another the entire legal and equitable ownership of the interest. The disclaimer or a copy thereof must be delivered in person or mailed by registered or certified mail, return receipt requested, to the person who has legal title to or possession of the interest disclaimed;

(3) a surviving joint tenant may disclaim as a separate interest any property or interest therein devolving to him by right of survivorship. A surviving joint tenant may disclaim the entire interest in any property or interest therein that is the subject of a joint tenancy devolving to him if the joint tenancy was created by act of a deceased joint tenant, the survivor did not join in creating the joint tenancy and has not accepted a benefit under it; and

(4) if real property or an interest therein is disclaimed, a copy of the disclaimer may be recorded in the office of the county clerk of the county in which the property or interest disclaimed is located.

C. The disclaimer must:

- (1) describe the property or interest disclaimed;
- (2) declare the disclaimer and extent thereof; and
- (3) be signed by the disclaimant.

D. The effects of a disclaimer are:

(1) if property or an interest therein devolves to a disclaimant under a testamentary instrument under a power of appointment exercised by a testamentary instrument or pursuant to the laws of intestacy and the decedent has not provided for another disposition of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had predeceased the decedent; but if by law or under the testamentary instrument the descendants of the disclaimant would share in the disclaimed interest by representation or otherwise were the disclaimant to predecease the decedent, then the disclaimed interest passes by representation, or passes as directed by the governing instrument, to the descendants of the disclaimant who survived the decedent. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest

disclaimed takes effect as if the disclaimant had predeceased the decedent. A disclaimer relates back for all purposes to the date of death of the decedent;

(2) if property or an interest therein devolves to a disclaimant under a nontestamentary instrument or contract and the instrument or contract does not provide for another disposition of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant has predeceased the effective date of the instrument or contract; but if by law or under the nontestamentary instrument or contract the descendants of the disclaimant would share in the disclaimed interest by representation or otherwise were the disclaimant to predecease the effective date of the instrument, then the disclaimed interest passes by representation, or passes as directed by the governing instrument, to the descendants of the disclaimant who survive the effective date of the instrument. A disclaimer relates back for all purposes to that date. A future interest that takes effect in possession or enjoyment at or after the termination of the disclaimed interest takes effect as if the disclaimant had died before the effective date of the instrument or contract that transferred the disclaimed interest; and

(3) the disclaimer or the written waiver of the right to disclaim is binding upon the disclaimant or person waiving and all persons claiming through or under either of them.

E. The right to disclaim property or an interest therein is barred by:

(1) an assignment, conveyance, encumbrance, pledge or transfer of the property or interest or a contract therefor;

(2) a written waiver of the right to disclaim;

(3) an acceptance of the property or interest or a benefit under it; or

(4) a sale of the property or interest under judicial sale made before the disclaimer is made.

F. This section does not abridge the right of a person to waive, release, disclaim or renounce property or an interest therein under any other statute.

G. An interest in property that exists on the effective date of this section as to which, if a present interest, the time for filing a disclaimer under this section has not expired or, if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained may be disclaimed within nine months after the effective date of this section."

Section 22

Section 22. Section 45-2-802 NMSA 1978 (being Laws 1993, Chapter 174, Section 61) is amended to read:

"45-2-802. EFFECT OF DIVORCE, ANNULMENT AND DECREE OF SEPARATION.--

A. An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

B. For purposes of Chapter 45, Article 2, Parts 1 through 4 and Section 45-3-203 NMSA 1978, a surviving spouse does not include:

(1) an individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless subsequently they participate in a marriage ceremony purporting to marry each to the other or live together as husband and wife;

(2) an individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third individual; or

(3) an individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights, including a property division judgment entered pursuant to the provisions of Section 40-4-20 NMSA 1978."

Section 23

Section 23. Section 45-2-803 NMSA 1978 (being Laws 1993, Chapter 174, Section 62) is amended to read:

"45-2-803. EFFECT OF HOMICIDE ON INTESTATE SUCCESSION, WILLS, TRUSTS, JOINT ASSETS, LIFE INSURANCE AND BENEFICIARY DESIGNATIONS.--

A. As used in this section:

(1) "disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument; and

(2) "revocable", with respect to a disposition, appointment, provision or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing

instrument, to cancel the designation, in favor of the killer, whether or not the decedent was then empowered to designate himself in place of his killer and the decedent then had capacity to exercise the power.

B. An individual who feloniously and intentionally kills the decedent forfeits all benefits pursuant to the provisions of Chapter 45, Article 2 NMSA 1978 with respect to the decedent's estate, including an intestate share, an omitted spouse's or child's share, a family allowance and a personal property allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed his intestate share.

C. The felonious and intentional killing of the decedent:

(1) revokes any revocable:

(a) disposition or appointment of property made by the decedent to the killer in a governing instrument;

(b) provision in a governing instrument executed by the decedent conferring a general or nongeneral power of appointment on the killer; and

(c) nomination of the killer in a governing instrument executed by the decedent, nominating or appointing the killer to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee or agent; and

(2) severs the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with the right of survivorship, transforming the interests of the decedent and killer into tenancies in common.

D. A severance pursuant to the provisions of Paragraph (2) of Subsection C of this section does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer unless a writing declaring the severance has been noted, registered, filed or recorded in records appropriate to the kind and location of the property that are relied upon in the ordinary course of transactions involving such property as evidence of ownership.

E. Provisions of a governing instrument executed by the decedent are given effect as if the killer disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the killer predeceased the decedent.

F. An acquisition of property or interest by a killer not covered by this section must be treated in accordance with the principle that a killer cannot profit from his wrong.

G. After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent's killer for purposes of this section. In the absence of a conviction, the court upon the petition of an interested person must determine whether under the preponderance of evidence standard the individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the court determines that under that standard the individual would be found criminally accountable for the felonious and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's killer for purposes of this section.

H. A payor or other third-party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument executed by the decedent affected by an intentional and felonious killing or for having taken any other action in good faith reliance on the validity of the governing instrument executed by the decedent upon request and satisfactory proof of the decedent's death before the payor or other third-party received written notice of a claimed forfeiture or revocation under this section. A payor or other third-party is liable for a payment made or other action taken after the payor or other third-party received written notice of a claimed forfeiture or revocation under this section.

Written notice of a claimed forfeiture or revocation pursuant to the provisions of this section must be mailed to the payor's or other third-party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third-party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed forfeiture or revocation pursuant to the provisions of this section, a payor or other third-party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination pursuant to the provisions of this section, shall order disbursement in accordance with the determination. Payments, transfers or deposits made to or with the court discharge the payor or other third-party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

I. A person who purchases property for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated pursuant to the provisions of this section to return the payment, item of property or benefit nor is liable pursuant to the provisions of this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property or any other benefit to which the person is not entitled pursuant to the provisions of this section is obligated to return the payment, item of property or benefit or is personally liable for the

amount of the payment or the value of the item of property or benefit to the person who is entitled to it pursuant to the provisions of this section.

J. If this section or any part of this section is pre-empted by federal law with respect to a payment, an item of property or any other benefit covered by this section, a person who, not for value, receives the payment, item of property or any other benefit to which the person is not entitled pursuant to the provisions of this section is obligated to return the payment, item of property or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit to the person who would have been entitled to it were this section or part of this section not pre-empted."

Section 24

Section 24. Section 45-2-804 NMSA 1978 (being Laws 1993, Chapter 174, Section 63) is amended to read:

"45-2-804. REVOCATION OF PROBATE AND NONPROBATE TRANSFERS BY DIVORCE--NO REVOCATION BY OTHER CHANGES OF CIRCUMSTANCES.--

A. As used in this section:

(1) "disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument;

(2) "divorce or annulment" means any divorce or annulment or any dissolution or declaration of invalidity of a marriage that would exclude the spouse as a surviving spouse within the meaning of Section 45-2-802 NMSA 1978. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section;

(3) "divorced individual" includes an individual whose marriage has been annulled;

(4) "governing instrument" means a governing instrument executed by the divorced individual before the divorce or annulment of his marriage to his former spouse;

(5) "relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption or affinity; and

(6) "revocable", with respect to a disposition, appointment, provision or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered by law or under the governing

instrument to cancel the designation in favor of his former spouse or former spouse's relative whether or not the divorced individual was then empowered to designate himself in place of his former spouse or in place of his former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.

B. Except as provided by the express terms of a governing instrument, a court order or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce or annulment, the divorce or annulment of a marriage:

(1) revokes any revocable:

(a) disposition or appointment of property made by a divorced individual to his former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse;

(b) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

(c) nomination in a governing instrument, nominating a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent or guardian; and

(2) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship, transforming the interests of the former spouses into tenancies in common.

C. A severance pursuant to the provisions of Paragraph (2) of Subsection B of this section does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed or recorded in records appropriate to the kind and location of the property that are relied upon in the ordinary course of transactions involving such property as evidence of ownership.

D. Provisions of a governing instrument are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

E. Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

F. No change of circumstances other than as described in this section and in Section 45-2-803 NMSA 1978 effects a revocation.

G. A payor or other third-party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment or remarriage or for having taken any other action in good faith reliance on the validity of the governing instrument before the payor or other third-party received written notice of the divorce, annulment or remarriage. A payor or other third-party is liable for a payment made or other action taken after the payor or other third-party received written notice of a claimed forfeiture or revocation pursuant to the provisions of this section.

Written notice of the divorce, annulment or remarriage pursuant to the provisions of this section must be mailed to the payor's or other third-party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third-party in the same manner as a summons in a civil action. Upon receipt of the written notice of the divorce, annulment or remarriage, a payor or other third-party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination pursuant to the provisions of this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers or deposits made to or with the court discharge the payor or other third-party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

H. A person who purchases property from a former spouse, relative of a former spouse or any other person for value and without notice or who receives from a former spouse, relative of a former spouse or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated pursuant to the provisions of this section to return the payment, item of property or benefit nor is liable pursuant to the provisions of this section for the amount of the payment or the value of the item of property or benefit. But a former spouse, relative of a former spouse or other person who, not for value, received a payment, item of property or any other benefit to which that person is not entitled pursuant to the provisions of this section is obligated to return the payment, item of property or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit to the person who is entitled to it pursuant to the provisions of this section.

I. If this section or any part of this section is pre-empted by federal law with respect to a payment, an item of property or any other benefit covered by this

section, a former spouse, relative of the former spouse or any other person who, not for value, received a payment, item of property or any other benefit to which that person is not entitled pursuant to the provisions of this section is obligated to return that payment, item of property or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit to the person who would have been entitled to it were this section or part of this section not pre-empted."

Section 25

Section 25. Section 45-2-902 NMSA 1978 (being Laws 1992, Chapter 66, Section 2) is amended to read:

"45-2-902. NONVESTED PROPERTY INTEREST OR POWER OF APPOINTMENT CREATED.--

A. Except as provided in Subsections B and C of this section and except as provided in Subsection A of Section 45-2-905 NMSA 1978, the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

B. Under Sections 45-2-901 through 45-2-905 NMSA 1978, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified owner of either a nonvested property interest or a property interest subject to a power of appointment as described in Subsection B or C of Section 45-2-901 NMSA 1978, the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates. Under Sections 45-2-901 through 45-2-905 NMSA 1978, a joint power with respect to community property or to marital property under the Uniform Marital Property Act held by individuals married to each other is a power exercisable by one person alone.

C. Under Sections 45-2-901 through 45-2-905 NMSA 1978, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created."

Section 26

Section 26. Section 45-2-903 NMSA 1978 (being Laws 1992, Chapter 66, Section 3) is amended to read:

"45-2-903. REFORMATION.--Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the ninety years allowed by each Paragraph (2) of Subsections A, B or C of Section 45-2-901 NMSA 1978 if:

A. a nonvested property interest or a power of appointment becomes invalid under Section 45-2-901 NMSA 1978;

B. a class gift is not but might become invalid under Section 45-2-901 NMSA 1978 and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

C. a nonvested property interest that is not validated by Paragraph (1) of Subsection A of Section 45-2-901 NMSA 1978 can vest but not within ninety years after its creation."

Section 27

Section 27. Section 45-2-904 NMSA 1978 (being Laws 1992, Chapter 66, Section 4) is amended to read:

"45-2-904. EXCLUSIONS.--Section 45-2-901 NMSA 1978 does not apply to:

A. a nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of:

(1) a premarital or postmarital agreement;

(2) a separation or divorce settlement;

(3) a spouse's election;

(4) a similar arrangement arising out of a prospective, existing or previous marital relationship between the parties;

(5) a contract to make or not to revoke a will or trust;

(6) a contract to exercise or not to exercise a power of appointment;

(7) a transfer in satisfaction of a duty of support; or

(8) a reciprocal transfer;

B. a fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease or mortgage property and the power of a fiduciary to determine principal and income;

C. a power to appoint a fiduciary;

D. a discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

E. a nonvested property interest held by a charity, government or governmental agency or subdivision if the nonvested property interest is preceded by an interest held by another charity, government or governmental agency or subdivision;

F. a nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral or other current or deferred benefit plan for one or more employees, independent contractors or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse;

G. a property interest, power of appointment or arrangement that was not subject to the common-law rule against perpetuities or that is excluded by another statute of New Mexico; or

H. a property interest or arrangement subject to a time limit under the provisions of Section 45-2-907 NMSA 1978."

Section 28

Section 28. Section 45-2-905 NMSA 1978 (being Laws 1992, Chapter 66, Section 5) is amended to read:

"45-2-905. PROSPECTIVE APPLICATION.--

A. Except as extended by Subsection B of this section, Sections 45-2-901 through 45-2-905 NMSA 1978 apply to a nonvested property interest or a power of appointment that is created on or after July 1, 1992. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

B. If a nonvested property interest or a power of appointment was created before July 1, 1992 and is determined in a judicial proceeding, commenced on or after July 1, 1992, to violate the New Mexico rule against perpetuities as that rule existed before July 1, 1992, a court, upon the petition of an interested person, may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created."

Section 29

Section 29. Section 45-2-906 NMSA 1978 (being Laws 1992, Chapter 66, Section 6) is amended to read:

"45-2-06. SUPERSESSSION.--Sections 45-2-901 through 45-2-905 NMSA 1978 supersede the rule of the common law known as the rule against perpetuities."

Section 30

Section 30. A new section of the Uniform Probate Code, Section 45-2-907 NMSA 1978, is enacted to read:

"45-2-907. HONORARY TRUSTS--TRUSTS FOR PETS.--

A. Subject to Subsection C of this section, if (i) a trust is for a specific lawful noncharitable purpose or for lawful noncharitable purposes to be selected by the trustee and (ii) there is no definite or definitely ascertainable beneficiary designated, the trust may be performed by the trustee for twenty-one years but no longer, whether or not the terms of the trust contemplate a longer duration.

B. Subject to this subsection and Subsection C of this section, a trust for the care of a designated domestic or pet animal is valid. The trust terminates when no living animal is covered by the trust. A governing instrument shall be liberally construed to bring the transfer within this subsection, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

C. In addition to the provisions of Subsection A or B of this section, a trust covered by either of those subsections is subject to the following provisions:

(1) except as expressly provided otherwise in the trust instrument, no portion of the principal or income may be converted to the use of the trustee or to any use other than for the trust's purposes or for the benefit of a covered animal;

(2) upon termination, the trustee shall transfer the unexpended trust property in the following order:

(a) as directed in the trust instrument;

(b) if the trust was created in a nonresiduary clause in the transferor's will or in a codicil to the transferor's will, under the residuary clause in the transferor's will; and

(c) if no taker is produced by the application of Subparagraph (a) or (b), to the transferor's heirs under the provisions of Section 45-2-711 NMSA 1978;

(3) for the purposes of Section 45-2-707 NMSA 1978, the residuary clause is treated as creating a future interest under the terms of a trust;

(4) the intended use of the principal or income can be enforced by an individual designated for that purpose in the trust instrument or, if none, by an individual appointed by a court upon application to it by an individual;

(5) except as ordered by the court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment or fee is required by reason of the existence of the fiduciary relationship of the trustee;

(6) a court may reduce the amount of the property transferred, if it determines that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under the provisions of paragraph (2) of Subsection C of this section; and

(7) if no trustee is designated or no designated trustee is willing or able to serve, a court shall name a trustee. A court may order the transfer of the property to another trustee, if required to assure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. A court may also make such other orders and determinations as shall be advisable to carry out the intent of the transferor and the purpose of this section."

Section 31

Section 31. Section 45-3-102 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-102) is amended to read:

"45-3-102. NECESSITY OF ORDER OF PROBATE FOR WILL.--Except as provided in Section 45-3-1201 NMSA 1978, to be effective to prove the transfer of any property or to nominate a personal representative, a will must be declared to be valid by an order of informal probate by the probate court or an adjudication of probate by the district court."

Section 32

Section 32. Section 45-3-106 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-106) is amended to read:

"45-3-106. PROCEEDINGS BEFORE DISTRICT COURT--SERVICE--JURISDICTION OVER PERSONS.--In proceedings before the district court where notice is required by the Uniform Probate Code or by rule, and in proceedings to construe probated wills or determine heirs which concern estates that have not been and cannot now be opened for administration, interested persons may be bound by the orders of the district court in respect to property in or subject to the laws of New Mexico by notice in conformity with Section 45-1-401 NMSA 1978. An order is binding as to all who are given notice of the proceeding though less than all interested persons are notified."

Section 33

Section 33. Section 45-3-108 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-108, as amended) is amended to read:

"45-3-108. PROBATE, TESTACY AND APPOINTMENT PROCEEDINGS--ULTIMATE TIME LIMIT.--

A. No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile or appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than three years after the decedent's death, except:

(1) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, then appropriate probate, appointment or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;

(2) appropriate probate, appointment or testacy proceedings may be maintained in relation to the estate of an absent, disappeared or missing person for whose estate a conservator has been appointed at any time within three years after the conservator becomes able to establish the death of the protected person;

(3) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of twelve months from the informal probate or three years from the decedent's death;

(4) an informal appointment or a formal testacy or appointment proceeding may be commenced thereafter if no proceedings concerning the succession or estate administration has occurred within the three-year period after the decedent's death, but the personal representative has no right to possess estate assets as provided in Section

45-3-709 NMSA 1978 beyond that necessary to confirm title thereto in the successors to the estate and claims other than expenses of administration may not be presented against the estate; and

(5) a formal testacy proceeding may be commenced at any time after three years from the decedent's death for the purpose of establishing an instrument to direct or control the ownership of property passing or distributable after the decedent's death from one other than the decedent when the property is to be appointed by the terms of the decedent's will or is to pass or be distributed as a part of the decedent's estate or its transfer is otherwise to be controlled by the terms of the decedent's will.

B. The limitations set out in Subsection A of this section do not apply to proceedings to construe probated wills or determine heirs of an intestate. In cases pursuant to the provisions of Paragraph (1) or (2) of Subsection A of this section, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitation provisions of the Uniform Probate Code that relate to the date of death."

Section 34

Section 34. Section 45-3-306 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-306) is amended to read:

"45-3-306. INFORMAL PROBATE--NOTICE REQUIREMENTS.--

A. The applicant shall give notice as described by Section 45-1-401 NMSA 1978 of his application for informal probate to any person demanding it pursuant to Section 45-3-204 NMSA 1978 and to any personal representative of the decedent whose appointment has not been terminated. No other notice of informal probate is required.

B. If an informal probate is granted, within 30 days thereafter the applicant shall give written information of the probate to the heirs and devisees. The information shall include the name and address of the applicant, the name and location of the court granting the informal probate, and the date of the probate. The information shall be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the applicant. No duty to give information is incurred under this section if a personal representative is appointed who is required to give written information pursuant to the provisions of Section 45-3-705 NMSA 1978. An applicant's failure to give information as required by this section is a breach of the applicant's duty to the heirs and devisees but does not affect the validity of the probate."

Section 35

Section 35. Section 45-3-412 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-412) is amended to read:

"45-3-412. FORMAL TESTACY PROCEEDINGS--EFFECT OF ORDER--
VACATION.--

A. Subject to appeal and subject to vacation as provided in this section and in Section 45-3-413 NMSA 1978, a formal testacy order under Sections 45-3-409 through 45-3-411 NMSA 1978, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will and to the determination of heirs, except that:

(1) the court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will were unaware of:

(a) its existence at the time of the earlier proceeding; or

(b) the earlier proceeding and were given no notice thereof
except by publication;

(2) if intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one or more persons were omitted from the determination and it is also shown that the persons were:

(a) unaware of their relationship to the decedent;

(b) were unaware of his death; or

(c) were given no notice of any proceeding concerning his
estate except by publication;

(3) a petition for vacation under either Paragraph (1) or (2) of this subsection shall be filed prior to the earliest of the following time limits:

(a) if a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate or, if the estate is closed by statement, six months after the filing of the closing statement;

(b) whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by Section 45-3-108 NMSA 1978 when it is no longer possible to initiate an original proceeding to probate a will of the decedent; or

(c) twelve months after the entry of the order sought to be vacated;

(4) the order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances, by the order of probate of the later-offered will or the order redetermining heirs; and

(5) the finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at his last known address and the court finds that a search under Subsection C of Section 45-3-403 NMSA 1978 was made.

B. If the alleged decedent is not dead, even if notice was sent and search was made, he may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands or the value of distributions received by them to the extent that any recovery from distributees is equitable in view of all of the circumstances."

Section 36

Section 36. A new section of the Uniform Probate Code, Section 45-3-707 NMSA 1978, is enacted to read:

"45-3-707. EMPLOYMENT OF APPRAISERS.--The personal representative may employ one or more qualified and disinterested appraisers to assist the personal representative in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. The name and address of any appraiser shall be indicated on the inventory with the item or items he appraised."

Section 37

Section 37. Section 45-3-715 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-715) is amended to read:

"45-3-715. TRANSACTIONS AUTHORIZED FOR PERSONAL REPRESENTATIVES--EXCEPTIONS.--

A. Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in Section 45-3-902 NMSA 1978, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(1) retain assets owned by the decedent pending distribution or liquidation, including those in which the representative is personally interested or which are otherwise improper for trust investment;

(2) receive assets from fiduciaries or other sources;

(3) perform, compromise or refuse performance of the decedent's contracts that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

(a) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(b) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent as designated in the escrow agreement;

(4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

(5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including money received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally;

(6) acquire or dispose of an asset, including land in New Mexico or another state, for cash or on credit, at public or private sale, and manage, develop, improve, partition or change the character of an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, or raze existing or erect new party walls or buildings;

(8) subdivide, develop or dedicate land to public use, make or obtain the vacation of plats and adjust boundaries, adjust differences in valuation on exchange or partition by giving or receiving considerations or dedicate easements to public use without consideration;

(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) abandon property when, in the opinion of the personal representative, it is valueless or is so encumbered or is in condition that it is of no benefit to the estate;

(12) vote stocks or other securities in person or by general or limited proxy;

(13) pay calls, assessments and other sums chargeable or accruing against or on account of securities unless barred by the provisions relating to claims;

(14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate, but the personal representative is liable for any act of the nominee in connection with the security so held;

(15) insure the assets of the estate against damage, loss and liability and himself against liability as to third persons;

(16) borrow money with or without security to be repaid from the estate assets or otherwise and advance money when necessary for the protection or preservation of the estate;

(17) effect a fair and reasonable compromise with any debtor or obligor or extend, renew or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner of the assets in satisfaction of the indebtedness secured by lien;

(18) pay taxes, assessments, compensation of the personal representative and other expenses incident to the administration of the estate;

(19) sell or exercise stock subscription or conversion rights or consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of a corporation or other business enterprise;

(20) allocate items of income or expense to either estate income or principal as permitted or provided by law;

(21) employ persons, including attorneys, accountants, investment advisors, appraisers or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon their

recommendations; and, instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(22) prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;

(23) sell, transfer, exchange or otherwise dispose of the estate or any interest in the estate for cash or on credit or for part cash and part credit at public or private sale. Security shall be taken for unpaid balances unless waived by order of the district court upon petition and good cause shown;

(24) continue any unincorporated business or venture in which the decedent was engaged at the time of his death:

(a) in the same business form for a period of not more than four months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business, including good will;

(b) in the same business form for any additional period of time that may be approved by order of the district court in a formal proceeding to which the persons interested in the estate are parties; or

(c) throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;

(25) incorporate any business or venture in which the decedent was engaged at the time of his death;

(26) provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate; and

(27) satisfy and settle claims and distribute the estate as provided in the Uniform Probate Code.

B. The powers granted in Subsection A of this section are given subject to those limitations contained in other sections of the Uniform Probate Code."

Section 38

Section 38. Section 45-3-719 NMSA 1978 (being Laws 1976 (S.S.), Chapter 37, Section 10) is repealed and a new Section 45-3-719 NMSA 1978 is enacted to read:

"45-3-719. COMPENSATION FOR PERSONAL REPRESENTATIVES.--A personal representative is entitled to reasonable compensation for his services. If a will provides for compensation of the personal representative and there is no contract with the decedent regarding compensation, he may renounce the provision before qualifying and be entitled to reasonable compensation. A personal representative also may renounce his right to all or any part of the compensation. A written renunciation of the fee may be filed with the court."

Section 39

Section 39. Section 45-3-720 NMSA 1978 (being Laws 1976 (S.S.), Chapter 37, Section 11) is repealed and a new Section 45-3-720 NMSA 1978 is enacted to read:

"45-3-720. EXPENSES IN ESTATE LITIGATION.--If any personal representative or person nominated as a personal representative defends or prosecutes any proceeding in good faith, whether successful or not, he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorneys' fees incurred."

Section 40

Section 40. A new section of the Uniform Probate Code, Section 45-3-721 NMSA 1978 is enacted to read:

"45-3-721. PROCEEDINGS FOR REVIEW OF EMPLOYMENT AND COMPENSATION.--After notice to all interested persons or on petition of an interested person or an appropriate motion if administration is supervised, the court may review the propriety of employment of any person by a personal representative including any attorney, auditor, investment advisor or other specialized agent or assistant, the reasonableness of the compensation of any person so employed or the reasonableness of the compensation determined by the personal representative for his own services. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds."

Section 41

Section 41. Section 45-3-802 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-802, as amended) is amended to read:

"45-3-802. STATUTES OF LIMITATIONS.--

A. Unless an estate is insolvent, the personal representative, with the consent of all successors whose interests would be affected, may waive any defense of limitations available to the estate. If the defense is not waived, no claim that was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid.

B. The running of a statute of limitations measured from an event other than death or the giving of notice to creditors is suspended for four months after the decedent's death but resumes thereafter as to claims not barred by other sections.

C. For purposes of a statute of limitations, the presentation of a claim pursuant to Section 45-3-804 NMSA 1978 is equivalent to commencement of a proceeding on the claim."

Section 42

Section 42. Section 45-3-805 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-805, as amended) is amended to read:

"45-3-805. CLASSIFICATION OF CLAIMS.--

A. If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(1) costs and expenses of administration, including compensation of personal representatives and of persons employed by the personal representatives;

(2) reasonable funeral expenses;

(3) debts and taxes with preference under federal law;

(4) reasonable medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent;

(5) debts and taxes with preference under other laws of New Mexico; and

(6) all other claims.

B. No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due."

Section 43

Section 43. Section 45-3-902 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-902) is amended to read:

"45-3-902. DISTRIBUTION--ORDER IN WHICH ASSETS APPROPRIATED--ABATEMENT.--

A. Except as provided in Subsection C of this section, shares of distributees abate, without any preference or priority as between real and personal property, in the following order:

- (1) property not disposed of by the will;
- (2) residuary devises;
- (3) general devises; and
- (4) specific devises.

B. For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged and, upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

C. If the will expresses an order of abatement or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in Subsection A of this section, the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

D. If an estate of a decedent consists partly of separate property and partly of community property, the debts and expenses of administration shall be apportioned and charged against the different kinds of property in accordance with the provisions of Subsection B of Section 45-2-805 NMSA 1978.

E. If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in or contribution from other interests in the remaining assets."

Section 44

Section 44. Section 45-3-913 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-913) is amended to read:

"45-3-913. DISTRIBUTIONS TO TRUSTEE.--

A. Before distributing to a trustee, the personal representative may require that the trust be registered if the state in which it is to be administered provides for registration and that the trustee inform the beneficiaries as provided in Section 45-7-303 NMSA 1978.

B. If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if he apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and he may withhold distribution until the court has acted.

C. No inference of negligence on the part of the personal representative shall be drawn from his failure to exercise the authority conferred by Subsections A and B of this section."

Section 45

Section 45. Section 45-3-1004 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-1004) is amended to read:

"45-3-1004. LIABILITY OF DISTRIBUTEES TO CLAIMANTS.--

A. After assets of an estate have been distributed and subject to Section 45-3-1006 NMSA 1978, an unpaid claim not barred may be prosecuted in a proceeding against one or more distributees.

B. No distributee shall be liable to claimants for amounts received as family or personal property allowances or for amounts in excess of the value of his distribution as of the time of distribution. As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration.

C. Any distributee who fails to notify other distributees of the demand made upon him by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against him loses his right of contribution against other distributees."

Section 46

Section 46. Section 45-3-1101 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-1101) is amended to read:

"45-3-1101. EFFECT OF APPROVAL OF AGREEMENTS INVOLVING TRUSTS, INALIENABLE INTERESTS OR INTERESTS OF THIRD PERSONS.--

A. A compromise of any controversy is binding on all the parties thereto as to:

(1) admission to probate of any instrument offered for formal probate as the will of a decedent;

- (2) the construction, validity or effect of any governing instrument;
- (3) the rights or interests in the estate of the decedent;
- (4) the rights or interests of any successor; or
- (5) the administration of the estate, if approved in a formal proceeding in the district court for that purpose.

B. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it."

Section 47

Section 47. Section 45-3-1102 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-1102) is amended to read:

"45-3-1102. PROCEDURE FOR SECURING COURT APPROVAL OF COMPROMISE.--The procedure for securing court approval of a compromise is as follows:

A. The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons and parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise.

B. Any interested person, including the personal representative, if any, or a trustee, may then submit the agreement to the district court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust and other fiduciaries and representatives.

C. After notice to all interested persons or their representatives, including the personal representative of any estate and all affected trustees of trusts, the district court, if it finds that an actual contest or controversy exists and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries under its supervision to execute the agreement. Minor children represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise. Upon the making of the order and the execution of the agreement, all further disposition of the estate shall then be made in accordance with the terms of the agreement."

Section 48

Section 48. Section 45-3-1201 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-1201, as amended) is amended to read:

"45-3-1201. COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT.--

A. Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

(1) the value of the entire estate, wherever located, less liens and encumbrances, does not exceed thirty thousand dollars (\$30,000);

(2) thirty days have elapsed since the death of the decedent;

(3) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(4) the claiming successor is entitled to payment or delivery of the property.

B. A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in Subsection A of this section.

C. The affidavit made pursuant to this section may not be used to perfect title to real estate."

Section 49

Section 49. A new section of the Uniform Probate Code, Section 45-4-401 NMSA 1978, is enacted to read:

"45-4-401. EFFECT OF ADJUDICATION.--An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if the local personal representative were a party to the adjudication."

Section 50

Section 50. Section 45-5-201 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-201) is amended to read:

"45-5-201. APPOINTMENT AND STATUS OF GUARDIAN OF MINOR--
GENERAL.--A person becomes a guardian of a minor by parental appointment or upon appointment by the court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian or minor ward."

Section 51

Section 51. Section 45-5-202 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-202) is repealed and a new Section 45-5-202 NMSA 1978 is enacted to read:

"45-5-202. PARENTAL APPOINTMENT OF GUARDIAN OF MINOR.--

A. The parent of an unmarried minor may appoint a guardian for the minor by will, or other writing signed by the parent and attested by at least two witnesses.

B. Subject to the right of the minor under Section 45-5-203 NMSA 1978, if both parents are dead or incapacitated or the surviving parent has no parental rights or has been adjudged to be incapacitated, a parental appointment becomes effective when the guardian's acceptance is filed in the court in which a nominating instrument is probated, or, in the case of a non-testamentary nominating instrument, in the court at the place where the minor resides or is present. If both parents are dead, an effective appointment by the parent who died later has priority.

C. A parental appointment effected by filing the guardian's acceptance under a will probated in the state of the testator's domicile is effective in this state.

D. Upon acceptance of appointment, the guardian shall give written notice of acceptance to the minor and to the person having the minor's care or the minor's nearest adult relative. If the minor is fourteen years of age or older, the notice shall state that the appointment may be terminated by filing a written objection in the court, as provided in Section 45-5-203 NMSA 1978."

Section 52

Section 52. Section 45-5-203 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-203, as amended) is amended to read:

"45-5-203. OBJECTION BY MINOR OF FOURTEEN OR OLDER TO PARENTAL APPOINTMENT.--A minor of fourteen or more years who is the subject of a parental appointment of a guardian may prevent the appointment or may cause it to terminate by filing in the court in which the will is probated or, in the case of a non-testamentary instrument, in the court where the minor resides or is present, a written objection to the appointment before it is accepted or after its acceptance. An objection may be withdrawn. An objection does not prevent appointment by the court in a proper proceeding of the parental nominee or any other suitable person."

Section 53

Section 53. Section 45-5-204 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-204) is amended to read:

"45-5-204. COURT APPOINTMENT OF GUARDIAN OF MINOR--CONDITIONS FOR APPOINTMENT.--

A. The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated or suspended by circumstances or prior court order.

B. A guardian, appointed as provided in Section 45-5-202 NMSA 1978, whose appointment has not been prevented or terminated under Section 45-5-203 NMSA 1978, has priority over any guardian who may be appointed by the court, but the court may proceed with another appointment upon a finding that the parental nominee has failed to accept the appointment within thirty days after notice of the guardianship proceeding.

C. If necessary, and upon appropriate petition or application, the court may appoint a temporary guardian, who shall have the full authority of a general guardian of a minor, but the authority of a temporary guardian may not last longer than six months. The appointment of a temporary guardian for a minor may occur even though the conditions described in Subsection A of this section have not been established."

Section 54

Section 54. Section 45-5-209 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-209) is repealed and a new Section 45-5-209 NMSA 1978 is enacted to read:

"45-5-209. POWERS AND DUTIES OF GUARDIAN OF MINOR.--

A. A guardian of a minor ward has the powers and responsibilities of a parent regarding the ward's support, care and education, but a guardian is not personally liable for the ward's expenses and is not liable to third persons by reason of the relationship for acts of the ward.

B. In particular and without qualifying the foregoing, a guardian shall:

(1) become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities and physical and mental health;

(2) take reasonable care of the ward's personal effects and commence protective proceedings if necessary to protect other property of the ward;

(3) apply any available money of the ward to the ward's current needs for support, care and education;

(4) conserve any excess money of the ward for the ward's future needs, but if a conservator has been appointed for the estate of the ward, the guardian, at least quarterly, shall pay to the conservator money of the ward to be conserved for the ward's future needs; and

(5) report the condition of the ward and of the ward's estate that has been subject to the guardian's possession or control, as ordered by the court on petition of any person interested in the ward's welfare or as required by court rule.

C. A guardian may:

(1) receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system or any private contract, devise, trust, conservatorship or custodianship and money or property of the ward paid or delivered pursuant to the provisions of Section 45-5-103 NMSA 1978 or any other statute;

(2) if consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, take custody of the person of the ward and establish the ward's place of abode within or without New Mexico;

(3) if no conservator for the estate of the ward has been appointed, institute proceedings, including administrative proceedings, or take other appropriate action to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward;

(4) consent to medical or other professional care, treatment or advice for the ward without liability by reason of the consent for injury to the ward resulting from the negligence or acts of third persons unless a parent would have been liable in the circumstances;

(5) consent to the marriage or adoption of the ward; and

(6) if reasonable under all of the circumstances, delegate to the ward certain responsibilities for decisions affecting the ward's well-being.

D. A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board and clothing personally provided to the ward, but only as approved by order of the court. If a conservator, other than the guardian or one who is affiliated with the guardian, has been appointed for the estate of the ward, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator without order of the court controlling the guardian.

E. In the interest of developing self-reliance on the part of a ward or for other good cause, the court, at the time of appointment or later, on its own motion or on appropriate petition or motion of the minor or other interested person, may limit the powers of a guardian otherwise conferred by this section and thereby create a limited guardianship. Any limitation on the statutory power of a guardian of a minor must be endorsed on the guardian's letters or, in the case of a guardian by parental appointment, must be reflected in letters that are issued at the time any limitation is imposed. Following the same procedure, a limitation may be removed and appropriate letters issued."

Section 55

Section 55. Section 45-5-212 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-212) is amended to read:

"45-5-212. RESIGNATION, REMOVAL AND OTHER POST-APPOINTMENT PROCEEDINGS.--

A. Any person interested in the welfare of a ward, or the ward if fourteen or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.

B. Notice of hearing on a petition for an order after the appointment of a guardian must be given to the ward, the guardian and any other person as ordered by the court.

C. After notice pursuant to Section 45-1-401 NMSA 1978 and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

D. If at any time in the proceeding the court finds that the interest of the ward is or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen or more years of age."

Section 56

Section 56. Section 45-5-301 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-301) is amended to read:

"45-5-301. APPOINTMENT OF GUARDIAN FOR INCAPACITATED PERSON-- NOTICE.--

A. The parent of an unmarried incapacitated person may appoint by will, or other writing signed by the parent and attested by at least two witnesses, a guardian of the incapacitated person. If both parents are dead or incapacitated or the surviving parent has no parental rights or has been adjudged incapacitated, appointment becomes effective when, after having given seven days' prior written notice of intention to do so to the incapacitated person and to the person having care of the incapacitated person or to the nearest adult relative, the guardian files acceptance of appointment in the court in which the will is probated, or in the case of a non-testamentary instrument, in the court at the place where the incapacitated person resides or is present. The notice shall state that the appointment may be terminated by filing a written objection in the court, as provided in Subsection D of this section. If both parents are dead, an effective appointment by the parent who died later has priority.

B. The spouse of a married incapacitated person may appoint by will, or other writing signed by the spouse and attested by at least two witnesses, a guardian of the incapacitated person. The appointment becomes effective when, after having given seven days' prior written notice of intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is probated or, in the case of a non-testamentary nominating instrument, in the court at the place where the incapacitated person resides or is present. The notice shall state that the appointment may be terminated by filing a written objection in the court, as provided in Subsection D of this section. An effective appointment by a spouse has priority over an appointment by a parent.

C. An appointment effected by filing the guardian's acceptance under a will probated in the state of testator's domicile is effective in New Mexico.

D. On the filing in the court in which the will was probated or, in the case of a non-testamentary nominating instrument, in the court at the place where the incapacitated person resides or is present, of written objection to the appointment by the incapacitated person for whom a parental or spousal appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the parental or spousal nominee or any other suitable person upon an adjudication of incapacity in proceedings under Sections 45-5-301.1 through 45-5-315 NMSA 1978."

Section 57

Section 57. Section 45-5-406 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-406, as amended) is amended to read:

"45-5-406. GUARDIANSHIP AND PROTECTIVE PROCEEDINGS--REQUEST FOR NOTICE--INTERESTED PERSON.--

A. Any interested person who desires to be notified before any order is made in a guardianship proceeding, including any proceeding subsequent to the appointment of a guardian, or in a protective proceeding may file a request for notice with the clerk of the court in which the proceeding is pending. The clerk shall mail a copy of the request to the petitioner and to the guardian or conservator if one has been appointed. A request is not effective unless it contains a statement showing the interest of the person making it and the address of that person or an attorney to whom notice is to be given. The request is effective only as to matters occurring after the filing.

B. Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in a protective proceeding.

C. In addition to the notices required by Section 45-5-207 or 45-5-309 NMSA 1978, notice of a petition for guardianship and of any subsequent proceedings or requests for orders shall be given to each interested person who has filed a request for notice pursuant to the provisions of Subsection A of this section. Except as otherwise required by law, notice shall be given in accordance with Section 45-1-401 NMSA 1978."

Section 58

Section 58. Section 45-5-501 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-501, as amended) is repealed and a new Section 45-5-501 NMSA 1978 is enacted to read:

"45-5-501. DEFINITION.--A durable power of attorney is a power of attorney by which a principal designates another his attorney in fact in writing and the writing contains the words "This power of attorney shall not be affected by subsequent incapacity of the principal, or lapse of time", or "This power of attorney shall become effective upon the incapacity of the principal", or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent incapacity, and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument."

Section 59

Section 59. Section 45-5-502 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-502) is repealed and a new Section 45-5-502 NMSA 1978 is enacted to read:

"45-5-502. DURABLE POWER OF ATTORNEY NOT AFFECTED BY LAPSE OF TIME, DISABILITY OR INCAPACITY.--All acts done by an attorney in fact pursuant to a durable power of attorney during any period of incapacity of the principal have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were competent. Unless the instrument states a time of termination, the

power is exercisable notwithstanding the lapse of time since the execution of the instrument."

Section 60

Section 60. A new section of the Uniform Probate Code, Section 45-5-503 NMSA 1978, is enacted to read:

"45-5-503. RELATION OF ATTORNEY IN FACT TO COURT-APPOINTED FIDUCIARY.--

A. If, following execution of a durable power of attorney, a court of the principal's domicile appoints a conservator or other fiduciary charged with the management of all of the principal's property or all of his property except specified exclusions, the attorney in fact is accountable to the fiduciary as well as to the principal. The fiduciary may not revoke or amend the power of attorney unless the appointing court expressly so authorizes after notice to the attorney in fact and the ward.

B. A principal may nominate, by a durable power of attorney, the conservator or guardian of his person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause for disqualification."

Section 61

Section 61. A new section of the Uniform Probate Code, Section 45-5-504 NMSA 1978, is enacted to read:

"45-5-504. POWER OF ATTORNEY NOT REVOKED UNTIL NOTICE.--

A. The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds successors in interest of the principal.

B. The incapacity of a principal who has previously executed a written power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his successors in interest.

C. The mere disability, as opposed to incapacity, of a principal who has executed a power of attorney, durable or otherwise, does not revoke or terminate the agency."

Section 62

Section 62. A new section of the Uniform Probate Code, Section 45-5-505 NMSA 1978, is enacted to read:

"45-5-505. PROOF OF CONTINUANCE OF DURABLE AND OTHER POWERS OF ATTORNEY BY AFFIDAVIT.--As to acts undertaken in good faith reliance thereon, an affidavit executed by the attorney in fact under a power of attorney, durable or otherwise, stating that he did not have at the time of exercise of the power actual knowledge of the termination of the power by revocation or of the principal's death or incapacity is conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power of attorney requires execution and delivery of any instrument that is recordable, the affidavit when acknowledged is likewise recordable. This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity."

Section 63

Section 63. A new section of the Uniform Probate Code, Section 45-5-601 NMSA 1978, is enacted to read:

"45-5-601. SHORT TITLE.--Sections 45-5-601 through 45-5-617 NMSA 1978 may be cited as the "Uniform Statutory Form Power of Attorney Act"."

Section 64

Section 64. A new section of the Uniform Probate Code, Section 45-5-602 NMSA 1978, is enacted to read:

"45-5-602. STATUTORY FORM OF POWER OF ATTORNEY.--

A. The following statutory form of power of attorney is legally sufficient:

"STATUTORY POWER OF ATTORNEY

NOTICE: THIS IS AN IMPORTANT DOCUMENT. THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT,

CHAPTER 45, ARTICLE 5, PART 6 NMSA 1978. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, YOU SHOULD ASK A LAWYER TO EXPLAIN THEM TO

YOU. THIS FORM DOES NOT PROHIBIT THE USE OF ANY OTHER FORM. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I, _____ reside at , _____
(Name) (Address)
New Mexico. I appoint _____
(Name(s) and address(es))
to serve as my attorney(s)-in-fact.

If any attorney-in-fact appointed above is unable to serve, then I appoint _____
to serve as
successor attorney-in-fact in place of the person who is unable to serve.

This power of attorney shall not be affected by my incapacity but will terminate upon my death unless I have revoked it prior to my death. I intend by this power of attorney to avoid a court-supervised guardianship or conservatorship.

Should my attempt be defeated, I ask that my agent be appointed as guardian or conservator of my person or estate.

STRIKE THROUGH THE SENTENCE ABOVE IF YOU DO NOT WANT TO
NOMINATE YOUR AGENT AS YOUR GUARDIAN OR CONSERVATOR.

CHECK AND INITIAL THE FOLLOWING PARAGRAPH ONLY IF YOU WANT YOUR
ATTORNEY(S)-IN-FACT TO BE ABLE TO ACT ALONE AND INDEPENDENTLY OF
EACH OTHER. IF YOU DO NOT CHECK AND INITIAL THE FOLLOWING
PARAGRAPH AND MORE THAN ONE PERSON IS NAMED TO ACT ON YOUR
BEHALF THEN THEY MUST ACT JOINTLY.

() If more than one person is appointed to
serve as my attorney-in-fact then they
initials may act severally, alone and independently of each other.

My attorney(s)-in-fact shall have the power to act in my name, place and stead in any way which I myself could do with respect to the following matters to the extent permitted by law:

INITIAL IN THE BOX IN FRONT OF EACH AUTHORIZATION WHICH YOU DESIRE
TO GIVE TO YOUR ATTORNEY(S)-IN-FACT. YOUR ATTORNEY(S)-IN-FACT SHALL
BE AUTHORIZED TO ENGAGE ONLY IN THOSE ACTIVITIES WHICH ARE
INITIALED.

INITIAL

- ☐ 1. real estate transactions.
- ☐ 2. stock and bond transactions.
- ☐ 3. commodity and option transactions.
- ☐ 4. tangible personal property transactions.
- ☐ 5. banking and other financial institution transactions.
- ☐ 6. business operating transactions.
- ☐ 7. insurance and annuity transactions.
- ☐ 8. estate, trust and other beneficiary transactions.
- ☐ 9. claims and litigation.
- ☐ 10. personal and family maintenance.
- ☐ 11. benefits from social security, medicare, medicaid or other government programs or civil or military service.
- ☐ 12. retirement plan transactions.
- ☐ 13. tax matters, including any transactions with the Internal Revenue Service.
- ☐ 14. decisions regarding lifesaving and life prolonging medical treatment.
- ☐ 15. decisions relating to medical treatment, surgical treatment, nursing care, medication, hospitalization, institutionalization in a nursing home or other facility and home health care.
- ☐ 16. transfer of property or income as a gift to the principal's spouse for the purpose of qualifying the principal for governmental medical assistance.
- ☐ 17. ALL OF THE ABOVE POWERS, INCLUDING FINANCIAL AND HEALTH CARE DECISIONS. IF YOU INITIAL THE BOX IN FRONT OF LINE 17, YOU NEED NOT INITIAL ANY OTHER LINES.

SPECIAL INSTRUCTIONS:

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS YOU HAVE GRANTED TO YOUR AGENT.

CHECK AND INITIAL THE FOLLOWING PARAGRAPH IF YOU INTEND FOR THIS POWER OF ATTORNEY TO BECOME EFFECTIVE ONLY IF YOU BECOME INCAPACITATED. YOUR FAILURE TO DO SO WILL MEAN THAT YOUR ATTORNEY(S)-IN-FACT ARE EMPOWERED TO ACT ON YOUR BEHALF FROM THE TIME YOU SIGN THIS DOCUMENT UNTIL YOUR DEATH UNLESS YOU REVOKE THE POWER BEFORE YOUR DEATH.

() This power of attorney shall become effective only if I become incapacitated.
initials My attorney(s)-in-fact shall be entitled to rely on notarized statements from two qualified health care professionals, one of whom shall be a physician, as to my incapacity. By incapacity I mean that among other things, I am unable to effectively manage my personal care, property or financial affairs.

This power of attorney will not be affected by lapse of time. I agree that any third party who receives a copy of this power of attorney may act under it.

(Signature)

(Optional, but preferred: Your social security number)

Dated: _____, 19____

ACKNOWLEDGEMENT

NOTICE: IF THIS POWER OF ATTORNEY AFFECTS REAL ESTATE, IT MUST BE RECORDED IN THE OFFICE OF THE COUNTY CLERK IN EACH COUNTY WHERE THE REAL ESTATE IS LOCATED.

STATE OF NEW MEXICO)

) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on _____, 19_____, by _____

(seal) _____
Notary Public

My Commission Expires:

BY ACCEPTING OR ACTING UNDER THE POWER OF ATTORNEY, YOUR AGENT ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT ACTING ON YOUR BEHALF." and

"THIS AFFIDAVIT IS FOR THE USE OF YOUR

ATTORNEY(S)-IN-FACT IF EVER

YOUR ATTORNEY(S)-IN-FACT ACTS ON YOUR BEHALF

UNDER YOUR WRITTEN POWER OF ATTORNEY.

AFFIDAVIT AS TO POWER OF ATTORNEY BEING IN FULL FORCE

STATE OF NEW MEXICO)

) ss.

COUNTY OF _____)

I/we being duly sworn, state:

1. ("Principal") of _____ County, New Mexico, signed a written Power of Attorney on _____, 19_____, appointing the undersigned as his/her attorney(s)-in-fact. (A true copy of the power of attorney is attached hereto and incorporated herein.)

2. As attorney(s)-in-fact and under and by virtue of the Power of Attorney, I/we have this date executed the following described instrument: _____.

3. At the time of executing the above described instrument I/we had no actual knowledge or actual notice of revocation or termination of the Power of Attorney by death or otherwise, or notice of any facts indicating the same.

4. I/we represent that the principal is now alive; has not, at any time, revoked or repudiated the power of attorney; and the power of attorney still is in full force and effect.

5. I/we make this affidavit for the purpose of inducing _____
to accept delivery of the above described instrument, as executed by me/us in my/our
capacity of attorney(s)-in-fact for the Principal.

_____, Attorney-in-fact

_____,
Attorney-in-fact

Sworn to before me this _____ day of _____, 19_____.

Notary Public

My Commission Expires:

_____ " " . "

B. A statutory power of attorney is legally sufficient under the Uniform Statutory Form Power of Attorney Act, if the wording of the form complies substantially with Subsection A of this section, the form is properly completed, and the signature of the principal is acknowledged in any form permitted by law.

C. If the line in front of line 17 of the form under Subsection A of this section is initialed, an initial on the line in front of any other power does not limit the powers granted by line 17.

D. By accepting or acting under a power of attorney, statutory or otherwise, an attorney-in-fact assumes fiduciary and other legal responsibilities of an agent acting for the principal."

Section 65

Section 65. A new section of the Uniform Probate Code, Section 45-5-603 NMSA 1978, is enacted to read:

"45-5-603. CONSTRUCTION OF POWERS GENERALLY.--By executing a statutory power of attorney with respect to a subject listed in Subsection A of Section 45-5-602, the principal, except as limited or extended by the principal in the power of attorney, empowers the agent, for that subject to:

(1) demand, receive, and obtain by litigation or otherwise, money or other thing of value to which the principal is, may become, or claims to be entitled; and conserve, invest, disburse or use anything so received for the purposes intended;

(2) contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction, and perform, rescind, reform, release or modify the contract or another contract made by or on behalf of the principal;

(3) execute, acknowledge, seal and deliver a deed, revocation, mortgage, lease, notice, check, release or other instrument the agent considers desirable to accomplish a purpose of a transaction;

(4) prosecute, defend, submit to arbitration, settle and propose or accept a compromise with respect to, a claim existing in favor of or against the principal or intervene in litigation relating to the claim;

(5) seek on the principal's behalf the assistance of a court to carry out an act authorized by the power of attorney;

(6) engage, compensate and discharge an attorney, accountant, expert witness or other assistant;

(7) keep appropriate records of each transaction, including an accounting of receipts and disbursements;

(8) prepare, execute and file a record, report or other document the agent considers desirable to safeguard or promote the principal's interest under a statute or governmental regulation;

(9) reimburse the agent for expenditures properly made by the agent in exercising the powers granted by the power of attorney; and

(10) in general, do any other lawful act with respect to the subject."

Section 66

Section 66. A new section of the Uniform Probate Code, Section 45-5-604 NMSA 1978, is enacted to read:

"45-5-604. CONSTRUCTION OF POWER RELATING TO REAL ESTATE TRANSACTIONS.--In a statutory power of attorney, the language granting power with respect to real estate transactions empowers the agent to:

(1) accept as a gift or as security for a loan, reject, demand, buy, lease, receive or otherwise acquire, an interest in real property or a right incident to real property;

(2) sell, exchange, convey with or without covenants, quitclaim, release, surrender, mortgage, encumber, partition, consent to partitioning, subdivide, apply for

zoning, rezoning or other governmental permits, plat or consent to platting, develop, grant options concerning, lease, sublease or otherwise dispose of, an interest in real property or a right incident to real property;

(3) release, assign, satisfy and enforce by litigation or otherwise, a mortgage, deed of trust, encumbrance, lien or other claim to real property which exists or is asserted;

(4) do any act of management or of conservation with respect to an interest in real property, or a right incident to real property, owned or claimed to be owned, by the principal, including;

(i) insuring against a casualty, liability or loss;

(ii) obtaining or regaining possession or protecting the interest or right, by litigation or otherwise;

(iii) paying, compromising or contesting taxes or assessments, or applying for and receiving refunds in connection with them; and

(iv) purchasing supplies, hiring assistance or labor and making repairs or alterations in the real property;

(5) use, develop, alter, replace, remove, erect or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;

(6) participate in a reorganization with respect to real property or a legal entity that owns an interest in or right incident to real property and receive and hold shares of stock or obligations received in a plan of reorganization, and act with respect to them, including:

(i) selling or otherwise disposing of them;

(ii) exercising or selling an option, conversion or similar right with respect to them; and

(iii) voting them in person or by proxy;

(7) change the form of title of an interest in or right incident to real property; and

(8) dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest."

Section 67

Section 67. A new section of the Uniform Probate Code, Section 45-5-605 NMSA 1978, is enacted to read:

"45-5-605. CONSTRUCTION OF POWER RELATING TO TANGIBLE PERSONAL PROPERTY TRANSACTIONS.--In a statutory power of attorney, the language granting power with respect to tangible personal property transactions empowers the agent to:

(1) accept as a gift or as security for a loan, reject, demand, buy, receive or otherwise acquire ownership or possession of tangible personal property or an interest in tangible personal property;

(2) sell, exchange, convey with or without covenants, release, surrender, mortgage, encumber, pledge, hypothecate, create a security interest in, pawn, grant options concerning, lease, sublease to others or otherwise dispose of tangible personal property or an interest in tangible personal property;

(3) release, assign, satisfy or enforce by litigation or otherwise, a mortgage, security interest, encumbrance, lien or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property; and

(4) do an act of management or conservation with respect to tangible personal property or an interest in tangible personal property on behalf of the principal, including:

(i) insuring against casualty, liability or loss;

(ii) obtaining or regaining possession, or protecting the property or interest, by litigation or otherwise;

(iii) paying, compromising or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;

(iv) moving from place to place;

(v) storing for hire or on a gratuitous bailment; and

(vi) using, altering and making repairs or alternations."

Section 68

Section 68. A new section of the Uniform Probate Code, Section 45-5-606 NMSA 1978, is enacted to read:

"45-5-606. CONSTRUCTION OF POWER RELATING TO STOCK AND BOND TRANSACTIONS.--In a statutory power of attorney, the language granting power with respect to stock and bond transactions empowers the agent to buy, sell and exchange stocks, bonds, mutual funds and all other types of securities and financial instruments except commodity futures contracts and call and put options on stocks and stock indexes, receive certificates and other evidences of ownership with respect to securities, exercise voting rights with respect to securities in person or by proxy, enter into voting trusts and consent to limitations on the right to vote."

Section 69

Section 69. A new section of the Uniform Probate Code, Section 45-5-607 NMSA 1978, is enacted to read:

"45-5-607. CONSTRUCTION OF POWER RELATING TO COMMODITY AND OPTION TRANSACTIONS.--In a statutory power of attorney, the language granting power with respect to commodity and option transactions empowers the agent to buy, sell, exchange, assign, settle and exercise commodity futures contracts and call and put options on stocks and stock indexes traded on a regulated option exchange, and establish, continue, modify and terminate option accounts with a broker."

Section 70

Section 70. A new section of the Uniform Probate Code, Section 45-5-608 NMSA 1978, is enacted to read:

"45-5-608. CONSTRUCTION OF POWER RELATING TO BANKING AND OTHER FINANCIAL INSTITUTION TRANSACTIONS.--In a statutory power of attorney, the language granting power with respect to banking and other financial institution transactions, empowers the agent to:

- (1) continue, modify and terminate an account or other banking arrangement made by or on behalf of the principal;
- (2) establish, modify and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm or other financial institution selected by the agent;
- (3) hire a safe deposit box or space in a vault;
- (4) contract to procure other services available from a financial institution as the agent considers desirable;
- (5) withdraw by check, order or otherwise money or property of the principal deposited with or left in the custody of a financial institution;

(6) receive bank statements, vouchers, notices and similar documents from a financial institution and act with respect to them;

(7) enter a safe deposit box or vault and withdraw or add to the contents;

(8) borrow money at an interest rate agreeable to the agent and pledge as security personal property of the principal necessary in order to borrow, pay, renew or extend the time of payment of a debt of the principal;

(9) make, assign, draw, endorse, discount, guarantee and negotiate promissory notes, checks, drafts and other negotiable or nonnegotiable paper of the principal, or payable to the principal or the principal's order, receive the cash or other proceeds of those transactions, accept a draft drawn by a person upon the principal and pay it when due;

(10) receive for the principal and act upon a sight draft, warehouse receipt, or other negotiable or nonnegotiable instrument;

(11) apply for and receive letters of credit, credit cards and traveler's checks from a financial institution, and give an indemnity or other agreement in connection with letters of credit; and

(12) consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution."

Section 71

Section 71. A new section of the Uniform Probate Code, Section 45-5-609 NMSA 1978, is enacted to read:

"45-5-609. CONSTRUCTION OF POWER RELATING TO BUSINESS OPERATING TRANSACTIONS.--In a statutory power of attorney, the language granting power with respect to business operating transactions, empowers the agent to:

(1) operate, buy, sell, enlarge, reduce and terminate a business interest;

(2) to the extent that an agent is permitted by law to act for a principal and subject to the terms of the partnership agreement to:

(i) perform a duty or discharge a liability and exercise a right, power, privilege or option that the principal has, may have or claims to have, under a partnership agreement, whether or not the principal is a partner;

(ii) enforce the terms of a partnership agreement by litigation or otherwise; and

(iii) defend, submit to arbitration, settle or compromise litigation to which the principal is a party because of membership in the partnership;

(3) exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege or option the principal has or claims to have as the holder of a bond, share or other instrument of similar character and defend, submit to arbitration, settle or compromise litigation to which the principal is a party because of a bond, share or similar instrument;

(4) with respect to a business owned solely by the principal:

(i) continue, modify, renegotiate, extend and terminate a contract made with an individual or a legal entity, firm, association or corporation by or on behalf of the principal with respect to the business before execution of the power of attorney;

(ii) determine:

(A) the location of its operation;

(B) the nature and extent of its business;

(C) the methods of manufacturing, selling, merchandising, financing, accounting and advertising employed in its operation;

(D) the amount and types of insurance carried; and

(E) the mode of engaging, compensating and dealing with its accountants, attorneys and other agents and employees;

(iii) change the name or form of organization under which the business is operated and enter into a partnership agreement with other persons or organize a corporation to take over all or prt of the operation of the business; and

(iv) demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the business, and control and disburse the money in the operation of the business;

(5) put additional capital into a business in which the principal has an interest;

(6) join in a plan of reorganization, consolidation or merger of the business;

(7) sell or liquidate a business or part of it at the time and upon the terms the agent considers desirable;

(8) establish the value of a business under a buy-out agreement to which the principal is a party;

(9) prepare, sign, file and deliver reports, compilations of information, returns or other papers with respect to a business which are required by a governmental agency or instrumentality or which the agent considers desirable, and make related payments; and

(10) pay, compromise or contest taxes or assessments and do any other act which the agent considers desirable to protect the principal from illegal or unnecessary taxation, fines, penalties or assessments with respect to a business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney."

Section 72

Section 72. A new section of the Uniform Probate Code, Section 45-5-610 NMSA 1978, is enacted to read:

"45-5-610. CONSTRUCTION OF POWER RELATING TO INSURANCE TRANSACTIONS.--In a statutory power of attorney, the language granting power with respect to insurance and annuity transactions empowers the agent to:

(1) continue, pay the premium or assessment on, modify, rescind, release or terminate a contract procured by or on behalf of the principal which insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;

(2) procure new, different and additional contracts of insurance and annuities for the principal and the principal's spouse, children and other dependents; and select the amount, type of insurance or annuity and mode of payment;

(3) pay the premium or assessment on, modify, rescind, release or terminate a contract of insurance or annuity procured by the agent;

(4) designate the beneficiary of the contract, but an agent may be named a beneficiary of the contract, or an extension, renewal or substitute for it, only to the extent the agent was named as a beneficiary under a contract procured by the principal before executing the power of attorney;

(5) apply for and receive a loan on the security of the contract of insurance or annuity;

(6) surrender and receive the cash surrender value;

(7) exercise an election;

(8) change the manner of paying premiums;

(9) change or convert the type of insurance contract or annuity, with respect to which the principal has or claims to have a power described in this section;

(10) change the beneficiary of a contract of insurance or annuity, but the agent may not be designated a beneficiary except to the extent permitted by Paragraph (4);

(11) apply for and procure government aid to guarantee or pay premiums of a contract of insurance on the life of the principal;

(12) collect, sell, assign, hypothecate, borrow upon or pledge the interest of the principal in a contract of insurance or annuity; and

(13) pay from proceeds or otherwise, compromise or contest, and apply for refunds in connection with, a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment."

Section 73

Section 73. A new section of the Uniform Probate Code, Section 45-5-611 NMSA 1978, is enacted to read:

"45-5-611. CONSTRUCTION OF POWER RELATING TO ESTATE, TRUST AND OTHER BENEFICIARY TRANSACTIONS.--In a statutory power of attorney, the language granting power with respect to estate, trust and other beneficiary transactions, empowers the agent to act for the principal in all matters that affect a trust, probate estate, guardianship, conservatorship, escrow, custodianship or other fund from which the principal is, may become or claims to be entitled, as a beneficiary, to a share or payment, including the power to:

(1) accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, exchange or consent to a reduction in or modification of a share in or payment from the fund;

(2) demand or obtain by litigation or otherwise money or other thing of value to which the principal is, may become or claims to be entitled by reason of the fund;

(3) initiate, participate in and oppose litigation to ascertain the meaning, validity or effect of a deed, will, declaration of trust or other instrument or transaction affecting the interest of the principal;

(4) initiate, participate in and oppose litigation to remove, substitute or surcharge a fiduciary;

(5) conserve, invest, disburse and use anything received for an authorized purpose;

(6) transfer an interest of the principal in real property, stocks, bonds, accounts with financial institutions, insurance and other property, to the trustee of a revocable trust created by the principal as settlor; and

(7) transfer property or income to an irrevocable trust established by the attorney-in-fact or others for the benefit of the principal as permitted by law for the purpose of qualifying the principal for governmental assistance."

Section 74

Section 74. A new section of the Uniform Probate Code, Section 45-5-612 NMSA 1978, is enacted to read:

"45-5-612. CONSTRUCTION OF POWER RELATING TO CLAIMS AND LITIGATION.--In a statutory power of attorney, the language with respect to claims and litigation empowers the agent to:

(1) assert and prosecute before a court or administrative agency a claim, a cause of action, counterclaim, offset and defend against an individual, a legal entity or government, including suits to recover property or other thing of value, to recover damages sustained by the principal, to eliminate or modify tax liability or to seek an injunction, specific performance or other relief;

(2) bring an action to determine adverse claims, intervene in litigation and act as amicus curiae;

(3) in connection with litigation, procure an attachment, garnishment, libel, order of arrest or other preliminary, provisional or intermediate relief and use an available procedure to effect or satisfy a judgment, order or decree;

(4) in connection with litigation, perform any lawful act, including acceptance of tender, offer of judgment, admission of facts, submission of a controversy on an agreed statement of facts, consent to examination before trial and binding the principal in litigation;

(5) submit to arbitration, settle and propose or accept a compromise with respect to a claim or litigation;

(6) waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon whom process

directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive and execute and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement or other instrument in connection with the prosecution, settlement or defense of a claim or litigation;

(7) act for the principal with respect to bankruptcy or insolvency proceedings, whether voluntary or involuntary, concerning the principal or some other person, with respect to a reorganization proceeding or a receivership or application for the appointment of a receiver or trustee which affects an interest of the principal in property or other thing of value; and

(8) pay a judgment against the principal or a settlement made in connection with litigation and receive and conserve money, or other thing of value paid in settlement of or as proceeds of a claim or litigation."

Section 75

Section 75. A new section of the Uniform Probate Code, Section 45-5-613 NMSA 1978, is enacted to read:

"45-5-613. CONSTRUCTION OF POWER RELATING TO PERSONAL AND FAMILY MAINTENANCE.--In a statutory power of attorney, the language granting power with respect to personal and family maintenance, empowers the agent to:

(1) do the acts necessary to maintain the customary standard of living of the principal, the principal's spouse, children and other individuals customarily or legally entitled to be supported by the principal, including providing living quarters by purchase, lease or other contract, or paying the operating costs, including interest, amortization payments, repairs and taxes on premises owned by the principal and occupied by those individuals;

(2) provide for the individuals described in Paragraph (1) normal domestic help; usual vacations and travel expenses; and funds for shelter, clothing, food, appropriate education and other current living costs;

(3) pay for the individuals described in Paragraph (1) necessary medical, dental and surgical care, hospitalization and custodial care;

(4) continue any provision made by the principal, for the individuals described in Paragraph (1), for automobiles or other means of transportation, including registering, licensing, insuring and replacing them;

(5) maintain or open charge accounts for the convenience of the individuals described in Paragraph (1) and open new accounts the agent considers desirable to accomplish a lawful purpose; and

(6) continue payments incidental to the membership or affiliation of the principal in a church, club, society, order or other organization or to continue contributions to those organizations."

Section 76

Section 76. A new section of the Uniform Probate Code, Section 45-5-614 NMSA 1978, is enacted to read:

"45-5-614. CONSTRUCTION OF POWER RELATING TO BENEFITS FROM SOCIAL SECURITY, MEDICARE, MEDICAID OR OTHER GOVERNMENTAL PROGRAMS OR CIVIL OR MILITARY SERVICE.--In a statutory power of attorney, the language granting power with respect to benefits from social security, medicare, medicaid or other governmental programs or civil or military service, empowers the agent to:

(1) execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in Paragraph (1) of Section 45-6-613 NMSA 1978 and for shipment of their household effects;

(2) take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate or other instrument for that purpose;

(3) prepare, file and prosecute a claim of the principal to a benefit or assistance, financial or otherwise, to which the principal claims to be entitled, under a statute or governmental regulation;

(4) prosecute, defend, submit to arbitration, settle and propose or accept a compromise with respect to any benefits the principal may be entitled to receive; and

(5) receive the financial proceeds of a claim of the type described in this section, conserve, invest, disburse or use anything received for a lawful purpose."

Section 77

Section 77. A new section of the Uniform Probate Code, Section 45-5-615 NMSA 1978, is enacted to read:

"45-5-615. CONSTRUCTION OF POWER RELATING TO RETIREMENT PLAN TRANSACTIONS.--In a statutory power of attorney, the language granting power with respect to retirement plan transactions empowers the agent to:

(1) select payment options under any retirement plan in which the principal participates, including plans for self-employed individuals;

(2) designate beneficiaries under those plans and change existing designations;

(3) make voluntary contributions to those plans;

(4) exercise the investment powers available under any self-directed retirement plan;

(5) make "rollovers" of plan benefits into other retirement plans;

(6) if authorized by the plan, borrow from, sell assets to and purchase assets from the plan; and

(7) waive the right of the principal to be a beneficiary of a joint or survivor annuity if the principal is a spouse who is not employed."

Section 78

Section 78. A new section of the Uniform Probate Code, Section 45-5-616 NMSA 1978, is enacted to read:

"45-5-616. CONSTRUCTION OF POWER RELATING TO TAX MATTERS.--In a statutory power of attorney, the language granting power with respect to tax matters empowers the agent to:

(1) prepare, sign and file federal, state, local and foreign income, gift, payroll, Federal Insurance Contributions Act returns and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters and any other tax-related documents, including receipts, offers, waivers, consents (including consents and agreements under Internal Revenue Code Section 2032A or any successor section), closing agreements and any power of attorney required by the internal revenue service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following twenty-five tax years;

(2) pay taxes due, collect refunds, post bonds, receive confidential information and contest deficiencies determined by the internal revenue service or other taxing authority;

(3) exercise any election available to the principal under federal, state, local or foreign tax law; and

(4) act for the principal in all tax matters for all periods before the internal revenue service and any other taxing authority."

Section 79

Section 79. A new section of the Uniform Probate Code, Section 45-5-617 NMSA 1978, is enacted to read:

"45-5-617. EXISTING INTERESTS--FOREIGN INTEREST--OTHER POWERS OF ATTORNEY.--The powers described in Sections 45-5-601 through 45-5-616 NMSA 1978 are exercisable equally with respect to an interest the principal has when the power of attorney is executed or acquires later, whether or not the property is located in New Mexico, and whether or not the powers are exercised or the power of attorney is executed in New Mexico. Existing statutory form powers of attorney, valid under existing New Mexico law, remain valid. Nothing in the Uniform Statutory Form Power of Attorney Act prohibits the use of any other form for a power of attorney. A power of attorney executed in another jurisdiction, which is in compliance with the law of that jurisdiction or with the law of New Mexico, is valid in New Mexico to the extent the document is not inconsistent with the public policy of New Mexico."

Section 80

Section 80. Section 45-6-213 NMSA 1978 (being Laws 1992, Chapter 66, Section 26) is amended to read:

"45-6-213. ALTERATION OF RIGHTS.--

A. Rights at death under Section 45-6-212 NMSA 1978 are determined by the terms of the account at the death of a party. The terms of the account may be altered by written notice given by a party to the financial institution to change the terms of the account or stop or vary payment under the terms of the account. The notice must be signed by a party and received by the financial institution during the party's lifetime.

B. A right of survivorship arising from the express terms of the account, Section 45-6-212 NMSA 1978 or a POD designation, may not be altered by will."

Section 81

Section 81. Section 45-6-226 NMSA 1978 (being Laws 1992, Chapter 66, Section 35) is amended to read:

"45-6-226. DISCHARGE.--

A. Payment made pursuant to Sections 45-6-201 through 45-6-227 NMSA 1978 in accordance with the terms of the account discharges the financial institution from all claims for amounts so paid, whether or not the payment is consistent with the beneficial ownership of the account as between parties, beneficiaries or their successors. Payment may be made whether or not a party, beneficiary or agent is disabled, incapacitated or deceased when payment is requested, received or made.

B. Protection under this section does not extend to payments made after a financial institution has received written notice from a party, or from the personal representative, surviving spouse or heir or devisee of a deceased party, to the effect that payments in accordance with the terms of the account, including one having an agency designation, should not be permitted, and the financial institution has had a reasonable opportunity to act on it when the payment is made. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in a request for payment if the financial institution is to be protected under this section. Unless a financial institution has been served with process in an action or proceeding, no other notice or other information shown to have been available to the financial institution affects its right to protection under this section.

C. A financial institution that receives written notice pursuant to this section or otherwise has reason to believe that a dispute exists as to the rights of the parties may refuse, without liability, to make payments in accordance with the terms of the account.

D. Protection of a financial institution under this section does not affect the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of sums on deposit in accounts or payments made from accounts."

Section 82

Section 82. A new section of the Uniform Probate Code, Section 45-7-601 NMSA 1978, is enacted to read:

"45-7-601. SHORT TITLE.--Sections 45-7-601 through 45-7-612 NMSA 1978 may be cited as the "Uniform Prudent Investor Act"."

Section 83

Section 83. A new section of the Uniform Probate Code, Section 45-7-602 NMSA 1978, is enacted to read:

"45-7-602. PRUDENT INVESTOR RULE.--

A. Except as otherwise provided in Subsection B of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in the Uniform Prudent Investor Act.

B. The prudent investor rule, a default rule, may be expanded, restricted, eliminated or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust."

Section 84

Section 84. A new section of the Uniform Probate Code, Section 45-7-603 NMSA 1978, is enacted to read:

"45-7-603. STANDARD OF CARE--PORTFOLIO STRATEGY--RISK AND RETURN OBJECTIVES.--

A. A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

B. A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

C. Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

- (1) general economic conditions;
- (2) the possible effect of inflation or deflation;
- (3) the expected tax consequences of investment decisions or strategies;
- (4) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interest in closely held enterprises, tangible and intangible personal property and real property;
- (5) the expected total return from income and the appreciation of capital;
- (6) other resources of the beneficiaries;
- (7) needs for liquidity, regularity of income and preservation or appreciation of capital; and

(8) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

D. A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

E. A trustee may invest in any kind of property or type of investment consistent with the standards of the Uniform Prudent Investor Act.

F. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise."

Section 85

Section 85. A new section of the Uniform Probate Code, Section 45-7-604 NMSA 1978, is enacted to read:

"45-7-604. DIVERSIFICATION.--A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying."

Section 86

Section 86. A new section of the Uniform Probate Code, Section 45-7-605 NMSA 1978, is enacted to read:

"45-7-605. DUTIES AT INCEPTION OF TRUSTEESHIP.--Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements and other circumstances of the trust, and with the requirements of the Uniform Prudent Investor Act."

Section 87

Section 87. A new section of the Uniform Probate Code, Section 45-7-606 NMSA 1978, is enacted to read:

"45-7-606. LOYALTY.--A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries."

Section 88

Section 88. A new section of the Uniform Probate Code, Section 45-7-607 NMSA 1978, is enacted to read:

"45-7-607. IMPARTIALITY.--If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries."

Section 89

Section 89. A new section of the Uniform Probate Code, Section 45-7-608 NMSA 1978, is enacted to read:

"45-7-608. INVESTMENT COSTS.--In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust and the skills of the trustee."

Section 90

Section 90. A new section of the Uniform Probate Code, Section 45-7-609 NMSA 1978, is enacted to read:

"45-7-609. REVIEWING COMPLIANCE.--Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight."

Section 91

Section 91. A new section of the Uniform Probate Code, Section 45-7-610 NMSA 1978, is enacted to read:

"45-7-610. DELEGATION OF INVESTMENT AND MANAGEMENT FUNCTIONS.--

A. A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill and caution in:

- (1) selecting an agent;
- (2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
- (3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

B. In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

C. A trustee who complies with the requirements of Subsection A of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

D. By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state."

Section 92

Section 92. A new section of the Uniform Probate Code, Section 45-7-611 NMSA 1978, is enacted to read:

"45-7-611. LANGUAGE INVOKING STANDARD.--The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under the Uniform Prudent Investor Act: "investments permissible by law for investment of trust funds", "legal investments", "authorized investments", "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital", "prudent man rule", "prudent trustee rule", "prudent person rule" and "prudent investor rule"."

Section 93

Section 93. A new section of the Uniform Probate Code, Section 45-7-612 NMSA 1978, is enacted to read:

"45-7-612. APPLICATION TO EXISTING TRUSTS.--The Uniform Prudent Investor Act applies to trusts existing on and created after its effective date. As applied to trusts existing on its effective date, the Uniform Prudent Investor Act governs only decisions or actions occurring after that date."

Section 94

Section 94. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE BILL 517

CHAPTER 211

RELATING TO MUNICIPAL ANNEXATION; ENABLING DESIGNATION OF TRADITIONAL HISTORIC COMMUNITIES; AMENDING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 3-7-1 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-7-1, as amended) is amended to read:

"3-7-1. METHODS OF ANNEXATION.--

A. There shall be three methods of annexing territory to a municipality:

(1) the arbitration method as provided in Sections 3-7-5 through 3-7-10 NMSA 1978;

(2) the boundary commission method as provided in Sections 3-7-11 through 3-7-16 NMSA 1978; and

(3) the petition method as provided in Section 3-7-17 NMSA 1978.

B. Territory may be annexed to a municipality by any one of the three methods of annexation provided for in Sections 3-7-5 through 3-7-18 NMSA 1978 except where limitations of annexation are provided by law. The provisions of this section apply to annexations of all municipalities except those that are otherwise specifically provided by law. The arbitration method of annexation may be used for municipal annexation of a traditional historic community only upon petition of a majority of the registered qualified electors of the territory within the traditional historic community."

Section 2

Section 2. Section 3-7-11 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-7-11) is amended to read:

"3-7-11. MUNICIPAL BOUNDARY COMMISSION--PURPOSE.--

A. The purpose of Sections 3-7-11 through 3-7-16 NMSA 1978 is to establish an independent commission known as the "municipal boundary commission" to determine the annexation of territory to a municipality whenever:

(1) the municipality petitions the municipal boundary commission to annex territory to the municipality; or

(2) a majority of the landowners of the territory proposed to be annexed petition the municipal boundary commission to annex the territory to the municipality.

B. The municipal boundary commission shall hear a request for municipal annexation of a traditional historic community only upon petition of a majority of the qualified electors of the territory within the traditional historic community."

Section 3

Section 3. Section 3-21-1 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-20-1, as amended) is amended to read:

"3-21-1. ZONING--AUTHORITY OF COUNTY OR MUNICIPALITY.--

A. For the purpose of promoting health, safety, morals or the general welfare, a county or municipality is a zoning authority and may regulate and restrict within its jurisdiction the:

structures;

(1) height, number of stories and size of buildings and other

(2) percentage of a lot that may be occupied;

(3) size of yards, courts and other open space;

(4) density of population; and

(5) location and use of buildings, structures and land for trade, industry, residence or other purposes.

B. The county or municipal zoning authority may:

(1) divide the territory under its jurisdiction into districts of such number, shape, area and form as is necessary to carry out the purposes of Sections 3-21-1 through 3-21-14 NMSA 1978; and

(2) regulate or restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land in each district. All such regulations shall be uniform for each class or kind of buildings within each district, but regulation in one district may differ from regulation in another district.

C. All state-licensed or state-operated community residences for the mentally ill or developmentally disabled serving ten or fewer persons may be considered a residential use of property for purposes of zoning and may be permitted use in all

districts in which residential uses are permitted generally, including particularly residential zones for single-family dwellings.

D. A board of county commissioners of the county in which the greatest portion of the territory of the petitioning village, community, neighborhood or district lies may declare by ordinance that a village, community, neighborhood or district is a "traditional historic community" upon petition by twenty-five percent or more of the registered qualified electors of the territory within the village, community, neighborhood or district requesting the designation. The number of registered qualified electors shall be based on county records as of the date of the last general election.

E. Any village, community, neighborhood or district that is declared a traditional historic village shall be excluded from the extraterritorial zone and extraterritorial zoning authority of any municipality whose extraterritorial zoning authority extends to include all or a portion of the traditional historic community and shall be subject to the zoning jurisdiction of the county in which the greatest portion of the traditional historic community lies."

Section 4

Section 4. A new section of Chapter 3, Article 7 NMSA 1978 is enacted to read:

"TRADITIONAL HISTORIC COMMUNITY--QUALIFICATIONS--ANNEXATION RESTRICTIONS.--

A. To qualify as a traditional historic community, an area shall:

(1) be an unincorporated area of a class B county with a population between ninety-five thousand and ninety-nine thousand five hundred, based on the 1990 federal decennial census;

(2) be an identifiable village, community, neighborhood or district that can be documented as having existed for more than one hundred years;

(3) include structures or landmarks that are associated with the identity of the specific village, community, neighborhood or district seeking designation as a traditional historic community;

(4) have a distinctive character or traditional quality that can be distinguished from surrounding areas or new developments in the vicinity; and

(5) be declared a traditional historic community by an ordinance of the board of county commissioners of the county in which the petitioning village, community, neighborhood or district is located.

B. A traditional historic community may be annexed by a municipality only by petition of a majority of the registered qualified electors of the territory within the traditional historic community proposed to be annexed by the municipality or by the arbitration method of annexation only upon petition of a majority of the registered qualified electors of the territory within the traditional historic community."

Section 5

Section 5. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE GOVERNMENT AND URBAN AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 1130 WITH EMERGENCY CLAUSE
SIGNED APRIL 6, 1995

CHAPTER 212

RELATING TO SUBDIVISIONS; ESTABLISHING ADDITIONAL PROCEDURES FOR
SUBDIVIDING LAND; PROVIDING FOR INCREASED CIVIL AND CRIMINAL
PENALTIES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NEW
MEXICO SUBDIVISION ACT.

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

Section 1

Section 1. Section 47-6-1 NMSA 1978 (being Laws 1973, Chapter 348, Section 1) is amended to read:

"47-6-1. SHORT TITLE.--Chapter 47, Article 6 NMSA 1978 may be cited as the "New Mexico Subdivision Act".

Section 2

Section 2. Section 47-6-2 NMSA 1978 (being Laws 1973, Chapter 348, Section 2, as amended) is amended to read:

"47-6-2. DEFINITIONS.--As used in the New Mexico Subdivision Act:

A. "immediate family member" means a husband, wife, father, stepfather, mother, stepmother, brother, stepbrother, sister, stepsister, son, stepson, daughter, stepdaughter, grandson, stepgrandson, granddaughter, stepgranddaughter, nephew and niece, whether related by natural birth or adoption;

B. "lease" means to lease or offer to lease land;

C. "parcel" means land capable of being described by location and boundaries and not dedicated for public or common use;

D. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity;

E. "final plat" means a map, chart, survey, plan or replat certified by a licensed, registered land surveyor containing a description of the subdivided land with ties to permanent monuments prepared in a form suitable for filing of record;

F. "preliminary plat" means a map of a proposed subdivision showing the character and proposed layout of the subdivision and the existing conditions in and around it, and need not be based upon an accurate and detailed survey of the land;

G. "sell" means to sell or offer to sell land;

H. "subdivide" means to divide a surface area of land into a subdivision;

I. "subdivider" means any person who creates or who has created a subdivision individually or as part of a common promotional plan or any person engaged in the sale, lease or other conveyance of subdivided land; however, "subdivider" does not include any duly licensed real estate broker or salesperson acting on another's account;

J. "subdivision" means the division of a surface area of land, including land within a previously approved subdivision, into two or more parcels for the purpose of sale, lease or other conveyance or for building development, whether immediate or future; but "subdivision" does not include:

(1) the sale, lease or other conveyance of any parcel that is thirty-five acres or larger in size within any twelve-month period, provided that the land has been used primarily and continuously for agricultural purposes, in accordance with Section 7-36-20 NMSA 1978, for the preceding three years;

(2) the sale or lease of apartments, offices, stores or similar space within a building;

(3) the division of land within the boundaries of a municipality;

(4) the division of land in which only gas, oil, mineral or water rights are severed from the surface ownership of the land;

(5) the division of land created by court order where the order creates no more than one parcel per party;

(6) the division of land for grazing or farming activities provided the land continues to be used for grazing or farming activities;

(7) the division of land resulting only in the alteration of parcel boundaries where parcels are altered for the purpose of increasing or reducing the size of contiguous parcels and where the number of parcels is not increased;

(8) the division of land to create burial plots in a cemetery;

(9) the division of land to create a parcel that is sold or donated as a gift to an immediate family member; however, this exception shall be limited to allow the seller or donor to sell or give no more than one parcel per tract of land per immediate family member;

(10) the division of land created to provide security for mortgages, liens or deeds of trust; provided that the division of land is not the result of a seller-financed transaction;

(11) the sale, lease or other conveyance of land that creates no parcel smaller than one hundred forty acres;

(12) the division of land to create a parcel that is donated to any trust or nonprofit corporation granted an exemption from federal income tax, as described in Section 501 (c)(3) of the United States Internal Revenue Code of 1986, as amended; school, college or other institution with a defined curriculum and a student body and faculty that conducts classes on a regular basis; or to any church or group organized for the purpose of divine worship, religious teaching or other specifically religious activity; or

(13) the sale, lease or other conveyance of a single parcel from a tract of land, except from a tract within a previously approved subdivision, within any five-year period; provided that a second or subsequent sale, lease or other conveyance from the same tract of land within five years of the first sale, lease or other conveyance shall be subject to the provisions of the New Mexico Subdivision Act; provided further that a survey shall be filed with the county clerk indicating the five-year holding period for both the original tract and the newly created tract.

K. "terrain management" means the control of floods, drainage and erosion and measures required for adapting proposed development to existing soil characteristics and topography;

L. "time of purchase, lease or other conveyance" means the time of signing any document obligating the person signing the document to purchase, lease or otherwise acquire a legal interest in land;

M. "common promotional plan" means any plan or scheme of operation, undertaken by a single subdivider or a group of subdividers acting in concert, to offer for sale or lease parcels of land where such land is either contiguous or part of the same area of land or is known, designated or advertised as a common unit or by a common name;

N. "type-one subdivision" means any subdivision containing five hundred or more parcels, any one of which is less than ten acres in size;

O. "type-two subdivision" means any subdivision containing not fewer than twenty-five but not more than four hundred ninety-nine parcels, any one of which is less than ten acres in size;

P. "type-three subdivision" means any subdivision containing not more than twenty-four parcels, any one of which is less than ten acres in size;

Q. "type-four subdivision" means any subdivision containing twenty-five or more parcels, each of which is ten acres or more in size; and

R. "type-five subdivision" means any subdivision containing not more than twenty-four parcels, each of which is ten acres or more in size."

Section 3

Section 3. Section 47-6-3 NMSA 1978 (being Laws 1973, Chapter 348, Section 3) is amended to read:

"47-6-3. FINAL PLAT--DESCRIPTION.--

A. Any person desiring to subdivide land shall have a final plat of the proposed subdivision certified by a surveyor registered in New Mexico. The final plat shall:

(1) define the subdivision and all roads by reference to permanent monuments;

(2) accurately describe legal access to, roads to and utility easements for each parcel, and if the access or easements are based upon an agreement, the recording data in the land records for the agreement;

(3) number each parcel in progression, give its dimensions and the dimensions of all land dedicated for public use or for the use of the owners of parcels fronting or adjacent to the land; and

(4) delineate those portions of the subdivision that are located in a flood plain.

B. Descriptions of parcels by number and plat designation are valid in conveyances and valid for the purpose of taxation."

Section 4

Section 4. Section 47-6-4 NMSA 1978 (being Laws 1973, Chapter 348, Section 4) is amended to read:

"47-6-4. FINAL PLAT ACKNOWLEDGMENT--AFFIDAVIT.--Every final plat shall contain a statement that the land being subdivided is subdivided in accordance with the final plat. The final plat shall be acknowledged by the owner and subdivider or their authorized agents in the manner required for the acknowledgment of deeds. Every final plat submitted to the county clerk shall be accompanied by an affidavit of the owner and subdivider or their authorized agents stating whether or not the proposed subdivision lies within the subdivision regulation jurisdiction of the county. A copy of the final plat shall be provided to every purchaser, lessee or other person acquiring an interest in the subdivided land prior to sale, lease or other conveyance."

Section 5

Section 5. Section 47-6-5 NMSA 1978 (being Laws 1973, Chapter 348, Section 5, as amended) is amended to read:

"47-6-5. DEDICATION FOR PUBLIC USE--MAINTENANCE.--The final plat shall contain a certificate stating that the board of county commissioners accepted, accepted subject to improvement or rejected, on behalf of the public, any land offered for dedication for public use in conformity with the terms of the offer of dedication. Upon full conformance with the county road construction standards, the roads may be accepted for maintenance by the county. Acceptance of offers of dedication on a final plat shall not be effective until the final plat is filed in the office of the county clerk or a resolution of acceptance by the board of county commissioners is filed in such office."

Section 6

Section 6. Section 47-6-6 NMSA 1978 (being Laws 1973, Chapter 348, Section 6, as amended) is amended to read:

"47-6-6. FILING WITH COUNTY CLERK--DUTIES OF COUNTY CLERK.--The county clerk shall not accept for filing any final plat subject to the New Mexico Subdivision Act that has not been approved as provided in the New Mexico Subdivision Act. Whenever separate documents are to be recorded concurrently with the final plat, the county clerk shall cross-reference such documents. Preliminary plats shall not be filed with the county clerk."

Section 7

Section 7. Section 47-6-7 NMSA 1978 (being Laws 1973, Chapter 348, Section 7) is amended to read:

"47-6-7. VACATION OF PLATS--APPROVAL--DUTIES OF COUNTY CLERK--EFFECT.--

A. Any final plat filed in the office of the county clerk may be vacated or a portion of the final plat may be vacated if:

(1) the owners of the land proposed to be vacated sign an acknowledged statement, declaring the final plat or a portion of the final plat to be vacated; and

(2) the statement is approved by the board of county commissioners of the county within whose platting authority the vacated portion of the subdivision is located.

B. In approving the vacation of all or a part of a final plat, the board of county commissioners shall determine whether or not the vacation will adversely affect the interests of persons on contiguous land or persons within the subdivision being vacated. In approving the vacation of all or a portion of a final plat, the board of county commissioners may require that streets dedicated to the county in the final plat continue to be dedicated to the county. The owners of parcels on the vacated portion of the final plat may enclose in equal proportions the adjoining streets and alleys that are authorized to be abandoned.

C. The approved statement declaring the vacation of a portion or all of a final plat shall be filed in the office of the county clerk in which the final plat is filed. The county clerk shall mark the final plat with the words "Vacated" or "Partially Vacated" and refer on the final plat to the volume and page on which the statement of vacation is recorded.

D. The rights of any utility existing prior to the vacation, total or partial, of any final plat are not affected by the vacation of a final plat."

Section 8

Section 8. Section 47-6-8 NMSA 1978 (being Laws 1973, Chapter 348, Section 8) is amended to read:

"47-6-8. REQUIREMENTS PRIOR TO SALE, LEASE OR OTHER CONVEYANCE.--It is unlawful to sell, lease or otherwise convey land within a subdivision before the following conditions have been met:

A. the final plat has been approved by the board of county commissioners and has been filed with the clerk of the county in which the subdivision is located. Where a subdivision lies within more than one county, the final plat shall be approved by the board of county commissioners of each county in which the subdivision is located and shall be filed with the county clerk of each county in which the subdivision is located;

B. the subdivider has furnished the board of county commissioners a sample copy of his sales contracts, leases and any other documents that will be used to convey an interest in the subdivided land; and

C. all corners of all parcels and blocks within a subdivision have been permanently marked with metal stakes in the ground and a reference stake placed beside one corner of each parcel."

Section 9

Section 9. Section 47-6-9 NMSA 1978 (being Laws 1973, Chapter 348, Section 9, as amended) is amended to read:

"47-6-9. SUBDIVISION REGULATION--COUNTY AUTHORITY.--

A. The board of county commissioners of each county shall regulate subdivisions within the county's boundaries. In regulating subdivisions, the board of county commissioners of each county shall adopt regulations setting forth the county's requirements for:

(1) preliminary and final subdivision plats, including their content and format;

(2) quantifying the maximum annual water requirements of subdivisions, including water for indoor and outdoor domestic uses;

(3) assessing water availability to meet the maximum annual water requirements of subdivisions;

(4) water conservation measures;

(5) water of an acceptable quality for human consumption, and for protecting the water supply from contamination;

(6) liquid waste disposal;

(7) solid waste disposal;

(8) legal access to each parcel;

(9) sufficient and adequate roads to each parcel, including ingress and egress for emergency vehicles;

(10) utility easements to each parcel;

(11) terrain management;

(12) phased development;

(13) protecting cultural properties, archaeological sites and unmarked burials, as required by the Cultural Properties Act;

(14) specific information to be contained in a subdivider's disclosure statement in addition to that required in Section 47-6-17 NMSA 1978;

(15) reasonable fees approximating the cost to the county of determining compliance with the New Mexico Subdivision Act and county subdivision regulations while passing upon subdivision plats;

(16) a summary procedure for reviewing certain type-three and all type-five subdivisions as provided in Section 47-6-11 NMSA 1978;

(17) recording all conveyances of parcels with the county clerk;

(18) financial security to assure the completion of all improvements that the subdivider proposes to build or to maintain;

(19) fencing subdivided land, where appropriate, in conformity with Section 77-16-1 NMSA 1978, which places the duty on the purchaser, lessee or other person acquiring an interest in the subdivided land to fence out livestock; and

(20) any other matter relating to subdivisions that the board of county commissioners feels is necessary to promote health, safety or the general welfare.

B. Subsection A of this section does not preempt the authority of any state agency to regulate or perform any activity that it is required or authorized by law to perform.

C. The following counties shall adopt regulations pursuant to this section on or before July 1, 1996: Bernalillo, Dona Ana and Santa Fe.

D. All remaining counties shall adopt regulations pursuant to this section on or before July 1, 1997.

E. Nothing in the New Mexico Subdivision Act shall be construed to limit the authority of counties to adopt subdivision regulations with requirements that are more stringent than the requirements set forth in the New Mexico Subdivision Act, provided the county has adopted a comprehensive plan in accordance with Section 3-21-5 NMSA 1978 and those regulations are consistent with such plan."

Section 10

Section 10. Section 47-6-10 NMSA 1978 (being Laws 1973, Chapter 348, Section 10, as amended) is amended to read:

"47-6-10. COUNTY SUBDIVISION REGULATIONS--HEARINGS--APPEAL.--In promulgating subdivision regulations, the board of county commissioners shall adhere to the following procedures.

A. Prior to adopting, amending or repealing any regulation, the board of county commissioners shall consult with representatives of the state engineer's office, the department of environment, the office of cultural affairs, all soil and water conservation districts within the county, the state highway and transportation department and the attorney general about the subjects within their respective expertise for which the board of county commissioners is considering promulgating a regulation. In the process of the consultation, the representatives of each of the state agencies shall give consideration to the conditions peculiar to the county and shall submit written guidelines to the board of county commissioners for its consideration in formulating regulations. The guidelines:

(1) shall be given consideration by the board of county commissioners in the formulation of the county's subdivision regulations;

(2) shall become a part of the record of any hearing in which regulations are adopted, amended or repealed; and

(3) may be in such detail as the agency involved desires.

B. A regulation may not be adopted, amended or repealed until after a public hearing held by the board of county commissioners. Notice of the hearing shall be given at least thirty days prior to the hearing date and shall state:

(1) the subject of the regulation;

(2) the time and place of the hearing;

(3) the manner in which interested persons may present their views; and

(4) the place and manner in which interested persons may secure copies of any proposed regulation. The board of county commissioners may impose a reasonable charge for the costs of reproducing and mailing of the proposed regulations.

C. The notice shall be published in a newspaper of general circulation in the county.

D. Reasonable effort shall be made to give notice to all persons who have made a written request to the board of county commissioners for advance notice of its hearings.

E. The board of county commissioners shall give the state engineer, the department of environment, the office of cultural affairs, the state highway and transportation department, all soil and water conservation districts within the county and the attorney general thirty days' notice of its regulation hearings.

F. At the hearing, the board of county commissioners shall allow all interested persons reasonable opportunity to submit data, views or arguments, orally or in writing, and to examine witnesses testifying at the hearing. The board shall keep a complete record of the hearing proceedings.

G. Representatives from the state engineer's office, the department of environment, the office of cultural affairs, all soil and water conservation districts within the county, the state highway and transportation department and the attorney general shall be given the opportunity to make an oral statement at the hearing and to enter into the record of the hearing a written statement setting forth any comments that they may have about the proposed regulation, whether favorable or unfavorable, when the proposed regulation relates to an issue that is within the agencies' respective areas of expertise.

H. A regulation is not invalid because of the failure of a state agency to submit a guideline prior to the promulgation of the regulation or because the representative of a state agency did not appear at a public hearing on the regulation or did not make any comment for entry in the hearing record.

I. The board of county commissioners shall act on the proposed regulations at the regulation hearings or at a public meeting to be held within thirty days of the hearing on the proposed regulations. Upon adopting, amending or repealing the regulations, the board of county commissioners shall include in the record a short statement setting forth the board's reasoning and the basis of the board's decision, including the facts and circumstances considered and the weight given to those facts and circumstances.

J. Any person heard or represented at the hearing shall be given written notice of the board's decision, including the facts and circumstances considered, if the person makes a written request to the board for notice of its decision.

K. A regulation, amendment or repeal is not effective until thirty days after it is filed with the county clerk and the state records administrator.

L. Any person who is or may be adversely affected by a decision of the board of county commissioners to adopt, amend or repeal a regulation may appeal that decision to the district court. All appeals shall be upon the record made at the hearing and shall be filed in the district court within thirty days after the board of county commissioners votes to adopt, amend or repeal the regulation.

M. An appeal is perfected by filing a notice of appeal in the district court of the county that has adopted, amended or repealed the regulation. The appellant shall certify in his notice of appeal that arrangements have been made with the board of county commissioners for preparation of a sufficient number of transcripts of the record of the hearing to support his appeal, including one copy that he shall furnish at his own expense to the board of county commissioners. A copy of the notice of appeal shall also be served upon the board of county commissioners.

N. Upon appeal, the district court shall set aside the regulation only if it is found to be:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence; or
- (3) otherwise not in accordance with law.

O. Any party to the action in district court may appeal to the court of appeals for further relief."

Section 11

Section 11. Section 47-6-11 NMSA 1978 (being Laws 1973, Chapter 348, Section 11, as amended) is amended to read:

"47-6-11. PRELIMINARY PLAT APPROVAL--SUMMARY REVIEW.--

A. Preliminary plats shall be submitted for type-one, type-two, type-three, except type-three subdivisions that are subject to review under summary procedure as set forth in Subsection I of this section, and type-four subdivisions.

B. Prior to approving the preliminary plat, the board of county commissioners of the county in which the subdivision is located shall require that the subdivider furnish documentation of:

- (1) water sufficient in quantity to fulfill the maximum annual water requirements of the subdivision, including water for indoor and outdoor domestic uses;

(2) water of an acceptable quality for human consumption and measures to protect the water supply from contamination;

(3) the means of liquid waste disposal for the subdivision;

(4) the means of solid waste disposal for the subdivision;

(5) satisfactory roads to each parcel, including ingress and egress for emergency vehicles, and utility easements to each parcel;

(6) terrain management to protect against flooding, inadequate drainage and erosion; and

(7) protections for cultural properties, archaeological sites and unmarked burials that may be impacted directly by the subdivision, as required by the Cultural Properties Act.

C. In addition to the requirements of Subsection B of this section, prior to approving the preliminary plat, the board of county commissioners of the county in which the subdivision is located shall:

(1) determine whether the subdivider can fulfill the proposals contained in his disclosure statement required by Section 47-6-17 NMSA 1978; and

(2) determine whether the subdivision will conform with the New Mexico Subdivision Act and the county's subdivision regulations.

D. The board of county commissioners shall not approve the preliminary plat if the subdivider cannot reasonably demonstrate that he can fulfill the requirements of Subsections B and C of this section.

E. Any subdivider submitting a preliminary plat for approval shall submit sufficient information to the board of county commissioners to permit the board to determine whether the subdivider can fulfill the requirements of Subsections B and C of this section.

F. In determining whether a subdivider can fulfill the requirements of Subsections B and C of this section, the board of county commissioners shall, within ten days after the preliminary plat is deemed complete, request opinions from:

(1) the state engineer to determine:

a) whether the subdivider can furnish water sufficient in quantity to fulfill the maximum annual water requirements of the subdivision, including water for indoor and outdoor domestic uses; and

(b) whether the subdivider can fulfill the proposals in his disclosure statement concerning water, excepting water quality;

(2) the department of environment to determine:

(a) whether the subdivider can furnish water of an acceptable quality for human consumption and measures to protect the water supply from contamination in conformity with state regulations promulgated pursuant to the Environmental Improvement Act;

(b) whether there are sufficient liquid and solid waste disposal facilities to fulfill the requirements of the subdivision in conformity with state regulations promulgated pursuant to the Environmental Improvement Act, the Water Quality Act and the Solid Waste Act; and

(c) whether the subdivider can fulfill the proposals contained in his disclosure statement concerning water quality and concerning liquid and solid waste disposal facilities;

(3) the state highway and transportation department to determine whether the subdivider can fulfill the state highway access requirements for the subdivision in conformity with state regulations promulgated pursuant to Section 67-3-16 NMSA 1978;

(4) the soil and water conservation district to determine:

(a) whether the subdivider can furnish terrain management sufficient to protect against flooding, inadequate drainage and erosion;

(b) whether the subdivider can fulfill the proposals contained in his disclosure statement concerning terrain management; and

(5) such other public agencies as the county deems necessary, such as local school districts and fire districts, to determine whether there are adequate facilities to accommodate the proposed subdivision.

G. If, in the opinion of each appropriate public agency, a subdivider can fulfill the requirements of Subsection F of this section, then the board of county commissioners shall weigh these opinions in determining whether to approve the preliminary plat at a public hearing to be held in accordance with Section 47-6-14 NMSA 1978.

H. If, in the opinion of the appropriate public agency, a subdivider cannot fulfill the requirements of Subsection F of this section, or if the appropriate public agency does not have sufficient information upon which to base an opinion on any one

of these subjects, the subdivider shall be notified of this fact by the board of county commissioners, and the procedure set out below shall be followed:

(1) if the appropriate public agency has rendered an adverse opinion, the board of county commissioners shall give the subdivider a copy of the opinion;

(2) the subdivider shall be given thirty days from the date of notification to submit additional information to the public agency through the board of county commissioners; and

(3) the public agency shall have thirty days from the date the subdivider submits additional information to change its opinion, or issue a favorable opinion when it has withheld one because of insufficient information. No more than thirty days following the date of the expiration of the thirty-day period, during which the public agency reviews any additional information submitted by the subdivider, the board of county commissioners shall hold a public hearing in accordance with Section 47-6-14 NMSA 1978 to determine whether to approve the preliminary plat. Where the public agency has rendered an adverse opinion, the subdivider has the burden of showing that the adverse opinion is incorrect either as to factual or legal matters.

I. If a type-three subdivision contains five or fewer parcels of land, and unless the land within the subdivision has been previously identified in the county's comprehensive plan, as amended or supplemented, or zoning ordinances as an area subject to unique circumstances or conditions that require additional review:

(1) if the smallest parcel is not less than three acres in size, the board of county commissioners shall use the same summary procedure for reviewing the subdivision as the board uses for reviewing type-five subdivisions; or

(2) if the smallest parcel is less than three acres in size, the board of county commissioners may use the same summary procedure for reviewing the subdivision as the board uses for reviewing type-five subdivisions.

J. Prior to approving the final plat of a type-five subdivision, the board of county commissioners of the county in which the subdivision is located shall:

(1) determine whether the subdivider can fulfill the proposals contained in his disclosure statement required by Section 47-6-17 NMSA 1978; and

(2) determine whether the subdivision conforms with the New Mexico Subdivision Act and the county's subdivision regulations.

K. The board of county commissioners shall not approve the final plat of any type-five subdivision if the subdivider cannot reasonably demonstrate that he can fulfill the requirements of Subsection J of this section.

L. Any subdivider submitting a plat of a type-five subdivision shall submit sufficient information to the board of county commissioners to permit the board to determine whether the subdivider can fulfill the requirements of Subsection J of this section.

M. The board of county commissioners shall by regulation establish a procedure for summary review for certain type-three subdivisions, as provided in Subsection I of this section and all type-five subdivisions. If the board of county commissioners fails to adopt criteria for summary review, the board of county commissioners shall approve the plat if it complies with Sections 47-6-3 and 47-6-4 NMSA 1978 within the time limitation set forth in Section 47-6-22 NMSA 1978. The board of county commissioners may delegate to any county administrative officer or planning commission member the authority to approve any subdivision under summary review. Approval by summary review is conclusive evidence of the approval of the board of county commissioners."

Section 12

Section 12. A new section of the New Mexico Subdivision Act is enacted to read:

"EXPIRATION OF PRELIMINARY PLAT.--

A. An approved or conditionally approved preliminary plat shall expire twenty-four months after its approval or conditional approval, or after any additional period of time as may be prescribed by county regulation, not to exceed an additional twelve months. However, if the subdivider proposes to file multiple final plats as provided for under county regulations governing phased development, each filing of a final plat shall extend the expiration of the approved or conditionally approved preliminary plat for an additional thirty-six months from the date of its expiration or the date of the previously filed final plat, whichever is later. The number of phased final plats shall be determined by the board of county commissioners at the time of the approval or conditional approval of the preliminary plat.

B. Prior to the expiration of the approved or conditionally approved preliminary plat, the subdivider may submit an application for extension of the preliminary plat for a period of time not exceeding a total of three years. The period of time specified in this subsection shall be in addition to the period of time provided in Subsection A of this section.

C. The expiration of the approved or conditionally approved preliminary plat shall terminate all proceedings on the subdivision, and no final plat shall be filed without first processing a new preliminary plat."

Section 13

Section 13. A new section of the New Mexico Subdivision Act is enacted to read:

"WATER PERMIT REQUIRED FOR FINAL PLAT APPROVAL.--

A. Until July 1, 1997, before approving the final plat for a subdivision containing twenty or more parcels, any one of which is two acres or less in size, the board of county commissioners shall require that the subdivider provide a copy of a permit obtained from the state engineer, issued pursuant to Section 72-5-1, 72-5-23 or 72-5-24 NMSA 1978, or if the subdivision is located within a declared underground water basin, provide a copy of a permit obtained from the state engineer issued pursuant to those sections, or to Section 72-12-3 or 72-12-7 NMSA 1978, for the subdivision water use. In acting on the permit application, the state engineer shall determine whether the amount of water permitted is sufficient in quantity to fulfill the maximum annual water requirements of the subdivision, including water for indoor and outdoor domestic uses. The board of county commissioners shall not approve the final plat unless the state engineer has so issued a permit for the subdivision water use.

B. On or after July 1, 1997, before approving the final plat for a subdivision containing twenty or more parcels, any one of which is two acres or less in size, the board of county commissioners may require that the subdivider provide a copy of a permit obtained from the state engineer, issued pursuant to Section 72-5-1, 72-5-23 or 72-5-24 NMSA 1978, or if the subdivision is located within a declared underground water basin, provide a copy of a permit obtained from the state engineer issued pursuant to those sections, or to Section 72-12-3 or 72-12-7 NMSA 1978, for the subdivision water use. In acting on the permit application, the state engineer shall determine whether the amount of water permitted is sufficient in quantity to fulfill the maximum annual water requirements of the subdivision, including water for indoor and outdoor domestic uses. The board of county commissioners may elect not to approve the final plat if the state engineer has not issued a permit for the subdivision water use."

Section 14

Section 14. A new section of the New Mexico Subdivision Act is enacted to read:

"APPROVAL OF FINAL PLATS.--

A. After the approval or conditional approval of a preliminary plat and prior to the expiration of such plat, the subdivider may prepare a final plat in accordance with the approved or conditionally approved preliminary plat.

B. The board of county commissioners shall not deny a final plat if it has previously approved a preliminary plat for the proposed subdivision and it finds that the final plat is in substantial compliance with the previously approved preliminary plat. Denial of a final plat shall be accompanied by a finding identifying the requirements that have not been met.

C. If, at the time of approval of the final plat, any public improvements have not been completed by the subdivider as required by the board of county

commissioners pursuant to the New Mexico Subdivision Act or county subdivision regulations, the board of county commissioners shall, as a condition precedent to the approval of the final plat, require the subdivider to enter into an agreement with the county upon mutually agreeable terms to thereafter complete the improvements at the subdivider's expense."

Section 15

Section 15. Section 47-6-14 NMSA 1978 (being Laws 1973, Chapter 348, Section 14) is amended to read:

"47-6-14. PUBLIC HEARINGS ON PRELIMINARY PLATS.--The board of county commissioners shall adhere to the following requirements concerning public hearings on preliminary plats.

A. Notice of the hearing shall be given at least twenty-one days prior to the hearing date and shall state:

(1) the subject of the hearing;

(2) the time and place of the hearing;

(3) the manner for interested persons to present their views; and

(4) the place and manner for interested persons to secure copies of any favorable or adverse opinion and of the subdivider's proposal. The board of county commissioners may impose a reasonable charge for the costs of reproducing and mailing the opinions and proposals.

B. The notice shall be published in a newspaper of general circulation in the county.

C. Reasonable effort shall be made to give notice to all persons who have made a written request to the board of county commissioners for advance notice of its hearings. Notice shall also be given to any public agency that issued an opinion or withheld an opinion on the basis of insufficient information.

D. Public hearings on preliminary plats shall be held within thirty days from the receipt of all requested public agency opinions where all such opinions are favorable, or within thirty days from the date all public agencies complete their review of any additional information submitted by the subdivider pursuant to Section 47-6-11 NMSA 1978. If the board of county commissioners does not receive a requested opinion within the thirty-day period, the board shall proceed.

E. At the hearing, the board of county commissioners shall allow all interested persons a reasonable opportunity to submit data, views or arguments, orally or in writing, and to examine witnesses testifying at the hearing.

F. The board of county commissioners shall approve, approve with conditions or disapprove the preliminary plat within thirty days of the public hearing at a public meeting of the board of county commissioners."

Section 16

Section 16. Section 47-6-15 NMSA 1978 (being Laws 1973, Chapter 348, Section 15) is amended to read:

"47-6-15. APPEALS.--

A. Any party who is or may be adversely affected by a decision of the board of county commissioners in approving or disapproving a preliminary or final plat may appeal to the district court of the county in which the subdivision is located within thirty days of the date of the board's action.

B. An appeal is perfected by filing a notice of appeal in the district court. A copy of the notice of appeal shall be served upon the board of county commissioners.

C. Upon appeal, the district court shall set aside the action of the board of county commissioners only if it is found to be:

(1) arbitrary, capricious or an abuse of discretion;

(2) not supported by substantial evidence; or

(3) otherwise not in accordance with law.

D. Any party to the action in district court may appeal to the court of appeals for further relief.

E. Any party who is or may be adversely affected by a decision of a delegate of the board of county commissioners in approving or disapproving a final plat under summary review shall appeal the delegate's decision to the board of county commissioners within thirty days of the date of the delegate's decision. The board of county commissioners shall hear the appeal and shall render a decision within thirty days of the date the board receives notice of the appeal. Thereafter, the procedure for appealing the decision of the board of county commissioners set out in Subsections A, B and C of this section shall apply."

Section 17

Section 17. Section 47-6-16 NMSA 1978 (being Laws 1973, Chapter 348, Section 16) is amended to read:

"47-6-16. SUCCEEDING SUBDIVISIONS.--Any proposed subdivision may be combined and upgraded for classification purposes by the board of county commissioners with a previous subdivision if the proposed subdivision includes:

A. a part of a previous subdivision that has been created in the preceding seven-year period; or

B. any land retained by a subdivider after creating a previous subdivision when the previous subdivision was created in the preceding seven-year period."

Section 18

Section 18. Section 47-6-17 NMSA 1978 (being Laws 1973, Chapter 348, Section 17) is amended to read:

"47-6-17. DISCLOSURE.--

A. Prior to selling, leasing or otherwise conveying any land in a subdivision, the subdivider shall disclose in writing such information as the board of county commissioners requires, by regulation, to permit the prospective purchaser, lessee or other person acquiring an interest in subdivided land to make an informed decision about the purchase, lease or other conveyance of the land.

B. The disclosure statement for subdivisions with not fewer than five and not more than one hundred parcels shall contain at least the following information:

(1) the name of the subdivision;

(2) name and address of the subdivider and the name and address of the person in charge of sales or leasing in New Mexico;

(3) total acreage of the subdivision, both present and anticipated;

(4) size of the largest and smallest parcels offered for sale, lease or other conveyance within the subdivision and the proposed range of selling or leasing prices including financing terms;

(5) distance from the nearest town to the subdivision and the route over which this distance is computed;

(6) name and address of the person who is recorded as having legal and equitable title to the land offered for sale, lease or other conveyance;

(7) a statement of the condition of title including any encumbrances;

(8) a statement of all restrictions or reservations of record that subject the subdivided land to any conditions affecting its use or occupancy;

(9) name and address of the escrow agent, if any;

(10) a statement as to availability and cost of public utilities;

(11) a statement describing the maximum annual water requirements of the subdivision, including water for indoor and outdoor domestic uses, and describing the availability of water to meet the maximum annual water requirements;

(12) a statement describing the quality of water in the subdivision available for human consumption;

(13) a description of the means of liquid waste disposal for the subdivision;

(14) a description of the means of solid waste disposal for the subdivision;

(15) a description of the means of water delivery within the subdivision;

(16) the average depth to water within the subdivision if water is available only from subterranean sources;

(17) a description of access to the subdivision;

(18) a statement disclosing whether the roads and other improvements within the subdivision will be maintained by the county, the subdivider or an association of lot owners and what measures have been taken to ensure that maintenance will take place;

(19) a description of the subdivider's provisions for terrain management;

(20) a summary, approved by the issuing state agency, of the opinions, if any, whether favorable or adverse, provided by state agencies to the board of county commissioners concerning any one of the points listed above;

(21) a statement that the subdivider shall record the deed, real estate contract, lease or other instrument conveying an interest in subdivided land with the appropriate county clerk within thirty days of

the signing of such instrument by the purchaser, lessee or other person acquiring an interest in the land;

(22) a statement advising the purchaser, lessee or other person acquiring an interest in subdivided land that building permits, wastewater permits or other use permits are required to be issued by state or county officials before improvements are constructed; and that further, he is advised to investigate the availability of such permits before purchase, lease or other conveyance and whether these are requirements for construction of additional improvements before he may occupy the property; and

(23) such other information as the board of county commissioners may require.

C. The disclosure statement for subdivisions with one hundred or more parcels shall contain all of the information required in Subsection B of this section as well as the following information:

(1) a statement of any activities or conditions adjacent to or nearby the subdivision that would subject the subdivided land to any unusual conditions affecting its use or occupancy;

(2) a description of all recreational facilities, actual and proposed, in the subdivision;

(3) a statement as to the availability of:

(a) fire protection;

(b) police protection;

(c) public schools for the inhabitants of the subdivision, including a statement concerning the proximity of the nearest elementary and secondary schools;

(d) hospital facilities;

(e) shopping facilities; and

(f) public transportation; and

(4) a statement setting forth the projected dates upon which any of the items mentioned in this section for which the subdivider has responsibility will be completed if they are not yet completed.

D. Disclosure statements shall be in the form that the board of county commissioners, after consultation with the attorney general, may require by regulation. The board of county commissioners may require by regulation that disclosure statements be printed in both English and Spanish. The form of disclosure statements, insofar as possible, shall be uniform for all counties.

E. Any subdivider who has satisfied the disclosure requirement of the Interstate Land Sales Full Disclosure Act may submit his approved statement of record in lieu of the disclosure statement required by the New Mexico Subdivision Act. However, any information required in the New Mexico Subdivision Act and not covered in the subdivider's statement of record shall be attached to the statement of record.

F. It is unlawful to sell, lease or otherwise convey land in a subdivision until:

(1) the required disclosure statement has been filed with the county clerk, the board of county commissioners and the attorney general's office; and

(2) the prospective purchaser, lessee or other person acquiring an interest in the subdivided land has been given a copy of the disclosure statement."

Section 19

Section 19. Section 47-6-18 NMSA 1978 (being Laws 1973, Chapter 348, Section 18) is amended to read:

"47-6-18. ADVERTISING STANDARDS.--

A. Brochures, disclosure statements, publications and advertising of any form relating to subdivided land shall:

(1) not misrepresent or contain false or misleading statements of fact;

(2) not describe deeds, title insurance or other items included in a transaction as "free" and shall not state that any parcel is "free" or given as an "award" or "prize" if any consideration is required for any reason;

(3) not describe parcels available for "closing costs only" or similar terms unless all such costs are accurately and completely itemized or when additional parcels must be purchased at a higher price;

(4) not include an asterisk or other reference symbol as a means of contradicting or substantially changing any statement;

(5) if subdivision illustrations are used, accurately portray the subdivision in its present state, and if illustrations are used portraying points of interest outside the subdivision, state the actual road miles from the subdivision;

(6) not contain artists' conceptions of the subdivision or any facilities within it unless clearly described as such and shall not contain maps unless accurately drawn to scale with the scale indicated;

(7) not contain references to any facilities, points of interest or municipalities located outside the subdivision unless the distances from the subdivision are stated in the advertisement in actual road miles; and

(8) refer to where the subdivider's disclosure statement may be obtained.

B. Copies of all brochures, publications and advertising relating to subdivided land shall be filed with the board of county commissioners of the county in which the subdivision is located and with the attorney general within fifteen days after initial use by the subdivider."

Section 20

Section 20. Section 47-6-19 NMSA 1978 (being Laws 1973, Chapter 348, Section 19, as amended) is amended to read:

"47-6-19. ROAD DEVELOPMENT.--

A. Roads within a subdivision shall be constructed only on a schedule approved by the board of county commissioners. In approving or disapproving a subdivider's road construction schedule, the board of county commissioners shall consider:

(1) the proposed use of the subdivision;

(2) the period of time before the roads will receive substantial use;

(3) the period of time before construction of homes will commence on the portion of the subdivision serviced by the road;

(4) the county regulations governing phased development; and

(5) the needs of prospective purchasers, lessees and other persons acquiring an interest in subdivided land in viewing the land within the subdivision.

B. All proposed roads shall conform to minimum county safety standards.

C. The board of county commissioners shall not approve the grading or construction of roads unless and until the subdivider can reasonably demonstrate that the roads to be constructed will receive use and that the roads are required to provide access to parcels or improvements within twenty-four months from the date of construction of the road.

D. It is unlawful for the subdivider to grade or otherwise commence construction of roads unless the construction conforms to the schedule of road development approved by the board of county commissioners."

Section 21

Section 21. Section 47-6-20 NMSA 1978 (being Laws 1973, Chapter 348, Section 20) is amended to read:

"47-6-20. PUBLIC AGENCIES REQUIRED TO PROVIDE COUNTIES WITH INFORMATION.--

A. Any public agency receiving a request from the board of county commissioners for an opinion pursuant to Section 47-6-11 NMSA 1978 shall furnish the board with the requested opinion within the time period set forth in Subsection A of Section 47-6-22 NMSA 1978. The board of county commissioners shall furnish the appropriate public agency with all relevant information that the board has received from the subdivider on the subject for which the board is seeking an opinion. If the public agency does not have sufficient information upon which to base an opinion, the public agency shall notify the board of this fact.

B. All opinion requests mailed by the board of county commissioners shall be by certified mail "return receipt requested". Boards of county commissioners delivering opinion requests shall obtain receipts showing the day the opinion request was received by the particular public agency."

Section 22

Section 22. Section 47-6-21 NMSA 1978 (being Laws 1973, Chapter 348, Section 21) is amended to read:

"47-6-21. INFORMATION REPORTS.--In determining whether the subdivider can fulfill the requirements of the subdivision and the proposals contained in his disclosure statement, the appropriate public agency may request, through the board of county commissioners, that the subdivider submit such information as the agency may feel necessary to permit it to make that determination."

Section 23

Section 23. Section 47-6-22 NMSA 1978 (being Laws 1973, Chapter 348, Section 22, as amended) is amended to read:

"47-6-22. TIME LIMIT ON ADMINISTRATIVE ACTION.--

A. All opinions required of public agencies shall be furnished to the board of county commissioners within thirty days after the public agencies receive the written request and accompanying information from the board of county commissioners. If the board of county commissioners does not receive a requested opinion within the thirty-day period, the board shall proceed in accordance with its own best judgment concerning the subject of the opinion request. The failure of a public agency to provide an opinion when requested by the board of county commissioners does not indicate that the subdivider's provisions concerning the subject of the opinion request were acceptable or unacceptable or adequate or inadequate.

B. Final plats submitted to the board of county commissioners for approval shall be approved or disapproved at a public meeting of the board of county commissioners within thirty days of the date the final plat is deemed complete.

C. If the board of county commissioners does not act upon a final plat within the required period of time, the subdivider shall give the board of county commissioners written notice of its failure to act. If the board of county commissioners fails to approve or reject the final plat within thirty days, the board of county commissioners shall, upon demand by the subdivider, issue a certificate stating that the final plat has been approved."

Section 24

Section 24. Section 47-6-23 NMSA 1978 (being Laws 1973, Chapter 348, Section 23) is amended to read:

"47-6-23. RIGHT OF INSPECTION--RESCISSION.--If the purchaser, lessee or other person acquiring an interest in the subdivided land has not inspected his parcel prior to the time of purchase, lease or other conveyance, the purchase, lease or other conveyancing agreement shall contain a provision giving the purchaser, lessee or other person acquiring an interest in the subdivided land six months within which to personally inspect his parcel. After making the personal inspection within the six-month period, the purchaser, lessee or other person acquiring an interest in the subdivided land has the right to rescind the purchase, lease or other conveyancing agreement and receive a refund of all funds paid on the transaction to the seller, lessor or other conveyor of subdivided land when merchantable title is revested in the seller, lessor or other conveyor of subdivided land. Notice of such rescission to the seller, lessor or other conveyor of subdivided land shall be made in writing and shall be given within three days of the date of personal inspection."

Section 25

Section 25. A new section of the New Mexico Subdivision Act is enacted to read:

"APPROVAL NECESSARY FOR UTILITY CONNECTION.--Any water, sewer, electric or gas utility that connects service to individual parcels within a subdivision, before a final plat for the subdivision has been approved by the board of county commissioners or before the landowner holds a valid building permit, may be fined a civil penalty of up to five hundred dollars (\$500) by the board of county commissioners. The board of county commissioners may also require any utility connected in violation of this section to be disconnected."

Section 26

Section 26. Section 47-6-25 NMSA 1978 (being Laws 1973, Chapter 348, Section 25) is amended to read:

"47-6-25. SUSPENSION OF RIGHT OF SALE.--The board of county commissioners may suspend or revoke approval of a plat as to the unsold, unleased or otherwise unconveyed portions of a subdivider's plat if the subdivider does not meet the schedule of compliance approved by the board."

Section 27

Section 27. Section 47-6-25.1 NMSA 1978 (being Laws 1981, Chapter 148, Section 7) is amended to read:

"47-6-25.1. ATTORNEY GENERAL--DISTRICT ATTORNEYS--
INVESTIGATION.--

A. If the attorney general or a district attorney has reasonable cause to believe that a person has information or may be in possession, custody or control of any document or other tangible object relevant to a civil investigation for violation of the New Mexico Subdivision Act, the attorney general or the district attorney, or both, may before bringing any action apply to the district court of Santa Fe county, or any county where the district attorney has his office, for approval of a civil investigative demand, demanding, in writing, such person to appear and be examined under oath, to answer written interrogatories under oath or to produce the document or object for inspection and copying. The demand shall:

(1) be served upon the person in the manner required for service of process in this state or, if the person cannot be found or does not reside or maintain a principal place of business within this state, in the manner required for service of process in the state in which the person resides, maintains a principal place of business or can be found;

(2) describe the nature of the conduct under investigation;

(3) describe the class of documents or objects with sufficient definiteness to permit it to be fairly identified if the production of documents or objects is requested;

(4) contain a copy of the written interrogatories if answers to written interrogatories are sought;

(5) prescribe a reasonable time at which the person shall appear to testify or within which the document or object must be produced;

(6) specify a place for the taking of testimony or for production of the document or object and designate a person who may be an authorized employee of the attorney general or district attorney to be custodian of the document or object; and

(7) contain a copy of Subsections C through E of this section.

B. No demand to produce a document or object for inspection and copying shall contain any requirement that would be unreasonable or improper if contained in a subpoena duces tecum issued in a civil proceeding by a district court of this state. The district court shall approve the demand if it finds that the attorney general or district attorney has reasonable cause to believe that a person has information or may be in possession, custody or control of any document or other tangible object relevant to a civil investigation for violation of the New Mexico Subdivision Act and that the demand is proper in form. A demand shall not be issued without approval of the district court.

C. If a person fails to comply with the written demand served upon him under the provisions of Subsection A of this section, the attorney general or district attorney may file a petition for an order to enforce the demand in the district court of the county in which the person resides or in which he maintains a principal place of business within this state or of the county of Santa Fe if the person neither resides nor has a principal place of business in this state. Notice of hearing on the petition and a copy of the petition shall be served upon the person, who may appear in opposition to the petition. If the court finds that the demand is proper in form and there is reasonable cause to believe that the person has information or may be in possession, custody or control of any document or other tangible object relevant to a civil investigation for violation of the New Mexico Subdivision Act, the court shall order the person to comply with the demand, subject to any modification that the court may prescribe. Upon motion by the person and for good cause shown, the court may make any further protective order in the proceedings that justice requires.

D. Prior to the filing of an action under the provisions of the New Mexico Subdivision Act for the violation under investigation, any testimony taken or material produced under this section shall be kept confidential by the attorney general or district attorney unless confidentiality is waived by the person being investigated and the person who has testified, answered interrogatories or produced material, or unless disclosure is authorized by the court. Any testimony taken or material produced under

this section shall be open to inspection only to the attorney general or district attorney and the person upon whom the demand for which inspection is sought has been served, unless otherwise ordered by the court.

E. Any person compelled to appear under this section and required to testify under oath may be accompanied, represented and advised by counsel. An objection may properly be made, received and entered upon the record when it is claimed that the person is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege."

Section 28

Section 28. Section 47-6-26 NMSA 1978 (being Laws 1973, Chapter 348, Section 26, as amended) is amended to read:

"47-6-26. INJUNCTIVE RELIEF--MANDAMUS.--

A. The board of county commissioners, the district attorney or the attorney general may apply to the district court for any one or more of the following remedies in connection with violations of the New Mexico Subdivision Act and county subdivision regulations:

(1) injunctive relief to prohibit a subdivider from selling, leasing or otherwise conveying an interest in subdivided land until he complies with the terms of the New Mexico Subdivision Act and county subdivision regulations;

(2) mandatory injunctive relief to compel compliance by any person with the provisions of the New Mexico Subdivision Act and county subdivision regulations;

(3) rescission and restitution for persons who have purchased, leased or otherwise acquired an interest in subdivided land that was divided, sold, leased or otherwise conveyed in material violation of the New Mexico Subdivision Act or county subdivision regulations; or

(4) a civil penalty of up to five thousand dollars (\$5,000) for each parcel created in knowing, intentional or willful material violation of the New Mexico Subdivision Act or county subdivision regulations.

B. The board of county commissioners, the district attorney and the attorney general shall not be required to post bond when seeking a temporary or permanent injunction or mandamus pursuant to the provisions of the New Mexico Subdivision Act.

C. In any action by the attorney general pursuant to the New Mexico Subdivision Act, venue shall be proper in the district court of any county where all or

part of the land is situated or the district court of the county where the defendant resides.

D. Nothing in this section shall be construed as limiting any common-law right of any person in any court relating to subdivisions."

Section 29

Section 29. Section 47-6-27 NMSA 1978 (being Laws 1973, Chapter 348, Section 27, as amended) is amended to read:

"47-6-27. CRIMINAL PENALTIES.--

A. Any person who knowingly, intentionally or willfully commits a material violation of the New Mexico Subdivision Act is guilty of a misdemeanor, punishable by a fine of not more than ten thousand dollars (\$10,000) per violation, or by imprisonment for not more than one year, or both.

B. Any person who is convicted of a second or subsequent knowing, intentional or willful violation of the New Mexico Subdivision Act is guilty of a fourth degree felony, punishable by a fine of not more than twenty-five thousand dollars (\$25,000) per violation or by imprisonment for not more than eighteen months, or both."

Section 30

Section 30. Section 47-6-27.1 NMSA 1978 (being Laws 1981, Chapter 148, Section 9) is amended to read:

"47-6-27.1. PRIVATE REMEDIES.--

A. Any sale, lease or other conveyance of land within a subdivision subject to the New Mexico Subdivision Act, which subdivision has not been approved by the board of county commissioners, shall be voidable at the option of the purchaser, lessee or other person acquiring an interest in the subdivided land. The purchaser, lessee or other person acquiring an interest in the subdivided land may recover restitution of all money, property or other things paid to or received by the seller, lessor or other conveyor of the subdivided land. The action shall be brought within six years from the time of purchase, lease or other conveyance, in accordance with Section 37-1-3 NMSA 1978.

B. Any purchaser, lessee or other person acquiring an interest in the subdivided land who suffers any loss of money or property, real or personal, as a result of any violation of the New Mexico Subdivision Act or any county subdivision regulation may bring an action to recover actual damages. The action shall be brought within six years from the time of purchase, lease or other conveyance, in accordance with Section 37-1-3 NMSA 1978.

C. Any purchaser, lessee or other person acquiring an interest in the subdivided land who has purchased, leased or otherwise acquired an interest in land within an approved subdivision may bring an action in district court to compel specific performance of any proposed improvement set forth in a subdivider's disclosure statement or in any document obligating the person signing the document to purchase, lease or otherwise acquire an interest in subdivided land or set forth in any advertising or promotional materials relating to the subdivided land. The action shall be brought within six years from the time of purchase, lease or other conveyance, in accordance with Section 37-1-3 NMSA 1978.

D. Costs shall be allowed to the prevailing party unless the court otherwise directs. The court, in its discretion, may award reasonable attorneys' fees to the prevailing party.

E. The remedies provided in this section are in addition to remedies otherwise available under common law or other statutes of this state.

F. This section shall apply to all purchases, leases or other conveyances of subdivided land in approved or unapproved subdivisions that occur after the effective date of this section."

Section 31

Section 31. Section 47-6-29 NMSA 1978 (being Laws 1973, Chapter 348, Section 41, as amended) is amended to read:

"47-6-29. JURISDICTION.--Nothing in the New Mexico Subdivision Act shall be construed as limiting the municipal extraterritorial subdivision and platting jurisdiction provided for in Sections 3-20-1 through 3-20-15 NMSA 1978."

Section 32

Section 32. REPEAL.--Sections 47-6-12 and 47-6-13 NMSA 1978 (being Laws 1973, Chapter 348, Sections 12 and 13, as amended) are repealed.

Section 33

Section 33. SEVERABILITY.--If any part or application of the New Mexico Subdivision Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 34

Section 34. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1996.

HOUSE FLOOR SUBSTITUTE FOR HOUSE JUDICIARY COMMITTEE SUBSTITUTE
FOR HOUSE BILL 1006

CHAPTER 213

RELATING TO LIMITED LIABILITY COMPANIES; AMENDING, REPEALING AND
ENACTING CERTAIN SECTIONS OF THE LIMITED LIABILITY COMPANY ACT.

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

Section 1

Section 1. Section 53-19-3 NMSA 1978 (being Laws 1993, Chapter 280, Section 3) is amended to read:

"53-19-3. NAME.--

A. The name of a limited liability company shall be stated in its articles of organization and shall contain the words "limited liability company" or "limited company" or the abbreviation "L.L.C.", "LLC", "L.C." or "LC". The word "limited" may be abbreviated as "ltd." and the word "company" may be abbreviated as "co.".

B. A limited liability company name shall be distinguishable from the name of any:

(1) limited liability company, limited partnership or corporation existing under the laws of this state;

(2) foreign limited liability company or corporation authorized to transact business in this state; and

(3) name reserved under Section 53-19-4 NMSA 1978.

C. The provisions of Subsection B of this section do not apply if the applicant files with the commission a certified copy of a final decree of a court establishing the prior right of the limited liability company to use such name in this state."

Section 2

Section 2. Section 53-19-16 NMSA 1978 (being Laws 1993, Chapter 280, Section 16) is amended to read:

"53-19-16. LIABILITIES AND DUTIES OF MANAGERS AND MEMBERS.--
Unless otherwise provided by the articles of organization or an operating agreement:

A. a member who is not a manager and is not vested with particular management responsibilities by the articles of organization or an operating agreement shall not be liable to the limited liability company or to the other members solely by reason of his act or omission in his capacity as a member;

B. a member who is vested with particular management responsibilities by the articles of organization or an operating agreement or a manager shall not be liable, responsible or accountable in damages or otherwise to the limited liability company or to the other members solely by reason of his act or omission on behalf of the limited liability company in his capacity as a member having particular management responsibilities or as a manager, unless such act or omission constitutes gross negligence or willful misconduct;

C. a member or manager may lend money to and transact other business with the limited liability company, and except as otherwise provided in Subsection D of this section and subject to other applicable law, he shall have the same rights and obligations with respect to such loan or transaction of business as he would have if he were not a member or manager;

D. every member who is vested with particular management responsibilities by the articles of organization or an operating agreement and every manager shall account to the limited liability company and hold as trustee for it any profit or benefit he derives from:

(1) any transaction connected with the conduct or winding up of the limited liability company; or

(2) any use by such member or manager of the company's property, including confidential or proprietary information of the limited liability company or other matters entrusted to him as a result of his status as a member or manager unless:

(a) the material facts of the relationship of the interested manager or member to the contract, transaction or use were disclosed or known to all of the other managers or members who, in good faith, authorized or approved the contract, transaction or use by: 1) the affirmative vote of a majority of all of the disinterested managers; or 2) the affirmative vote of all of the disinterested members, even though all of the disinterested managers were less than a majority of all of the managers or even though all of the disinterested members did not have a majority share of the voting power of all of the members; or

(b) the contract, transaction or use was fair to the limited liability company when it was authorized or approved."

Section 3

Section 3. Section 53-19-17 NMSA 1978 (being Laws 1993, Chapter 280, Section 17) is amended to read:

"53-19-17. VOTING.--

A. Except as provided by the articles of organization, an operating agreement or the Limited Liability Company Act, members who have contributed to the capital of the limited liability company shall vote in proportion to the value of their contributions to the capital of the limited liability company, determined in accordance with the Limited Liability Company Act and adjusted to the time the vote is taken to reflect all contributions made and all withdrawals of capital by the members prior to such time.

B. Except as provided by the articles of organization, an operating agreement or the Limited Liability Company Act and subject to the provisions of Subsection C of this section:

(1) the affirmative vote, approval or consent of the members having a majority share of the voting power of all members shall be required to amend the articles of organization or an operating agreement to approve the sale, mortgage, pledge or other hypothecation or disposition of all or substantially all of the assets of the limited liability company, to approve the merger or consolidation of the limited liability company or, except as provided in Paragraph (3) of this subsection, to approve any other action required or permitted to be approved by the members;

(2) the affirmative vote, approval or consent of all of the other members shall be required to remove a member from membership in the limited liability company;

(3) if the articles of incorporation or operating agreement vest management responsibility in one or more managers, the affirmative vote, approval or consent of a majority of the managers is required to decide or resolve any difference on any matter connected with carrying on the business and affairs of the limited liability company that is within the scope of the managers' authority; and

(4) any matter connected with the carrying on of the business and affairs of the limited liability company that is not within the scope of the authority of one or more managers, or of one or more members in whom the articles of organization and operating agreement vest particular management responsibility, shall be decided or resolved by the affirmative vote, approval or consent of members having a majority share of the voting power of all members.

C. Notwithstanding the provisions of Subsection B of this section, if a provision in the articles of organization or operating agreement requires a greater than

majority vote to approve a matter, the same greater than majority vote shall be required to amend that provision."

Section 4

Section 4. Section 53-19-39 NMSA 1978 (being Laws 1993, Chapter 280, Section 39) is amended to read:

"53-19-39. DISSOLUTION.--

A. A limited liability company is dissolved upon the happening of any of the following events:

(1) an event specified in the articles of organization or an operating agreement;

(2) except as otherwise provided in the articles of organization or an operating agreement, upon the written consent of members having a majority share of the voting power of all members;

(3) except as otherwise provided in the articles of organization or an operating agreement, a majority in interest of the remaining members do not give their written consent to continue the business of the limited liability company within ninety days after the occurrence of an event of dissociation;

(4) entry of a decree of judicial dissolution pursuant to Section 53-19-40 NMSA 1978.

B. On the dissolution of the limited liability company, the limited liability company shall cease to carry on its business and affairs, except insofar as necessary for winding up the company's business and affairs, but its legal existence shall continue until all its business and affairs are wound up.

C. For purposes of Subsection A of this section, the requirement of written consent is satisfied if the consent is given by remaining members:

(1) holding a majority share of the voting power of all members;

(2) whose aggregate share of the capital of the limited liability company constitutes more than one-half of the aggregate share of capital of the limited liability company of all remaining members; and

(3) whose aggregate share of the distributions and allocations of the limited liability company constitutes more than one-half of the aggregate share of the distributions and allocations to all remaining members."

Section 5

Section 5. Section 53-19-45 NMSA 1978 (being Laws 1993, Chapter 280, Section 45) is amended to read:

"53-19-45. KNOWN CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY.--

A. A dissolved limited liability company may dispose of the known claims against it by filing articles of dissolution pursuant to Section 53-19-41 NMSA 1978 and following the procedure described in this section.

B. The dissolved limited liability company shall notify its known claimants in writing of the dissolution at any time after the effective date of dissolution. The written notice shall:

(1) describe information that must be included in a claim;

(2) provide a mailing address where a claim may be sent;

(3) state the deadline by which claims must be received by the limited liability company, which may not be earlier than the later of one hundred twenty days after the date on which the articles of dissolution were filed pursuant to Section 53-19-41 NMSA 1978 or, if the dissolution was not effective on such filing date, one hundred twenty days after the effective date of dissolution stated in the articles of dissolution;

(4) state that the claim shall be barred if not received by the deadline; and

(5) state the effective date that will apply to any rejection notice that the limited liability company may give upon receipt of any claim.

C. A claim against the dissolved limited liability company is barred:

(1) if a claimant who was given written notice pursuant to Subsection B of this section does not deliver the claim to the dissolved limited liability company by the deadline; or

(2) if a claimant whose claim was rejected in writing by the dissolved limited liability company does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

D. For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution."

Section 6

Section 6. Section 53-19-46 NMSA 1978 (being Laws 1993, Chapter 280, Section 46) is amended to read:

"53-19-46. UNKNOWN CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY.--

A. A dissolved limited liability company may publish notice of its dissolution pursuant to this section and request that persons with claims against the limited liability company present them in accordance with the notice.

B. The notice shall:

(1) be published one time in a newspaper of general circulation in the county where the dissolved limited liability company's principal office or registered office is or was located;

(2) describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) state that a claim against the limited liability company shall be barred unless a proceeding to enforce the claim is commenced within three years after the publication of the notice.

C. If the dissolved limited liability company publishes a newspaper notice in accordance with Paragraph (1) of Subsection B of this section and files articles of dissolution pursuant to Section 53-19-41 NMSA 1978, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved limited liability company within three years after the publication date of the newspaper notice:

(1) a claimant who did not receive written notice pursuant to provisions of Section 53-19-45 NMSA 1978;

(2) a claimant whose claim was timely delivered to the dissolved limited liability company but neither accepted nor rejected; and

(3) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

D. A claim may be enforced under this section:

(1) against the dissolved limited liability company, to the extent of its undistributed assets; or

(2) if the assets have been distributed in winding up, against a member of the dissolved limited liability company to the extent of the lesser of his pro rata share of the claim and the fair market value of the assets of the limited liability company distributed to him in winding up, determined as of the times of such distributions; but a member's total liability for all claims pursuant to the provisions of this section shall not exceed the total fair market value of the assets distributed to him determined as of the date of distribution."

Section 7

Section 7. Section 53-19-59 NMSA 1978 (being Laws 1993, Chapter 280, Section 59) is repealed and a new Section 53-19-59 NMSA 1978 is enacted to read:

"53-19-59. CONVERSIONS AND MERGERS--DEFINITIONS.--As used in Sections 53-19-59 through 53-19-62.3 NMSA 1978:

A. "corporation" means an organization incorporated under the laws of New Mexico or a foreign corporation;

B. "general partner" means a partner in a partnership and a general partner in a limited partnership;

C. "limited partner" means a limited partner in a limited partnership;

D. "limited partnership" means a limited partnership created under the Uniform Limited Partnership Act, a predecessor law or comparable law of another jurisdiction;

E. "partner" includes a general partner and a limited partner;

F. "partnership" means a general partnership under the Uniform Partnership Act, a predecessor law or comparable law of another jurisdiction;

G. "partnership agreement" means an agreement among the partners concerning the partnership or limited partnership; and

H. "shareholder" means a shareholder in a corporation."

Section 8

Section 8. Section 53-19-60 NMSA 1978 (being Laws 1993, Chapter 280, Section 60) is repealed and a new Section 53-19-60 NMSA 1978 is enacted to read:

"53-19-60. CONVERSIONS AND MERGERS--CONVERSION OF PARTNERSHIP OF LIMITED PARTNERSHIP TO LIMITED LIABILITY COMPANY.--

A. A partnership or limited partnership may be converted to a limited liability company pursuant to this section.

B. The terms and conditions of a conversion of a partnership or limited partnership to a limited liability company must be approved by all of the partners or by a number or percentage of the partners required for conversion in the partnership agreement.

C. An agreement of conversion must set forth the terms and conditions of the conversion of the partners' interests into interests in the converted limited liability company or the cash or other consideration to be paid or delivered as a result of the conversion of the partners' interests, or a combination of these.

D. After a conversion is approved under Subsection B of this section, the partnership or limited partnership being converted shall file articles of organization with the commission that satisfy the requirements of Section 53-19-8 NMSA 1978 and that also contain:

(1) a statement that the partnership was converted to a limited liability company from a partnership or limited partnership;

(2) its former name;

(3) a statement of the number of votes cast by the partners entitled to vote for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under Subsection B of this section; and

(4) in the case of a limited partnership, a statement that the certificate of limited partnership is to be canceled as of the date the conversion takes effect.

E. In the case of a limited partnership, the filing of articles of organization under Subsection D of this section cancels its certificate of limited partnership as of the date the conversion took effect.

F. A conversion takes effect when articles of organization are filed with the commission or at any later date specified in the articles of organization.

G. A general partner who becomes a member of a limited liability company as a result of a conversion remains liable as a partner for an obligation incurred by the partnership or limited partnership before the conversion takes effect.

H A general partner's liability for all obligations of the limited liability company incurred after the conversion takes effect is that of a member of the company. A limited partner who becomes a member as a result of a conversion remains liable

only to the extent the limited partner was liable for an obligation incurred by the limited partnership before the conversion takes effect."

Section 9

Section 9. Section 53-19-61 NMSA 1978 (being Laws 1993, Chapter 280, Section 61) is repealed and a new Section 53-19-61 NMSA 1978 is enacted to read:

"53-19-61. CONVERSIONS AND MERGERS--EFFECT OF CONVERSION.--

A. A partnership or limited partnership that has been converted pursuant to Section 53-19-60 NMSA 1978 is for all purposes the same entity that existed before the conversion.

B. When a conversion takes effect:

(1) all property owned by the converting partnership or limited partnership is vested in the limited liability company;

(2) all debts, liabilities and other obligations of the converting partnership or limited partnership continue as obligations of the limited liability company;

(3) an action or proceeding pending by or against the converting partnership or limited partnership may be continued as if the conversion had not occurred;

(4) except as prohibited by other law, all of the rights, privileges, immunities, powers and purposes of the converting partnership or limited partnership are vested in the limited liability company; and

(5) except as otherwise provided in the agreement of conversion under Subsection C of Section 53-19-60 NMSA 1978, all of the partners of the converting partnership continue as members of the limited liability company."

Section 10

Section 10. Section 53-19-62 NMSA 1978 (being Laws 1993, Chapter 280, Section 62) is repealed and a new Section 53-19-62 NMSA 1978 is enacted to read:

"53-19-62. CONVERSIONS AND MERGER OF ENTITIES.--

A. Pursuant to a plan of merger approved under Subsection C of this section, a limited liability company may be merged with or into one or more limited liability companies, foreign limited liability companies, corporations, foreign corporations, partnerships, foreign partnerships, limited partnerships, foreign limited partnerships or other domestic or foreign entities.

B. A plan of merger must set forth:

- (1) the name of each entity that is a party to the merger;
- (2) the name of the surviving entity into which the other entities will merge;
- (3) the type of organization of the surviving entity;
- (4) the terms and conditions of the merger;
- (5) the manner and basis for converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or in part; and
- (6) the street address of the surviving entity's principal place of business.

C. A plan of merger must be approved:

- (1) in the case of a limited liability company that is a party to the merger, by the members representing the percentage of voting power of all members specified in the operating agreement, but not fewer than the members holding a majority of the voting power of all members or, if provision is not made in the operating agreement, by all the members;
- (2) in the case of a foreign limited liability company that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the foreign limited liability company is organized;
- (3) in the case of a partnership or domestic limited partnership that is a party to the merger, by the vote required for approval of a conversion under Subsection B of Section 53-19-60 NMSA 1978; and
- (4) in the case of any other entities that are parties to the merger, by the vote required for approval of a merger by the law of this state or of the other state or foreign jurisdiction in which the entity is organized and, in the absence of such a requirement, by all the owners of interests in the entity.

D. After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

E. The merger is effective upon the filing of the articles of merger with the commission or at such later date as the articles may provide."

Section 11

Section 11. A new Section 53-19-62.1 NMSA 1978 is enacted to read:

"53-19-62.1. CONVERSION AND MERGERS--ARTICLES OF MERGER.--

A. After approval of the plan of merger under Subsection C of Section 53-19-62 NMSA 1978, unless the merger is abandoned under Subsection D of Section 53-19-62 NMSA 1978, articles of merger must be signed on behalf of each limited liability company and other entity that is a party to the merger and delivered to the commission for filing. The articles must set forth:

(1) the name and jurisdiction of formation or organization of each of the limited liability companies and other entities that are parties to the merger;

(2) for each limited liability company that is to merge, the date its articles of organization were filed with the commission;

(3) that a plan of merger has been approved and signed by each limited liability company and other entity that is to merge;

(4) the name and address of the surviving limited liability company or other surviving entity;

(5) the effective date of the merger;

(6) if a limited liability company is the surviving entity, such changes in its articles of organization as are necessary by reason of the merger;

(7) if a party to a merger is a foreign limited liability company, the jurisdiction and date of filing of its initial articles of organization and the date when its application for authority was filed with the commission or, if an application has not been filed, a statement to that effect; and

(8) if the surviving entity is not a limited liability company, an agreement that the surviving entity may be served with process in this state in any action or proceeding for the enforcement of any liability or obligation of any limited liability company previously subject to suit in this state that is to merge, and for the enforcement, as provided in the Limited Liability Company Act, of the right of members of any limited liability company to receive payment for their interest against the surviving entity.

B. If a foreign limited liability company is the surviving entity of a merger, it may not do business in this state until an application for that authority is filed with the commission.

C. The surviving limited liability company or other entity shall furnish a copy of the plan of merger, on request and without cost, to any member of any limited

liability company or any person holding an interest in any other entity that is to merge.

D. Articles of merger operate as an amendment to the limited liability company's articles of organization."

Section 12

Section 12. A new Section 53-19-62.2 NMSA 1978 is enacted to read:

"53-19-62.2. CONVERSIONS AND MERGERS--EFFECT OF MERGER.--

A. When a merger takes effect:

(1) the separate existence of each limited liability company and other entity that is a party to the merger, other than the surviving entity, terminates;

(2) all property owned by each of the limited liability companies and other entities that are party to the merger vests in the surviving entity;

(3) all debts, liabilities and other obligations of each limited liability company and other entity that is party to the merger become the obligations of the surviving entity;

(4) an action or proceeding pending by or against a limited liability company or other party to a merger may be continued as if the merger had not occurred or the surviving entity may be sustained as a party to the action or proceeding; and

(5) except as prohibited by other law, all the rights, privileges, immunities, powers and purposes of every limited liability company and other entity that is a party to a merger become vested in the surviving entity.

B. The commission is an agent for service of process in an action or proceeding against the surviving foreign entity to enforce an obligation of any party to a merger if the surviving foreign entity fails to appoint or maintain an agent designated for service of process in this state or the agent for service of process cannot with reasonable diligence be found at the designated office. Upon receipt of process, the commission shall send a copy of the process by registered or certified mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:

(1) the date the company receives the process, notice or demand;

(2) the date shown on the return receipt, if signed on behalf of the company; or

(3) five days after its deposit in the mail, if mailed postpaid and correctly addressed.

C. A member of the surviving limited liability company is liable for all obligations of a party to the merger for which the member was personally liable before the merger.

D. Unless otherwise agreed, a merger of a limited liability company that is not the surviving entity in the merger does not require the limited liability company to wind up its business under the Limited Liability Company Act or to pay its liability and distribute its assets pursuant to the Limited Liability Company Act.

E. Articles of merger serve as articles of dissolution for a limited liability company that is not the surviving entity in the merger."

Section 13

Section 13. A new Section 53-19-62.3 NMSA 1978 is enacted to read:

"53-19-62.3. CONVERSION AND MERGERS--NON-EXCLUSIVITY.--Sections 53-19-59 through 53-19-62.2 NMSA 1978 do not preclude an entity from being converted or merged under other law."

Section 14

Section 14. Section 53-19-63 NMSA 1978 (being Laws 1993, Chapter 280, Section 63) is amended to read:

"53-19-63. FILING, SERVICE AND COPYING FEES.--The commission shall charge and collect:

A. for filing the original articles of organization and issuing a certificate of organization, a fee of fifty dollars (\$50.00);

B. for filing amended or restated articles of merger and issuing a certificate of amended or restated articles, a fee of fifty dollars (\$50.00);

C. for filing articles of merger or consolidation and issuing a certificate of consolidation, a fee of one hundred dollars (\$100);

D. for filing articles of dissolution or revocation of dissolution, a fee of twenty-five dollars (\$25.00);

E. for issuing a certificate for any purpose not otherwise specified, a fee of twenty-five dollars (\$25.00);

F. for furnishing written information on any limited liability company, a fee of twenty-five dollars (\$25.00);

G. for providing from the commission's records any document or instrument, a fee of one dollar (\$1.00) per page, but in no case less than ten dollars (\$10.00), and a fee of twenty-five dollars (\$25.00) for certification of documents or instruments;

H. for accepting an application for reservation of a name or for filing a notice of the transfer of any name reservation, a fee of twenty dollars (\$20.00);

I. for filing a statement of change of address of registered office or registered agent, or both, a fee of twenty dollars (\$20.00);

J. for issuing a registration to a foreign limited liability company, a fee of one hundred dollars (\$100);

K. for filing an amendment of the registration of a foreign limited liability company, a fee of fifty dollars (\$50.00); and

L. for filing an application for cancellation of registration of a foreign limited liability company and issuing a certificate of cancellation, a fee of twenty-five dollars (\$25.00)."

SENATE BILL 717

CHAPTER 214

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
PROVIDING CERTAIN FUNDS FOR CORRECTIONS PURPOSES; MAKING AN
APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 33-1-18 NMSA 1978 (being Laws 1990 (1st S.S.), Chapter 5, Section 1) is amended to read:

"33-1-18. FUNDS CREATED.--There are created in the state treasury special funds to be known as the "corrections department building fund", the "Guadalupe county prison fund" and the "New Mexico prison fund". The funds shall consist of money appropriated by the legislature, from year to year, from the income of the permanent fund and land income of which the penitentiary of New Mexico is the beneficiary and any other revenues that are appropriated to the funds, other than revenues derived from property taxes or general fund revenues. Income from investment of each special fund created by this section shall be credited to that fund."

Section 2

Section 2. AUTHORIZATION OF PUBLIC FINANCING FOR CORRECTIONAL FACILITIES.--

A. The legislature authorizes the New Mexico finance authority to issue bonds of up to fifty million dollars (\$50,000,000), to be repaid by special funds created pursuant to Section 33-1-18 NMSA 1978, for the design and construction of the correctional facilities authorized in Paragraphs (1) and (2) of Subsection B of Section 33-1-17 NMSA 1978, if Senate Finance Committee Substitute for Senate Bill 1196 of the first session of the forty-second legislature is enacted into law. The proceeds from the sale of the bonds are appropriated to the corrections department for the purposes authorized in Paragraphs (1) and (2) of Subsection B of Section 33-1-17 NMSA 1978, if Senate Finance Committee Substitute for Senate Bill 1196 of the first session of the forty-second legislature is enacted into law, provided that each county, or political subdivisions in the county, shall provide land, utilities, roads and related infrastructure needs in the form of matching funds or in-kind contributions.

B. Pursuant to the provisions of Section 6-21-6 NMSA 1978, the legislature authorizes the New Mexico finance authority to make lease payments from the public project revolving fund for the correctional facilities authorized in Paragraphs (1) and (2) of Subsection B of Section 33-1-17 NMSA 1978, if Senate Finance Committee Substitute for Senate Bill 1196 of the first session of the forty-second legislature is enacted into law.

Section 3

Section 3. SEVERANCE TAX BONDS--PURPOSE FOR WHICH ISSUED-- APPROPRIATION OF PROCEEDS.--

A. The state board of finance may issue and sell severance tax bonds in compliance with the Severance Tax Bonding Act in an amount not exceeding sixteen million dollars (\$16,000,000) when the corrections department certifies the need for the issuance of the bonds pursuant to the provisions of this section. The corrections department may certify the need for the issuance of any portion of the total amount of bonds authorized, if a lesser amount of any required local matching funds or in-kind contributions are available at the time that a project is ready to be certified.

B. The state board of finance shall schedule the issuance and sale of the bonds in the most expeditious and economical manner possible upon a finding by the board that a project has been developed sufficiently to justify the issuance and that the project can proceed to contract within a reasonable time. The state board of finance shall further take the appropriate steps necessary to comply with the Internal Revenue Code of 1986, as amended.

C. The proceeds from the sale of the bonds are appropriated to the corrections department for the purposes authorized in Paragraphs (1) and (2) of Subsection B of Section 33-1-17 NMSA 1978, if Senate Finance Committee Substitute for Senate Bill 1196 of the first session of the forty-second legislature is enacted into law, provided that each county, or political subdivisions in the county, shall provide land, utilities, roads and related infrastructure needs in the form of matching funds or in-kind contributions; and provided further that if the proceeds from the sale of the bonds may not lawfully be used for lease-purchase financing, then the proceeds from the sale of the bonds are appropriated to the corrections department to fulfill through alternative means the purposes authorized in Paragraphs (1) and (2) of Subsection B of Section 33-1-17 NMSA 1978, if Senate Finance Committee Substitute for Senate Bill 1196 of the first session of the forty-second legislature is enacted into law.

D. Any unexpended or unencumbered balance remaining six months after completion of a project shall revert to the severance tax bonding fund. If the corrections department has not certified the need for the issuance of the bonds by the end of fiscal year 1998, the authorization provided in this section shall be void.

Section 4

Section 4. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 1177

CHAPTER 215

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
EXPANDING THE USE OF PRIVATE CONTRACTORS FOR PRISONS; PROVIDING
ADDITIONAL REVENUE SOURCES FOR CORRECTIONAL FACILITIES; AMENDING
AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 7-27-5 NMSA 1978 (being Laws 1983, Chapter 306, Section 7, as amended) is amended to read:

"7-27-5. INVESTMENT OF SEVERANCE TAX PERMANENT FUND.--The severance tax permanent fund shall be invested for two general purposes, to provide income to the fund and to stimulate the economy of New Mexico, preferably on a continuing basis. The investments in Sections 7-27-5.1 and 7-27-5.6 NMSA 1978 shall be those intended to provide maximum income to the fund and shall be referred to as

the market rate investments. The investments permitted in Sections 7-27-5.3 through 7-27-5.5, 7-27-5.7, 7-27-5.13 through 7-27-5.17 and 7-27-5.21 NMSA 1978 shall be those intended to stimulate the economy of New Mexico and shall be referred to as the differential rate investments. The prudent man rule shall be applied to the market rate investments, and the state investment officer shall keep separate records of the earnings of the market rate investments. All transactions entered into on or after July 1, 1991, shall be accounted for in accordance with generally accepted accounting principles."

Section 2

Section 2. A new section of the Severance Tax Bonding Act, Section 7-27-5.21 NMSA 1978, is enacted to read:

"7-27-5.21. SEVERANCE TAX PERMANENT FUND--INVESTMENT IN OBLIGATIONS ISSUED UNDER SECTION 33-1-19 NMSA 1978 FOR CORRECTIONS FACILITIES.--Subject to the approval of the state investment council, the severance tax permanent fund may be invested in bonds, certificates of participation or other obligations issued pursuant to Section 33-1-19 NMSA 1978 for corrections related facilities."

Section 3

Section 3. Section 33-1-17 NMSA 1978 (being Laws 1985, Chapter 149, Section 1, as amended) is amended to read:

"33-1-17. PRIVATE CONTRACT.--

A. The corrections department may contract for the operation of any adult female facility or for housing adult female inmates in a private facility with a person or entity in the business of providing correctional or jail services to government entities.

B. The corrections department may contract with a person or entity in the business of providing correctional or jail services to government entities for:

(1) a correctional facility in Guadalupe county of not less than five hundred fifty and not more than two thousand two hundred beds;

(2) a correctional facility in Lea, Chaves or Santa Fe county of not less than one thousand two hundred and not more than two thousand two hundred beds;

(3) design and construction of a support services building, a laundry and an infirmary at the penitentiary of New Mexico in Santa Fe; or

(4) construction of a public facility to house a special incarceration alternative program for adult male and adult female felony offenders.

C. The authorization in Subsection B of this section for a correctional facility in Guadalupe county and a correctional facility in Lea, Chaves or Santa Fe county is contingent upon construction of both facilities, so that one of the facilities shall not be constructed unless both of the facilities are constructed, as nearly as practicable, simultaneously.

D. The department shall solicit proposals and award any contract under this section in accordance with the provisions of the Procurement Code. The contract shall include such terms and conditions as the department may require after consultation with the general services department; provided that the terms and conditions shall include provisions:

(1) setting forth comprehensive standards for conditions of incarceration;

(2) that the contractor assumes all liability caused by or arising out of all aspects of the provision or operation of the facility;

(3) for liability insurance or other proof of financial responsibility acceptable to the general services department covering the contractor and its officers, employees and agents in an amount sufficient to cover all liability caused by or arising out of all aspects of the provision or operation of the facility;

(4) for termination for cause upon ninety days' notice to the contractor for failure to meet contract provisions when such failure seriously affects the availability or operation of the facility;

(5) that venue for the enforcement of the contract shall be in the district court for Santa Fe county;

(6) that continuation of the contract is subject to the availability of funds; and

(7) that compliance with the contract shall be monitored by the corrections department and the contract may be terminated for noncompliance.

E. When the contractor begins operation of a facility for which private contractor operation is authorized, his employees performing the functions of correctional officers shall be deemed correctional officers for the purposes of Sections 33-1-10 and 33-1-11 NMSA 1978 but for no other purpose of state law, unless specifically stated.

F. Any contract awarded pursuant to this section may include terms to provide for the renovation of the facility or for the construction of new buildings. Work performed pursuant to such terms and conditions shall not be considered a capital project as defined in Section 15-3-23.3 NMSA 1978 or a state public works project as defined in Section 13-1-91 NMSA 1978 nor shall it be subject to the requirements of Section 13-1-150 NMSA 1978 or of the Capital Program Act, review by the staff architect of the property control division of the general services department pursuant to Section 15-3-20 NMSA 1978 or regulation by the director of that division pursuant to Section 15-3-11 NMSA 1978.

G. Any contract entered into by the corrections department with a private contractor to operate an existing facility shall include a provision securing the right of all persons employed by that facility prior to the effective date of that contract to be employed by that contractor in any position for which they qualify before that position is offered to any person not employed by that facility prior to that date."

Section 4

Section 4. Section 33-1-19 NMSA 1978 (being Laws 1990 (1st S.S.), Chapter 5, Section 2) is amended to read:

"33-1-19. USE OF FUNDS.--

A. The funds created in or pursuant to Section 33-1-18 NMSA 1978 shall be used by the corrections department or the board of finance for the purpose of acquiring, designing, constructing or equipping, by lease or lease-purchase, or by financing the ownership by the corrections department through the issuance of bonds or other obligations by the corrections department or the board of finance, or other means, a corrections department central office complex, a personnel training academy, a special incarceration alternative facility, correctional facilities or any combination of these facilities, and for paying the expenses relating to the lease, lease-purchase or financing of these facilities. Before any of the funds created in Section 33-1-18 NMSA 1978 may be used for any such purpose, the state board of finance shall approve the proposed facility and the proposed use of the funds.

B. The funds created in or pursuant to Section 33-1-18 NMSA 1978 shall be used so that available appropriations are devoted to the following projects:

(1) payment for the corrections department central office complex;

(2) a correctional facility in Guadalupe county of not less than five hundred fifty and not more than two thousand two hundred beds;

(3) a correctional facility in Lea, Chaves or Santa Fe county of not less than one thousand two hundred and not more than two thousand two hundred beds; and

(4) design and construction of a support services building, a laundry and an infirmary at the penitentiary of New Mexico in Santa Fe.

C. The use of funds designated in Subsection B of this section for a correctional facility in Guadalupe county and a correctional facility in Lea, Chaves or Santa Fe county is contingent upon construction of both facilities, so that one of the facilities shall not be constructed unless both of the facilities are constructed, as nearly as possible, simultaneously.

D. Any balance at the end of any fiscal year in the special funds created in Section 33-1-18 NMSA 1978 that are not needed to pay leases, loans, bonds or other financing instruments in that fiscal year may be appropriated by the legislature for expenditure in succeeding fiscal years by the corrections department for corrections purposes."

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 1196

CHAPTER 216

WITH LINE-ITEM VETO

EXTENDING THE PERIOD OF TIME IN WHICH AN APPROPRIATION FOR
PHREATOPHYTE REMOVAL; MAY BE EXPENDED AND CHANGING THE PURPOSE
OF THAT APPROPRIATION.

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

Section 1

Section 1. EXPENDITURE PERIOD EXTENDED--APPROPRIATION PURPOSE
CHANGED.--The appropriation for five hundred thousand dollars (\$500,000) to the
energy, minerals and natural resources department for phreatophyte removal set forth
in Subsection P of Section 3 of Chapter 147 of Laws 1994 ~~shall not be expended for
phreatophyte removal but shall be expended to conduct a demonstration project of salt
cedar control and native riparian vegetation and wetland area restoration in the Pecos
River valley pursuant to Section 75-8-2 NMSA 1978, and that appropriation shall not~~
revert at the end of the eighty-third fiscal year but may also be expended in fiscal year
1996. Any unexpended or unencumbered balance remaining at the end of fiscal year
1996 shall revert to the general fund.

SENATE BILL 272

CHAPTER 217

RELATING TO HIGHWAYS; AUTHORIZING REIMBURSEMENT FOR THE COST OF RELOCATING UTILITIES OWNED BY MUNICIPALITIES OR COUNTIES; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 67-8-21 NMSA 1978 (being Laws 1959, Chapter 310, Section 7, as amended) is amended to read:

"67-8-21. MUNICIPALLY OR COUNTY OWNED UTILITIES-- SPECIAL DISTRICTS--REIMBURSEMENT FOR COST OF RELOCATION.--

A. Under the provisions of this section, the commission shall reimburse cities, towns, villages and counties for cost of relocation of municipally or county owned utility facilities where relocation is required because of the construction or repair of any public state highway or interstate system in the city or county, town or village, provided only that the governing body of the municipality or county shall have adopted and filed with the commission its resolution electing to receive reimbursement of its costs of relocation pursuant to this section in lieu of Section 67-8-18 NMSA 1978 and of any other statute of this state that may provide the same or similar reimbursement relief to cities, towns, villages and counties with respect to relocations in the interstate system.

B. Notwithstanding any other provision of Sections 67-8-15 through 67-8-21 NMSA 1978, the commission may pay the cost of relocation of utilities owned by special districts, counties or municipalities located within the right of way of public highways on the state highway system when the relocation is required by the state highway and transportation department, provided that the special district, county or municipality can demonstrate, pursuant to rules promulgated by the commission, that the special district, county or municipality is financially unable to pay the cost of relocation. As used in this section, "special district" means any single or multipurpose district organized or that may be organized as a local public body of this state for the purpose of constructing and furnishing any urban-oriented service that another political subdivision of the state is authorized to perform, including but not limited to the services of water for domestic, commercial or industrial uses, sewage, garbage, refuse collection and recreation, but excluding the functions or services of drainage, irrigation, reclamation, soil and water conservation or flood control."

HOUSE BILL 612

CHAPTER 218

WITH LINE-ITEM VETOES

RELATING TO CAPITAL EXPENDITURES; REAUTHORIZING UNISSUED, UNEXPENDED OR UNENCUMBERED BALANCES; CHANGING AGENCIES AND PURPOSES OF CERTAIN SEVERANCE TAX BOND AUTHORIZATIONS AND OTHER FUNDS; EXTENDING EXPENDITURE PERIODS OF CERTAIN FUNDS; AUTHORIZING EXPENDITURES; MAKING APPROPRIATIONS; DECLARING AN EMERGENCY.

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

Section 1

Section 1. SEVERANCE TAX BONDS--STATE AGENCY ON AGING --EXPANSION OF PURPOSE--APPROPRIATION.--The balance of the proceeds from severance tax bonds appropriated to the state agency on aging, pursuant to Subsection V of Section 4 of Chapter 148 of Laws 1994, to purchase equipment for the Campos senior citizen center at Santa Rosa located in Guadalupe county may also be expended for the purchase of a van for transportation of senior citizens to and from the center and on various center-related activity trips.

Section 2

Section 2. SEVERANCE TAX BONDS--STATE AGENCY ON AGING--CHANGE IN PURPOSE--APPROPRIATION.--The balance of the proceeds from severance tax bonds appropriated to the state agency on aging, pursuant to Subsection CC of Section 4 of Chapter 148 of Laws 1994, shall not be expended for its original purpose but is reauthorized and appropriated for the purpose of making improvements to the building and to the parking lot of the Silver City senior center located in Grant county.

Section 3

Section 3. SEVERANCE TAX BONDS--STATE AGENCY ON AGING--CHANGE IN PURPOSE--APPROPRIATION.--The balance of the proceeds from the sale of severance tax bonds appropriated to the state agency on aging, pursuant to Subsection O of Section 2 of Chapter 367 of Laws 1993, to purchase, renovate and furnish a building for a senior citizen center in Artesia shall not be expended for its original purpose but is reauthorized and appropriated to the state agency on aging to construct and renovate meal sites for senior citizens in Artesia located in Eddy county.

Section 4

Section 4. GENERAL FUND--DEPARTMENT OF FINANCE AND ADMINISTRATION--EXTENDING EXPENDITURE PERIOD--APPROPRIATION.--The period of time for expenditure of the general fund appropriation to the local government division of the department of finance and administration, pursuant to Paragraph (27) of Subsection B of Section 49 of Chapter 148 of Laws 1994, for making improvements to and purchasing

equipment for the Velarde recreational area in Rio Arriba county shall be extended through fiscal year 1999. Any unexpended or unencumbered balance remaining at the end of fiscal year 1999 shall revert to the general fund.

Section 5

Section 5. GENERAL FUND--DEPARTMENT OF FINANCE AND ADMINISTRATION--EXPANSION OF PURPOSE--EXTENDING EXPENDITURE PERIOD--

APPROPRIATION.--The general fund appropriation to the local government division of the department of finance and administration, pursuant to Paragraph (21) of Subsection B of Section 49 of Chapter 148 of Laws 1994, to continue construction of the Lea county cultural center may also be used for the purpose of equipping, furnishing and landscaping the Lea county cultural center. The period of time for expenditure of the appropriation shall be extended through fiscal year 1999. Any unexpended or unencumbered balance remaining at the end of fiscal year 1999 shall revert to the general fund.

Section 6

Section 6. GENERAL FUND--DEPARTMENT OF FINANCE AND ADMINISTRATION--CHANGE IN PURPOSE--EXTENDING EXPENDITURE PERIOD--APPROPRIATION.--

A. The general fund appropriation to the local government division of the department of finance and administration, pursuant to Subsection S of Section 6 of Chapter 147 of Laws 1994, to assist in the purchase and renovation of a fine arts facility in the town of Taos shall not be expended for its original purpose but is appropriated for expenditure in fiscal years 1995 through 1999 for the following purposes:

(1) one hundred thousand dollars (\$100,000) to make renovations and other improvements to the Bataan hall auditorium in the town of Taos in Taos county; and

(2) two hundred thousand dollars (\$200,000) for designing, constructing and equipping the new Taos public library in the town of Taos in Taos county.

B. Any unexpended or unencumbered balance remaining at the end of fiscal year 1999 shall revert to the general fund.

Section 7

Section 7. GENERAL FUND--DEPARTMENT OF FINANCE AND ADMINISTRATION--EXPANSION OF PURPOSE--CHANGE IN PURPOSE--EXTENDING EXPENDITURE PERIOD--APPROPRIATIONS.--

A. The general fund appropriations to the local government division of the department of finance and administration:

(1) to design, construct and equip an indoor swimming pool and facilities on the west mesa in Albuquerque, pursuant to Subsection W of Section 6 of Chapter 147 of Laws 1994, shall be expanded to include land acquisition for the indoor swimming pool and facilities on the west mesa in Albuquerque located in Bernalillo county; and

(2) for a school parks community development project for use at Sandia high school and Madison middle school in Albuquerque public schools, pursuant to Subsection ZZZZZZZ of Section 6 of Chapter 147 of Laws 1994, shall not be expended for its original purpose but is appropriated for the design and construction of a school community park at Sandia high school for use by Madison middle school and Sandia high school in the Albuquerque public school district located in Bernalillo county.

B. The period of time for expenditure of the appropriations shall be extended through fiscal year 1999. Any unexpended or unencumbered balance remaining at the end of fiscal year 1999 shall revert to the general fund.

Section 8

Section 8. SEVERANCE TAX BONDS--DEPARTMENT OF FINANCE AND ADMINISTRATION--EXPANSION OF PURPOSE--APPROPRIATION.--The balance of the proceeds from severance tax bonds appropriated to the local government division of the department of finance and administration, pursuant to Subsection BBBBBBB of Section 9 of Chapter 148 of Laws 1994, for the purpose of continuing construction of the Lea county cultural center may also be used for the purpose of equipping, furnishing and landscaping the Lea county cultural center.

Section 9

Section 9. SEVERANCE TAX BONDS--DEPARTMENT OF FINANCE AND ADMINISTRATION--CHANGE IN CONTINGENCY--APPROPRIATION.--The balance of the proceeds from severance tax bonds appropriated to the local government division of the department of finance and administration, pursuant to Subsection J of Section 9 of Chapter 148 of Laws 1994, to expand, improve, equip and furnish the Pleasant Hill fire department located in Curry county shall not be subject to the contingency imposed of an equal amount but shall be subject to a contingency of twenty-five thousand dollars (\$25,000) contributed by the city of Pleasant Hill.

Section 10

Section 10. SEVERANCE TAX BONDS--DEPARTMENT OF FINANCE AND ADMINISTRATION--EXPANSION OF PURPOSE--CHANGE IN PURPOSE--APPROPRIATION.--

A. The balance of the proceeds from severance tax bonds appropriated to the local government division of the department of finance and administration:

(1) to acquire necessary equipment to renovate the playground of Duranes community center in Albuquerque located in Bernalillo county, pursuant to Subsection AA of Section 9 of Chapter 148 of Laws 1994, shall be expanded to include the purchase of equipment for the Duranes community center in Albuquerque located in Bernalillo county;

(2) for a swimming pool in the Westgate community in Albuquerque located in Bernalillo county, pursuant to Subsection MMMM of Section 9 of Chapter 148 of Laws 1994, shall not be expended for that purpose but is reauthorized and appropriated to design, construct and equip an indoor swimming pool and facilities at West Mesa high school in Albuquerque located in Bernalillo county; and

(3) to plan, design and construct an indoor swimming pool and facilities in the west mesa area in Albuquerque in Bernalillo county, pursuant to Subsection KK of Section 9 of Chapter 148 of Laws 1994, shall be expanded to include land acquisition for an indoor swimming pool and facilities in the west mesa area in Albuquerque located in Bernalillo county.

Section 11

Section 11. GENERAL FUND--DEPARTMENT OF FINANCE AND ADMINISTRATION--EXPANSION OF PURPOSE--EXTENDING EXPENDITURE PERIOD--APPROPRIATION.--The general fund appropriation to the local government division of the department of finance and administration in Paragraph (8) of Subsection P of Section 7 of Chapter 147 of Laws 1994 to complete the refurbishing of a daycare center in Aztec in San Juan county shall be expanded to include the acquisition of a building for the daycare center. The period of time for expenditure of the appropriation shall be extended through fiscal year 1999. Any unexpended or unencumbered balance remaining at the end of fiscal year 1999 shall revert to the general fund.

Section 12

Section 12. GENERAL FUND--CHANGE OF AGENCY--EXTENDING EXPENDITURE PERIOD--APPROPRIATION.--The general fund appropriation to the governing board of the Albuquerque technical-vocational institute, pursuant to Subsection DD of Section 3 of Chapter 147 of Laws 1994, to extend utilities to the undeveloped southwest mesa property shall not be used by that agency but is appropriated to the local government division of the department of finance and administration to extend utilities to the undeveloped southwest mesa property. The period of time for expenditure of the appropriation shall be extended through fiscal year 1999. Any unexpended or unencumbered balance remaining at the end of fiscal year 1999 shall revert to the general fund.

Section 13

Section 13. GENERAL FUND--DEPARTMENT OF PUBLIC SAFETY--EXTENDING EXPENDITURE PERIOD--APPROPRIATION.--The period of time for expenditure of the general fund appropriation to the department of public safety, pursuant to Subsection HHHHHH of Section 6 of Chapter 147 of Laws 1994, to contract with a nonprofit corporation to operate a community-based anti-drug program in Bernalillo county shall be extended through fiscal year 1999. Any unexpended or unencumbered balance remaining at the end of fiscal year 1999 shall revert to the general fund.

Section 14

Section 14. GENERAL FUND--THIRD JUDICIAL DISTRICT--EXTENDING EXPENDITURE PERIOD--APPROPRIATION.--The period of time for expenditure of the general fund appropriation to the third judicial district, pursuant to Subsection F of Section 7 of Chapter 147 of Laws 1994, for moving expenses shall be extended through fiscal year 1999. Any unexpended or unencumbered balance remaining at the end of fiscal year 1999 shall revert to the general fund.

Section 15

Section 15. SEVERANCE TAX BONDS--DEPARTMENT OF ENVIRONMENT--EXPANSION OF PURPOSE--CHANGE IN CONTINGENCY--APPROPRIATION.--The balance of the proceeds from severance tax bonds appropriated to the department of environment, pursuant to Subsection T of Section 10 of Chapter 148 of Laws 1994, for the construction of a sewer system on Jemez road to connect with the Santa Fe River sewer trunk line in Santa Fe may also be expended to connect the sewer system with the Agua Fria public water and sanitation district, and shall not be subject to the contingency imposed in the original appropriation but shall be contingent on receipt of ten percent in matching funds from Santa Fe county.

Section 16

Section 16. SEVERANCE TAX BONDS--DEPARTMENT OF ENVIRONMENT --CHANGE IN PURPOSE--APPROPRIATION.--The balance of the proceeds from severance tax bonds appropriated to the department of environment, pursuant to Subsections C and II of Section 10 of Chapter 148 of Laws 1994, for construction and other improvements at the Socorro county landfill shall not be expended for their original purposes but are reauthorized and appropriated to improve solid waste management and disposal in Socorro county.

Section 17

Section 17. SEVERANCE TAX BONDS--GENERAL SERVICES DEPARTMENT --EXPANSION OF PURPOSE--APPROPRIATION.--The balance of the proceeds from

severance tax bonds appropriated to the property control division of the general services department, pursuant to Subsection B of Section 14 of Chapter 367 of Laws 1993, for a primary health care facility in Abiquiu located in Rio Arriba county may also be expended to purchase equipment for the health care facility.

Section 18

Section 18. SEVERANCE TAX BONDS--DEPARTMENT OF HEALTH--EXPANSION OF PURPOSE--APPROPRIATION.--The balance of the proceeds from severance tax bonds appropriated to the department of health, pursuant to Subsection B of Section 11 of Chapter 148 of Laws 1994, for completing the purchase of a primary health care facility in Chaves county may also be expended to purchase land to expand and make improvements to the primary health care facility in Chaves county.

Section 19

Section 19. SEVERANCE TAX BONDS--CHANGE IN AGENCY--CHANGE IN PURPOSE--APPROPRIATION.--The balance of the proceeds from severance tax bonds appropriated to the property control division of the general services department, pursuant to Subsection V of Section 14 of Chapter 367 of Laws 1993, to plan and design an alcohol rehabilitation center to serve all Indian pueblos in Sandoval county shall not be expended for its original purpose but is reauthorized and appropriated to the New Mexico office of Indian affairs to conduct a needs assessment and to plan and design an alcohol rehabilitation center to serve all Indian pueblos located in Sandoval county.

Section 20

Section 20. SEVERANCE TAX BONDS--GENERAL SERVICES DEPARTMENT -- EXPANSION OF PURPOSE--APPROPRIATION.--The balance of the proceeds from severance tax bonds appropriated to the general services department, pursuant to Subsection J of Section 13 of Chapter 148 of Laws 1994, to continue phase two of the construction of the state library, archives and records center in Santa Fe county may also be expended to plan and design that center.

Section 21

Section 21. SEVERANCE TAX BONDS--STATE HIGHWAY AND TRANSPORTATION DEPARTMENT--CONTINGENCY NEGATED --APPROPRIATION.--The balance of the proceeds from severance tax bonds appropriated to the state highway and transportation department, pursuant to Subsection F of Section 14 of Chapter 148 of Laws 1994, for street improvements in the city of Jal in Lea county shall not be subject to the contingency imposed.

Section 22

Section 22. GENERAL FUND--DEPARTMENT OF MILITARY AFFAIRS --CHANGE IN PURPOSE--EXTENDING EXPENDITURE PERIOD --APPROPRIATION.--The general fund appropriation to the department of military affairs, pursuant to Paragraph (2) of Subsection A of Section 53 of Chapter 148 of Laws 1994, to plan, design, construct, furnish and equip a new headquarters building to house the offices of the adjutant general and its staff in Santa Fe county shall not be expended for that purpose but is appropriated to plan, design, construct, furnish and equip the new headquarters building in two phases and to plan, design and construct a separate maintenance shop, equipment storage and facilities building in Santa Fe county. The period of time for expenditure of the appropriation shall be extended through fiscal year 1999. Any unexpended or unencumbered balance remaining at the end of fiscal year 1999 shall revert to the general fund.

Section 23

Section 23. GENERAL FUND--OFFICE OF CULTURAL AFFAIRS--EXTENDING EXPENDITURE PERIOD--APPROPRIATIONS.--

A. The period of time for expenditure of the following appropriations from the general fund to the office of cultural affairs, pursuant to Subsection V of Section 7 of Chapter 147 of Laws 1994, shall be extended through fiscal year 1999:

(1) to build a data base of cultural holdings in state and local museums, pursuant to Paragraph (1) of that subsection;

(2) for improvements and acquisitions at the palace of the governors in Santa Fe, pursuant to Paragraph (4) of that subsection; and

(3) to design a state monument interpretive center to commemorate the Camino Real de Tierra Adentro in Socorro county, pursuant to Paragraph (8) of that subsection.

B. Any unexpended or unencumbered balance remaining at the end of fiscal year 1999 shall revert to the general fund.

Section 24

Section 24. GENERAL FUND--STATE DEPARTMENT OF PUBLIC EDUCATION --EXTENDING EXPENDITURE PERIOD--APPROPRIATION.--The period of time for expenditure of the general fund appropriation to the state department of public education, pursuant to Paragraph (19) of Subsection II of Section 7 of Chapter 147 of Laws 1994, to study the feasibility of creating a countywide alternative high school in San Juan county shall be extended through fiscal year 1999. Any unexpended or unencumbered balance remaining at the end of fiscal year 1999 shall revert to the general fund.

Section 25

Section 25. SEVERANCE TAX BONDS--ADMINISTRATIVE OFFICE OF THE COURTS--EXPANSION OF PURPOSE--APPROPRIATION.--The balance of the proceeds from severance tax bonds appropriated to the administrative office of the courts, pursuant to Subsection A of Section 38 of Chapter 148 of Laws 1994, for the asbestos removal project for the supreme court building may also be expended to renovate the supreme court building to comply with the federal Americans with Disabilities Act of 1990 and the New Mexico Uniform Building Code and for other capital improvement projects at the supreme court building.

Section 26

Section 26. GENERAL FUND--DEPARTMENT OF FINANCE AND ADMINISTRATION--EXTENDING EXPENDITURE PERIOD--APPROPRIATIONS.--

A. The period of time for expenditure of the following appropriations from the general fund to the local government division of the department of finance and administration, pursuant to Subsection B of Section 49 of Chapter 148 of Laws 1994, shall be extended through fiscal year 1999:

(1) for a new public health facility in San Miguel county, pursuant to Paragraph (2) of that subsection;

(2) for a gymnasium addition to the Paradise Hills community center in Bernalillo county, pursuant to Paragraph (3) of that subsection;

(3) for a community center in the Taylor Ranch subdivision in Bernalillo county, pursuant to Paragraph (6) of that subsection;

(4) for playground equipment at the west mesa community center in Albuquerque in Bernalillo county, pursuant to Paragraph (7) of that subsection;

(5) for a little league baseball complex in the east mountain area of Bernalillo county, pursuant to Paragraph (8) of that subsection;

(6) for a fire station in Sierra in Chaves county, pursuant to Paragraph (12) of that subsection;

(7) for a family community center in Texico in Curry county, pursuant to Paragraph (13) of that subsection;

(8) for a multipurpose community center in Chaparral in Dona Ana county, pursuant to Paragraph (14) of that subsection;

(9) for a building to house the Artesia headstart program in Eddy county, pursuant to Paragraph (17) of that subsection;

~~[(10) for a cultural center in Lea county, pursuant to Paragraph (21) of that subsection;]~~

(11) for an underground water reservoir in Embudo in Rio Arriba county, pursuant to Paragraph (25) of that subsection;

(12) for recreational facilities in Espanola in Rio Arriba county, pursuant to Paragraph (26) of that subsection;

(13) for the Velarde recreational area in Rio Arriba county, pursuant to Paragraph (27) of that subsection;

(14) for a recreational center in Pena Blanca in Sandoval county, pursuant to Paragraph (28) of that subsection;

(15) for a youth recreational and educational facility in Santa Fe in Santa Fe county, pursuant to Paragraph (29) of that subsection;

(16) for a community fire station at Chamisal in Taos county, pursuant to Paragraph (30) of that subsection;

(17) for a study of a youth and families center in Taos in Taos county, pursuant to Paragraph (31) of that subsection;

(18) for the east San Jose community center in Bernalillo county, pursuant to Paragraph (33) of that subsection;

(19) for the playground at the east San Jose community center in Bernalillo county, pursuant to Paragraph (34) of that subsection;

(20) for equipment for the east San Jose community center located in Bernalillo county, pursuant to Paragraph (35) of that subsection; and

(21) for the Barelvas community center in Albuquerque in Bernalillo county, pursuant to Paragraph (38) of that subsection.

B. The period of time for expenditure of the following appropriations from the general fund to the local government division of the department of finance and administration, pursuant to Subsection P of Section 7 of Chapter 147 of Laws 1994, shall be extended through fiscal year 1999:

(1) for the middle Rio Grande conservancy district for cleanup, maintenance work and other improvements, including equipment purchase and

contractual services, to protect the middle Rio Grande bosque, pursuant to Paragraph (3) of that subsection;

(2) for refurbishing of a daycare center in Aztec in San Juan county, pursuant to Paragraph (8) of that subsection;

(3) for a multiple sports and outdoor recreational complex in Belen in Valencia county, pursuant to Paragraph (9) of that subsection; and

(4) for an addition to the multipurpose youth center in Los Lunas in Valencia county, pursuant to Paragraph (10) of that subsection.

C. The period of time for expenditure of the following appropriations from the general fund to the local government division of the department of finance and administration, pursuant to Laws 1994, Chapter 147, Section 6, shall be extended through fiscal year 1999:

(1) for reading and learning materials for the Carnegie library in the city of Las Vegas in San Miguel county, pursuant to Subsection V of that section;

(2) for continued development of an inventory of irrigated and non-irrigated lands within the middle Rio Grande conservancy district, pursuant to Subsection X of that section;

(3) for handicapped vans for the Sun-Tran bus service in Bernalillo county, pursuant to Subsection HH of that section;

~~[(4) for a school parks community development project for use at Sandia high school and Madison middle school in Albuquerque public schools in Bernalillo county, pursuant to Subsection ZZZZZZZ of that section;]~~

(5) for headstart facilities in Artesia public schools, pursuant to Subsection EEEEEEEE of that section; and

(6) for a study of the heavy-use areas of the Arroyo del Oso park, golf course and soccer field in Albuquerque, pursuant to Subsection DDD of that section.

D. Any unexpended or unencumbered balance remaining from the projects specified in Subsections A through C of this section at the end of fiscal year 1999 shall revert to the general fund.

Section 27

Section 27. SEVERANCE TAX BONDS--CONTINUED AUTHORIZATION.--
Notwithstanding the provisions of Subsection C of Section 1 of Chapter 113 of Laws

1992 and Laws 1993, Chapter 339, Section 2, the authorization provided in Laws 1992, Chapter 113, Section 20 for the New Day shelter for troubled youth in Bernalillo county is continued through fiscal year 1996. If the general services department has not certified the need for the issuance of the bonds by the end of fiscal year 1996, the authorization provided in this section shall be void.

Section 28

Section 28. MINERS' TRUST FUND--MINERS' COLFAX MEDICAL CENTER -- EXTENDING EXPENDITURE--PERIOD--APPROPRIATION.--The period of time for expenditure of the appropriation made from the miners' trust fund to the miners' Colfax medical center, pursuant to Laws 1993, Chapter 367, Section 42, to renovate the long-term care facility shall be extended through fiscal year 1999. Any unexpended or unencumbered balance remaining at the end of fiscal year 1999 shall revert to the miners' trust fund.

Section 29

Section 29. SEVERANCE TAX BONDS--CHANGE OF AGENCY--CHANGE OF PURPOSE--APPROPRIATION.--The balance of the proceeds from severance tax bond proceeds appropriated to the capital program fund for the general services department, pursuant to Paragraph (2) of Subsection C of Section 1 of Chapter 115 of Laws 1986, for the purpose of acquiring land for an executive building in Santa Fe shall not be expended for that purpose but is reauthorized and appropriated to the legislative council service for the following purposes:

A. for planning and design of the remodeling and renovation of the state library building located in Santa Fe county, including planning for asbestos abatement;

B. for long-range space needs planning for the occupants of the state capitol and the Bataan memorial building located in Santa Fe county; and

C. for initial planning and design of any remodeling and renovation of the Bataan memorial building that would be necessary, if the governor determines to move out of the state capitol and into the Bataan memorial building, provided the governor agrees to request sufficient appropriations to provide for the necessary remodeling and renovation of the Bataan memorial building, relocation costs for the governor and relocation costs of any occupants of the Bataan memorial building that would have to be moved out of the Bataan memorial building to make room for the governor.

Section 30

Section 30. SEVERANCE TAX BONDS--PUBLIC SCHOOL CAPITAL IMPROVEMENTS FUND--CHANGE IN PURPOSE--APPROPRIATION.--The balance of the proceeds from severance tax bonds to the public school capital improvements fund, pursuant to Subsection B of Section 22 of Chapter 148 of Laws 1994, shall not be

expended for its original purpose but is reauthorized and appropriated to be expended for the purpose of purchasing land for a new Socorro elementary school located in Socorro county.

Section 31

Section 31. SEVERANCE TAX BONDS--CHANGE OF PURPOSE -- APPROPRIATION.--The proceeds from severance tax bonds appropriated to the state highway and transportation department, pursuant to Paragraph (1) of Subsection A of Section 64 of Chapter 148 of Laws 1994, for street improvements in Clovis in Curry county shall not be expended for their original purpose but are reauthorized and appropriated in the following amounts to the following agencies for the following purposes:

A. seven thousand dollars (\$7,000) to the state highway and transportation department to make improvements to the sidewalks on Main street in Portales located in Roosevelt county; and

B. five thousand dollars (\$5,000) to the local government division of the department of finance and administration to remove graffiti in Portales located in Roosevelt county.

Section 32

Section 32. SEVERANCE TAX BONDS--UNIVERSITY OF NEW MEXICO --CHANGE OF PURPOSE--APPROPRIATION.--The balance of the proceeds from severance tax bonds appropriated to the board of regents of the university of New Mexico, pursuant to Subsection A of Section 10 of Chapter 113 of Laws 1992, to construct a home for families of adults being treated at the cancer center at the university of New Mexico school of medicine shall not be used for its original purpose but is reauthorized and appropriated to plan, construct or equip renovations for additional seating and to complete construction of a training and weight room in the football stadium at the university of New Mexico located in Bernalillo county.

Section 33

Section 33. SEVERANCE TAX BONDS--CHANGE IN PURPOSE --APPROPRIATION.-
-One hundred thousand dollars (\$100,000) of the proceeds from severance tax bonds appropriated to the state highway and transportation department, pursuant to Paragraph (2) of Subsection A of Section 61 of Chapter 367 of Laws 1993 shall not be expended for its original purpose but is reauthorized and appropriated to pave county road 85 located between Camino la Tierra and Tano road located in Santa Fe county.

Section 34

Section 34. SEVERANCE TAX BONDS--CHANGE OF AGENCY--CHANGE IN PURPOSE--APPROPRIATION.--Eleven thousand dollars (\$11,000) of the proceeds from severance tax bonds appropriated to the property control division of the general services department, pursuant to Subsection J of Section 18 of Chapter 113 of Laws 1992, shall not be expended for its original purpose but is reauthorized and appropriated to the New Mexico office of Indian affairs to equip or furnish the new Nambe Pueblo senior center at Nambe Pueblo located in Santa Fe county.

Section 35

Section 35. SEVERANCE TAX BONDS--DEPARTMENT OF FINANCE AND ADMINISTRATION--CHANGE IN PURPOSE--APPROPRIATION.--The balance of the proceeds from severance tax bonds appropriated to the local government division of the department of finance and administration, pursuant to Subsection T of Section 7 of Chapter 367 of Laws 1993, to renovate the Mountainair community center located in Torrance county in order to comply with the federal Americans with Disabilities Act of 1990 shall not be used for its original purpose but is reauthorized and appropriated to be used to plan, design or construct other renovations to the Mountainair community center located in Torrance county.

Section 36

Section 36. SEVERANCE TAX BONDS--DEPARTMENT OF FINANCE AND ADMINISTRATION--CHANGE OF PURPOSE--APPROPRIATION.--One hundred thousand dollars (\$100,000) of the proceeds from severance tax bonds appropriated to the local government division of the department of finance and administration, pursuant to Subsection RR of Section 9 of Chapter 148 of Laws 1994, to acquire land for the Manzano Mesa multigenerational community center and park in Albuquerque located in Bernalillo county shall not be expended for its original purpose, but is reauthorized and appropriated to plan, design and construct improvements to the Fort Marcy recreational complex park and amphitheater in Santa Fe located in Santa Fe county.

Section 37

Section 37. SEVERANCE TAX BONDS--CHANGE OF AGENCY--CHANGE OF PURPOSE--APPROPRIATION.--The balance of the proceeds from severance tax bonds appropriated to the local government division of the department of finance and administration, pursuant to Subsection AAAAAAA of Section 9 of Chapter 148 of Laws 1994, for sidewalks in the village of Lincoln in Lincoln county shall not be expended for its original purpose but is reauthorized and appropriated to the state highway and transportation department to pave county road 85 located between Camino la Tierra and Tano road located in Santa Fe county.

Section 38

Section 38. SEVERANCE TAX BONDS--CHANGE IN AGENCY--CHANGE IN PURPOSE--APPROPRIATION.--The appropriation of severance tax bond proceeds to the local government division of the department of finance and administration for a master plan to provide municipal services to the city of Las Vegas, pursuant to Subsection NNNNNN of Section 9 of Chapter 148 of Laws 1994, shall not be expended for that purpose but is reauthorized and appropriated to the state department of public education to prepare a twenty-year master plan for the city of Las Vegas schools.

Section 39

Section 39. SEVERANCE TAX BONDS--DEPARTMENT OF FINANCE AND ADMINISTRATION--EXPANSION OF PURPOSE--APPROPRIATION.--The purpose of the appropriation of severance tax bond proceeds to the local government division of the department of finance and administration for establishing a new north valley little league field in Albuquerque in Bernalillo county, pursuant to Subsection FFFFFFFF of Section 9 of Chapter 148 of Laws 1994, shall be expanded to include expenditure for making improvements to the existing north valley little league field in Albuquerque in Bernalillo county and the proceeds are reauthorized and appropriated for that expanded purpose.

Section 40

Section 40. SEVERANCE TAX BONDS--DEPARTMENT OF FINANCE AND ADMINISTRATION--CHANGE IN PURPOSE--APPROPRIATION.--The balance of the appropriation of severance tax bond proceeds to the local government division of the department of finance and administration, pursuant to Subsection VVV of Section 7 of Chapter 367 of Laws 1993, shall not be expended for that purpose but is reauthorized and appropriated for the purpose of conducting a needs assessment study for a community center in Taos.

Section 41

Section 41. GENERAL FUND--OFFICE OF CULTURAL AFFAIRS--EXPANSION OF PURPOSE--APPROPRIATION.--The purpose for which the appropriation made to the office of cultural affairs to plan and design a multicultural center in Grants located in Cibola county, pursuant to the Subsection CCCC of Section 6 of Chapter 147 of Laws 1994, is expanded to include expenditure for construction of the center and is appropriated for that expanded purpose.

Section 42

Section 42. SEVERANCE TAX BONDS--DEPARTMENT OF FINANCE AND ADMINISTRATION--CHANGE IN PURPOSE--APPROPRIATION.--The purpose for which the appropriation made to the local government division of the department of finance and administration to install a sprinkler system at the cemetery and make renovations at the Paddy Martinez park in Grants located in Cibola county, pursuant to

Subsection SSSSS of Section 9 of Chapter 148 of Laws 1994, shall be changed to prohibit expenditure for the installation of the sprinkler system at the cemetery and to expend the appropriation totally for renovations and improvements at Paddy Martinez park, and the money is appropriated for that changed purpose.

Section 43

Section 43. SEVERANCE TAX BONDS--OFFICE OF CULTURAL AFFAIRS --CHANGE IN CONTINGENCY--EXTENDING EXPENDITURE PERIOD --APPROPRIATION.--The matching funds requirement for expenditure of the appropriation to the office of cultural affairs for exhibits and materials for El Malpais national monument located in Cibola county, pursuant to Subsection H of Section 4 of Chapter 367 of Laws 1993, shall be changed to require at least two hundred fifty thousand dollars (\$250,000) in matching funds from nonstate sources. The period of time for certification and issuance of the bonds shall be extended to the end of fiscal year 1998.

Section 44

Section 44. GENERAL FUND--OFFICE OF CULTURAL AFFAIRS--EXTENDING EXPENDITURE PERIOD--APPROPRIATION.--The period of time in which the appropriation pursuant to Subsection DDDD of Section 6 of Chapter 147 of Laws 1994 to the office of cultural affairs to conduct a comprehensive statewide study of the economic, educational and quality of life impact of New Mexico's museums, historic sites, visual and performing arts, arts organizations, community celebrations and other cultural assets shall be extended through fiscal year 1996.

Section 45

Section 45. SEVERANCE TAX BONDS--DEPARTMENT OF FINANCE AND ADMINISTRATION--EXPANSION OF PURPOSE--APPROPRIATION.--The purpose of the appropriation of severance tax bond proceeds to the local government division of the department of finance and administration, pursuant to Subsection LLLLLL of Section 9 of Chapter 148 of Laws 1994, is expanded to include expenditure for equipping and furnishing of the De Baca general hospital located in De Baca county, and the proceeds are reauthorized and appropriated for that expanded purpose.

Section 46

Section 46. SEVERANCE TAX BONDS--CHANGE IN AGENCY--EXPANSION OF PURPOSE--APPROPRIATIONS.--

A. The balance of the proceeds from the sale of severance tax bonds appropriated to the New Mexico office of Indian affairs, pursuant to Subsection B of Section 16 of Chapter 367 of Laws 1993, is transferred to the local government division of the department of finance and administration for the expanded purpose of contracting

with a school district in the Pine Hill area of Cibola county or through a joint powers agreement with the Navajo Nation to plan and design the Ramah Navajo early childhood education facility located in Cibola county.

B. The balance of the proceeds from the sale of severance tax bonds appropriated to the New Mexico office of Indian affairs, pursuant to Subsection C of Section 16 of Chapter 367 of Laws 1993, is transferred to the local government division of the department of finance and administration for the expanded purpose of contracting with a school district in the Pine Hill area of Cibola county or through a joint powers agreement with the Navajo Nation to purchase, install and set up a portable building to house the Ramah Navajo early childhood education facility located in Cibola county.

Section 47

Section 47. SEVERANCE TAX BONDS--DEPARTMENT OF FINANCE AND ADMINISTRATION--EXPANSION OF PURPOSE--APPROPRIATION.--The severance tax bond proceeds appropriated to the local government division of the department of finance and administration, pursuant to Subsection LLLL of Section 9 of Chapter 148 of Laws 1994, to furnish and equip a health clinic in Hobbs shall be expended for its original purpose and may also be expended to continue construction of that health clinic in Hobbs in Lea county.

Section 48

Section 48. SEVERANCE TAX BONDS--DEPARTMENT OF FINANCE AND ADMINISTRATION--CHANGE IN PURPOSE--APPROPRIATION.--The appropriation from severance tax bonds to the local government division of the department of finance and administration, pursuant to Subsection KKKK of Section 9 of Chapter 148 of Laws 1994, shall not be expended for its original purpose but is appropriated to the local government division of the department of finance and administration to acquire land for, design, construct and equip or acquire and renovate a building for a police substation in the foothills area of Albuquerque's northeast heights located in Bernalillo county.

Section 49

Section 49. SEVERANCE TAX BONDS--STATE AGENCY ON AGING --CHANGE IN PURPOSE--APPROPRIATION.--The unexpended balance from the appropriation from severance tax bonds to the state agency on aging, pursuant to Subsection BB of Section 4 of Chapter 148 of Laws 1994, shall not be expended for its original purpose but is reauthorized and appropriated to be expended for the purpose of constructing improvements to the Logan senior citizen center and its parking facility in the village of Logan in Quay county.

Section 50

Section 50. SEVERANCE TAX BONDS--CHANGE IN AGENCY --APPROPRIATION.-- One hundred thousand dollars (\$100,000) from the proceeds from the sale of severance tax bonds appropriated to the state armory board, pursuant to Subsection FFFFFFFF of Section 6 of Chapter 147 of Laws 1994, for the purpose of renovating the national guard armory in Portales is transferred to the local government division of the department of finance and administration.

Section 51

Section 51. SEVERANCE TAX BONDS--DEPARTMENT OF ENVIRONMENT--EXPANSION OF PURPOSE--APPROPRIATION.--The balance of the proceeds from severance tax bonds appropriated to the department of environment, pursuant to Subsection K of Section 4 of Chapter 113 of Laws 1992, for construction of a water storage tank and connection of it to the main waterline in Blanco in San Juan county is expanded to include design, inspection and construction of water system improvements.

Section 52

Section 52. SEVERANCE TAX BONDS--STATE ARMORY BOARD--CHANGE OF PURPOSE--APPROPRIATION.--Five hundred thousand dollars (\$500,000) of the proceeds from the severance tax bonds appropriated to the state armory board, pursuant to Section 33 of Chapter 148 of Laws 1994 to design and construct a national guard armory in or near the town of Taos located in Taos county shall not be used for its original purpose but is reauthorized and appropriated to the state armory board to design and construct an armory in Springer located in Colfax county.

Section 53

Section 53. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 276, 367, 368, 369, 498, 605, 707, 708, 763, 810, 813, 886, 928 & 998
& SENATE BILLS 69, 187, 345, 662, 947 & 1056 WITH EMERGENCY CLAUSE
SIGNED APRIL 7, 1995

CHAPTER 219

WITH LINE-ITEM VETO

~~RELATING TO HEALTH CARE; AMENDING DUTIES OF THE HEALTH CARE TASK FORCE; MAKING APPROPRIATIONS.~~

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

Section 1. Laws 1994, Chapter 62, Section 3 is amended to read:

"Section 3. DUTIES.--After its appointment, the task force shall hold one organizational meeting to develop a workplan and budget for the ensuing interim. The workplan and budget shall be submitted to the legislative council for approval. Upon approval of the workplan and budget by the legislative council, the task force shall:

~~A. bring together the various groups working on issues related to health care reform to facilitate the development and implementation of a comprehensive health care delivery system for New Mexico and to pursue health care system reforms;~~

~~B. investigate health care delivery and payment initiatives to support and provide universal health care for all New Mexicans by October 1, 1997, pursuant to the provisions of Laws 1994, Chapter 62, Section 23;~~

~~_____ C. consider the infrastructure and personnel necessary for health care delivery;~~

~~_____ D. investigate cost containment measures that may be implemented to assure the efficient use of public and private funds for health care;~~

~~_____ E. consider the impact of national health care reforms on health care delivery and payment proposals in New Mexico;~~

~~_____ F. provide legislative oversight on the implementation of health care reform measures and health care delivery and payment proposals that become law; and~~

~~_____ G. recommend legislation or changes if any are found to be necessary to the first and second sessions of the forty-second legislature."}]~~

Section 2. Laws 1994, Chapter 62, Section 6 is amended to read:

~~"Section 6. STAFF.--The staff for the task force shall be provided by the legislative council service, and the staff of the New Mexico health policy commission shall assist the health care task force as requested. The legislative council service at the direction of the task force may hire additional staff as necessary and may contract with experts, including economists, actuaries and the bureau of business and economic research, to assist the task force in carrying out its tasks."}]~~

Section 3

Section 3. HEALTH CARE--APPROPRIATIONS.--

A. The following amounts are appropriated from the general fund for expenditure in fiscal year 1996 for the following purposes:

~~[(1) seventy thousand dollars (\$70,000) to the human services department to contract for services or otherwise provide for operational efficiencies in the medicaid program, for waiver applications to the federal government under the federal Social Security Act and for administrative or operational expenses necessary to implement any waivers obtained for the medicaid program;]~~

(2) two million eight hundred thousand dollars (\$2,800,000) to the department of health for the following purposes:

(a) five hundred thousand dollars (\$500,000) to provide for six full-time equivalent staff and operating costs in district health offices ~~[to advise and consult with local school districts regarding school health services;]~~

(b) two hundred fifty thousand dollars (\$250,000) to provide operational expenses and contractual services for healthier schools' model sites;

~~[(c) seven hundred fifty thousand dollars (\$750,000) for operational expenses and contractual services for school-based health center programs; and]~~

(d) one million three hundred thousand dollars (\$1,300,000) for operational expenses ~~[and to contract with health care providers to deliver primary health care services to eligible children, to work with local school districts to identify children who may require primary health care services and to work with district health officers to assure continuity of health care for children;]~~

~~[(3) two hundred thousand dollars (\$200,000) to the legislative council service to provide staff support and to contract for services to assist the health care task force;]~~

~~[(4) one hundred fifty-six thousand three hundred dollars (\$156,300) to the board of regents of the university of New Mexico to provide for staff, operational expenses and contractual services to expand the primary care physician assistant training program;]~~

(5) sixty-nine thousand dollars (\$69,000) to the department of health to establish a health program that will coordinate and facilitate access to breast cancer prevention information and services and to provide staff, contractual services and operational expenses for the breast cancer prevention program; and

~~[(6) one hundred eighty thousand dollars (\$180,000) to the department of health to pay commitment stipends to potential health professionals, as provided in the Health Service Corps Act.]~~

B. Any unexpended or unencumbered balance remaining at the end of fiscal year 1996 shall revert to the general fund.

HOUSE BILL 235

CHAPTER 220

MAKING AN APPROPRIATION FOR IN-PLANT DEVELOPMENT TRAINING PROGRAMS.

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

Section 1

Section 1. APPROPRIATION.--Three million five hundred thousand dollars (\$3,500,000) is appropriated from the general fund to the development training fund for expenditure in fiscal year 1996 for in-plant development training programs conducted pursuant to Section 21-19-7 NMSA 1978. Any unexpended or unencumbered balance remaining at the end of fiscal year 1996 shall not revert to the general fund.

HOUSE BILL 246

CHAPTER 221

RELATING TO CRIMINAL LAW; ENACTING THE CRIMES AGAINST HOUSEHOLD MEMBERS ACT; ENACTING NEW SECTIONS OF THE CRIMINAL CODE; PROVIDING CRIMINAL PENALTIES.

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

Section 1

Section 1. A new section of the Criminal Code is enacted to read:

"SHORT TITLE.--This act may be cited as the "Crimes Against Household Members Act".

Section 2

Section 2. A new section of the Criminal Code is enacted to read:

"DEFINITIONS.--As used in the Crimes Against Household Members Act, "household member" means a spouse, former spouse or family member, including a relative, parent, present or former step-parent, present or former in-law, a co-parent of a child or a person with whom a person has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member for the purposes of the Crimes Against Household Members Act."

Section 3

Section 3. A new section of the Criminal Code is enacted to read:

"ASSAULT AGAINST A HOUSEHOLD MEMBER.--

A. Assault against a household member consists of:

- (1) an attempt to commit a battery against a household member; or
- (2) any unlawful act, threat or menacing conduct that causes a household member to reasonably believe that he is in danger of receiving an immediate battery.

B. Whoever commits assault against a household member is guilty of a petty misdemeanor."

Section 4

Section 4. A new section of the Criminal Code is enacted to read:

"AGGRAVATED ASSAULT AGAINST A HOUSEHOLD MEMBER.--

A. Aggravated assault against a household member consists of:

- (1) unlawfully assaulting or striking at a household member with a deadly weapon; or
- (2) willfully and intentionally assaulting a household member with intent to commit any felony.

B. Whoever commits aggravated assault against a household member is guilty of a fourth degree felony."

Section 5

Section 5. A new section of the Criminal Code is enacted to read:

"ASSAULT AGAINST A HOUSEHOLD MEMBER WITH INTENT TO COMMIT A VIOLENT FELONY.--

A. Assault against a household member with intent to commit a violent felony consists of any person assaulting a household member with intent to kill or commit any murder, mayhem, criminal sexual penetration in the first, second or third degree, robbery, kidnapping, false imprisonment or burglary.

B. Whoever commits assault against a household member with intent to commit a violent felony is guilty of a third degree felony."

Section 6

Section 6. A new section of the Criminal Code is enacted to read:

"BATTERY AGAINST A HOUSEHOLD MEMBER.--

A. Battery against a household member consists of the unlawful, intentional touching or application of force to the person of a household member, when done in a rude, insolent or angry manner.

B. Whoever commits battery against a household member is guilty of a petty misdemeanor."

Section 7

Section 7. A new section of the Criminal Code is enacted to read:

"AGGRAVATED BATTERY AGAINST A HOUSEHOLD MEMBER.--

A. Aggravated battery against a household member consists of the unlawful touching or application of force to the person of a household member with intent to injure that person or another.

B. Whoever commits aggravated battery against a household member by inflicting an injury to that person that is not likely to cause death or great bodily harm, but that does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the body, is guilty of a misdemeanor.

C. Whoever commits aggravated battery against a household member by inflicting great bodily harm or doing so with a deadly weapon or doing so in any manner whereby great bodily harm or death can be inflicted, is guilty of a third degree felony."

Section 8

Section 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.

HOUSE BILL 512

CHAPTER 222

WITH LINE-ITEM VETOES

RELATING TO CAPITAL EXPENDITURES; AUTHORIZING THE ISSUANCE OF SEVERANCE TAX BONDS; AUTHORIZING EXPENDITURES; MAKING APPROPRIATIONS TO CERTAIN STATE AGENCIES AND STATE FUNDS FOR CAPITAL IMPROVEMENTS, PLANNING AND OTHER PURPOSES; DECLARING AN EMERGENCY.

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

Section 1

Section 1. SEVERANCE TAX BONDS--AUTHORIZATIONS-- APPROPRIATION OF PROCEEDS.--

A. The state board of finance may issue and sell severance tax bonds in compliance with the Severance Tax Bonding Act in an amount not to exceed the total of the amounts authorized for purposes specified in Sections 2 through 19 of this act. The state board of finance shall schedule the issuance and sale of the bonds in the most expeditious and economical manner possible upon a finding by the board that the project has been developed sufficiently to justify the issuance and that the project can proceed to contract within a reasonable time. The state board of finance shall further take the appropriate steps necessary to comply with the Internal Revenue Code of 1986, as amended. Proceeds from the sale of the bonds are appropriated for the purposes specified in Sections 2 through 19 of this act.

B. The agencies named in Sections 2 through 19 of this act shall certify to the state board of finance when the money from the proceeds of the severance tax bonds authorized in this section is needed for the purposes specified in the applicable sections of this act.

C. If the specified agency has not certified the need for the issuance of the bonds by the end of fiscal year 1998, the authorization provided in this act shall be void.

D. Unless otherwise specified in this act, any unexpended or unencumbered balance remaining from the proceeds from severance tax bonds issued pursuant to Sections 2 through 19 of this act after fiscal year 1999 shall revert to the severance tax bonding fund.

Section 2

Section 2. SEVERANCE TAX BONDS--STATE AGENCY ON AGING --PURPOSE.--
Pursuant to the provisions of Section 1 of this act, upon certification by the state agency on aging that the need exists for the issuance of the bonds, four hundred twenty-seven thousand seven hundred dollars (\$427,700) is appropriated to the state agency on aging to purchase kitchen equipment for meal programs located throughout the state.

Section 3

Section 3. SEVERANCE TAX BONDS--CORRECTIONS DEPARTMENT --PURPOSE.-- Pursuant to the provisions of Section 1 of this act, upon certification by the corrections department that the need exists for the issuance of the bonds, five hundred eighty thousand five hundred dollars (\$580,500) is appropriated to the corrections department to replace equipment for the construction industries programs at correctional facilities located throughout the state.

Section 4

Section 4. SEVERANCE TAX BONDS--COMMISSION ON HIGHER EDUCATION--PURPOSE.--Pursuant to the provisions of Section 1 of this act, upon certification by the commission on higher education that the need exists for the issuance of the bonds, one million seven hundred thousand dollars (\$1,700,000) is appropriated to the commission on higher education to make improvements to higher education facilities located throughout the state, in order to comply with the federal Americans with Disabilities Act of 1990 and with life safety codes.

Section 5

Section 5. SEVERANCE TAX BONDS--DEPARTMENT OF ENVIRONMENT --PURPOSE.--Pursuant to the provisions of Section 1 of this act, upon certification by the department of environment that the need exists for the issuance of the bonds, the following amounts are appropriated to the department of environment for the following purposes:

A. two million dollars (\$2,000,000) to plan, design or construct wastewater systems for environmental protection agency funded colonias located throughout the state;

B. two hundred fifty thousand dollars (\$250,000) for the purpose of designing, inspecting and constructing water and wastewater system improvements in the village of Magdalena located in Socorro county;

C. one hundred thousand dollars (\$100,000) for purposes of closing the present Chama village landfill in Rio Arriba county, establishing both a solid waste transfer station and a recycling center and providing one year's support for the village of Chama's participation in the north central solid waste authority and use of the Los Alamos landfill;

D. two hundred thousand dollars (\$200,000) to expand and make improvements to the city of Bloomfield's water and sewer system in San Juan county; and

E. two hundred thousand dollars (\$200,000) to design, inspect and construct water system improvements in the community of Bluewater acres located in Cibola county.

Section 6

Section 6. SEVERANCE TAX BONDS--INTERSTATE STREAM COMMISSION --
PURPOSE.--Pursuant to the provisions of Section 1 of this act, upon certification by the interstate stream commission that the need exists for the issuance of the bonds, one million dollars (\$1,000,000) is appropriated to the interstate stream commission for the purpose of acquiring, by purchase or lease, water rights within the Pecos river basin that will most effectively aid the state in complying with the Pecos River Compact and the United States supreme court's amended decree in Texas v. New Mexico, 484 U.S. 388 (1988).

Section 7

Section 7. SEVERANCE TAX BONDS--PUBLIC SCHOOL CAPITAL OUTLAY FUND--
PURPOSE.--Pursuant to the provisions of Section 1 of this act, upon certification by the public school capital outlay council that the need exists for the issuance of the bonds, twenty million dollars (\$20,000,000) is appropriated to the public school capital outlay fund to carry out the provisions of the Public School Capital Outlay Act. This appropriation shall not revert.

Section 8

Section 8. SEVERANCE TAX BONDS--OFFICE OF CULTURAL AFFAIRS --
PURPOSE.--Pursuant to the provisions of Section 1 of this act, upon certification by the office of cultural affairs that the need exists for the issuance of the bonds, the following amounts are appropriated to the office of cultural affairs for the following purposes:

A. two million dollars (\$2,000,000) to plan, design, construct or equip a Hispanic cultural center located in Bernalillo county; and

B. two hundred thousand dollars (\$200,000) for the purpose of purchasing the Casa San Ysidro Minge collection in Corrales, located in Sandoval county, consisting of Spanish-Mexican art, writings, furniture, religious artifacts and buildings, and to be managed and curated by the Albuquerque museum.

Section 9

Section 9. SEVERANCE TAX BONDS--GENERAL SERVICES DEPARTMENT --
PURPOSES.--Pursuant to the provisions of Section 1 of this act, upon certification by the general services department that the need exists for the issuance of the bonds, the

following amounts are appropriated to the general services department for the following purposes:

A. three hundred fifty-three thousand dollars (\$353,000) for the purpose of planning and designing support facilities at the penitentiary of New Mexico located in Santa Fe county;

B. two hundred ninety-three thousand two hundred dollars (\$293,200) to make improvements to the security system of the central New Mexico correctional facility located in Valencia county;

C. five hundred seven thousand two hundred dollars (\$507,200) to make improvements to the electrical system at the penitentiary of New Mexico located in Santa Fe county, in order to comply with the Duran consent decree and electrical code requirements at the facility;

D. three hundred thirty-five thousand dollars (\$335,000) to install a fire protection system in the north and south facilities at the penitentiary of New Mexico located in Santa Fe county; and

E. six hundred thirty-three thousand two hundred dollars (\$633,200) to improve and replace the security sensor system, replace and repair roofing and provide for mechanical improvements at the western New Mexico correctional facility located in Cibola county.

Section 10

Section 10. SEVERANCE TAX BONDS--DEPARTMENT OF MILITARY AFFAIRS--PURPOSES.--Pursuant to the provisions of Section 1 of this act, upon certification by the department of military affairs that the need exists for the issuance of the bonds, the following amounts are appropriated to the department of military affairs for the following purposes:

A. one hundred fifty thousand dollars (\$150,000) for the purpose of designing and constructing an armory in Clayton located in Union county; and

B. four hundred fifty thousand dollars (\$450,000) for the purpose of designing and constructing an armory in Springer located in Colfax county.

Section 11

Section 11. SEVERANCE TAX BONDS--DEPARTMENT OF FINANCE AND ADMINISTRATION--PURPOSES.--Pursuant to the provisions of Section 1 of this act, upon certification by the local government division of the department of finance and administration that the need exists for the issuance of the bonds, the following amounts

are appropriated to the local government division of the department of finance and administration for the following purposes:

A. three hundred fifty thousand dollars (\$350,000) to design, construct or equip a recreation, swimming pool and convention center facility in the city of Las Vegas;

B. one hundred thousand dollars (\$100,000) to develop a master plan for the city of Las Vegas in San Miguel county;

C. two hundred thousand dollars (\$200,000) to continue construction and equipping of the county sheriff's command center in the northeast heights of Albuquerque in Bernalillo county;

D. three hundred fifty thousand dollars (\$350,000) for the purpose of acquiring land for, designing, constructing and equipping or acquiring and renovating a building for a police substation in the foothills area of Albuquerque's northeast heights located in Bernalillo county;

E. three hundred fifty thousand dollars (\$350,000) for the purpose of designing, constructing and equipping a community center in Taylor Ranch located in Bernalillo county;

F. one hundred seventy-five thousand dollars (\$175,000) for the purpose of developing and constructing the south First street flood control project in Artesia in Eddy county;

G. one hundred seventy-five thousand dollars (\$175,000) for the purpose of developing and constructing the north and south Atkinson street flood control project in Roswell in Chaves county;

H. one hundred fifty thousand dollars (\$150,000) to acquire land for the Tres Pistolas open space project in Bernalillo county; and

I. one hundred thousand dollars (\$100,000) to design and construct trails in the east mountain area of the Sandia mountains in Bernalillo county.

Section 12

Section 12. SEVERANCE TAX BONDS--NEW MEXICO OFFICE OF INDIAN AFFAIRS--PURPOSES.--Pursuant to the provisions of Section 1 of this act, upon certification by the New Mexico office of Indian affairs that the need exists for the issuance of the bonds, the following amounts are appropriated to the New Mexico office of Indian affairs for the following purposes:

A. one hundred thousand dollars (\$100,000) for the purpose of constructing a multipurpose building at the Pueblo of Picuris located in Taos county; and

B. one hundred thousand dollars (\$100,000) to plan, design or construct a modular building for court uses in Alamo located in Socorro county.

Section 13

Section 13. SEVERANCE TAX BONDS--STATE HIGHWAY AND TRANSPORTATION DEPARTMENT--PURPOSES.--Pursuant to the provisions of Section 1 of this act, upon certification by the state highway and transportation department that the need exists for the issuance of the bonds, the following amounts are appropriated to the state highway and transportation department for the following purposes:

A. one hundred thousand dollars (\$100,000) for road improvements to approximately two miles of state highway 130 within and near the village of Cloudcroft in Otero county; and

B. two hundred thousand dollars (\$200,000) for the purpose of installing traffic signals on U.S. highway 70 at the intersection of U.S. highway 70 and either Las Alamedas or Emerald located in Dona Ana county.

Section 14

Section 14. SEVERANCE TAX BONDS--NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY--PURPOSES.--Pursuant to the provisions of Section 1 of this act, upon certification by the board of regents of the New Mexico institute of mining and technology that the need exists for the issuance of the bonds, the following amounts are appropriated to the board of regents of the New Mexico institute of mining and technology for the following purposes:

A. three hundred fifty thousand dollars (\$350,000) to plan and design the renovation of Weir and Kramer halls on the campus of the New Mexico institute of mining and technology in Socorro in Socorro county; and

B. three hundred fifty thousand dollars (\$350,000) for the purpose of renovating and designing, constructing and equipping an addition to Jones hall at the New Mexico institute of mining and technology in Socorro in Socorro county.

Section 15

Section 15. SEVERANCE TAX BONDS--NEW MEXICO HIGHLANDS UNIVERSITY--PURPOSE.--Pursuant to the provisions of Section 1 of this act, upon certification by the board of regents of New Mexico highlands university that the need exists for the issuance of the bonds, five hundred thousand dollars (\$500,000) is appropriated to the

board of regents of New Mexico highlands university for renovation and improvement of the Douglas school building in Las Vegas in San Miguel county.

Section 16

Section 16. SEVERANCE TAX BONDS--ALBUQUERQUE TECHNICAL -VOCATIONAL INSTITUTE--PURPOSE.--Pursuant to the provisions of Section 1 of this act, upon certification by the governing board of Albuquerque technical-vocational institute that the need exists for the issuance of the bonds, three hundred fifty thousand dollars (\$350,000) is appropriated to the governing board of the Albuquerque technical-vocational institute for the purpose of purchasing and renovating Pajarito elementary school in the Albuquerque public school district in Bernalillo county.

Section 17

Section 17. SEVERANCE TAX BONDS--NEW MEXICO STATE UNIVERSITY--PURPOSE.--Pursuant to the provisions of Section 1 of this act, upon certification by the board of regents of New Mexico state university that the need exists for the issuance of the bonds, four hundred thousand dollars (\$400,000) is appropriated to the board of regents of New Mexico state university for the purpose of making improvements to existing athletic facilities on the New Mexico state university campus in Las Cruces in Dona Ana county.

Section 18

Section 18. SEVERANCE TAX BONDS--SAN JUAN COLLEGE--PURPOSE.--Pursuant to the provisions of Section 1 of this act, upon certification by the governing board of San Juan college that the need exists for the issuance of the bonds, two hundred ninety-five thousand dollars (\$295,000) is appropriated to the governing board of San Juan college for the purpose of designing, building, equipping and furnishing a child and family development center classroom addition at San Juan college located in San Juan county.

Section 19

Section 19. SEVERANCE TAX BONDS--STATE DEPARTMENT OF PUBLIC EDUCATION--PURPOSES.--Pursuant to the provisions of Section 1 of this act, upon certification by the state department of public education that the need exists for the issuance of the bonds, the following amounts are appropriated to the state department of public education for the following purposes:

A. one hundred fifty thousand dollars (\$150,000) for the purpose of acquiring portable school buildings in Alamogordo located in Otero county; and

B. one hundred thousand dollars (\$100,000) for the purpose of designing and constructing tennis courts at Roswell high school in Chaves county.

Section 20

Section 20. GENERAL FUND--APPROPRIATIONS--PURPOSE.--The amounts and purposes specified in the appropriations from the general fund to the agencies set forth in Sections 21 through 44 of this act may be expended in fiscal years 1995 through 1999, unless otherwise specified. Any unexpended or unencumbered balance remaining at the end of fiscal year 1999 shall revert to the general fund.

Section 21

Section 21. GENERAL FUND--STATE AGENCY ON AGING --APPROPRIATIONS.--The following amounts are appropriated from the general fund to the state agency on aging for the following purposes:

~~[A. one hundred thousand dollars (\$100,000) to construct a senior citizen center for the Canoncito Navajo chapter located in Bernalillo county;]~~

~~[B. fifty thousand dollars (\$50,000) to acquire land for planning, designing, constructing or equipping a new senior citizen center in the village of Central located in Grant county;]~~

C. three hundred seventy thousand dollars (\$370,000) for renovation and improvement of the existing structure and designing, constructing, equipping and furnishing an addition to the North Mesa senior citizen center in Carlsbad in Eddy county;

D. sixty-five thousand dollars (\$65,000) to complete construction of additions or improvements to or to equip and furnish the Corona senior citizen center in Lincoln county;

~~[E. two hundred thousand dollars (\$200,000) to plan, design, build or equip an addition to a senior center located in Curry county;]~~

F. one hundred fifty thousand dollars (\$150,000) to plan, design, construct or renovate the senior citizen center in Deming located in Luna county;

G. one hundred thousand dollars (\$100,000) for the purpose of planning, designing, constructing or equipping a senior citizen meal site in Artesia in Eddy county;

~~[H. ten thousand dollars (\$10,000) for the purpose of designing, building or equipping a senior citizen community center at Angel Fire in Colfax county;]~~

I. fifty thousand eight hundred ninety-five dollars (\$50,895) for the purchase of vehicles or equipment for the Dulce senior citizen center in Rio Arriba county;

J. thirty-nine thousand two hundred forty dollars (\$39,240) for purchasing and equipping vehicles for handicapped and elderly persons for the senior citizen center at Dulce in Rio Arriba county;

K. forty-five thousand dollars (\$45,000) to plan, design or construct the Arrey senior center in Sierra county and to make other improvements in order to comply with the federal Americans with Disabilities Act of 1990;

L. one hundred five thousand dollars (\$105,000) to plan, design or construct the McIntosh senior citizen center located in Torrance county;

~~[M. sixty thousand dollars (\$60,000) to design, build or equip a senior citizen center in Los Alamos in Los Alamos county;]~~

N. fifty thousand dollars (\$50,000) for the purpose of designing, constructing, including infrastructure work, and equipping a senior citizen center in Shiprock located in San Juan county;

O. one hundred thousand dollars (\$100,000) for the purpose of designing, constructing and equipping a senior citizen center in Sanostee located in San Juan county;

P. one hundred thousand dollars (\$100,000) to design, construct and equip a new permanent mealsite building for senior citizens in the vicinity of Wyoming and Paseo del Norte in the northeast heights section of Albuquerque in Bernalillo county;

Q. twenty-five thousand dollars (\$25,000) to purchase a handicapped-equipped van with a wheelchair lift that complies with the federal Americans with Disabilities Act of 1990 for the city of Grants located in Cibola county;

R. one hundred seventy-five thousand dollars (\$175,000) for renovations and to purchase vehicles and mealsite and other equipment for the Isleta Pueblo senior center located in Bernalillo county;

~~[S. eighteen thousand dollars (\$18,000) to purchase and equip a vehicle for use by the elderly and disabled in Gallup located in McKinley county;]~~

T. fifty thousand dollars (\$50,000) to design, construct or equip a senior citizen center in the town of Springer in Colfax county; and

U. thirty-four thousand dollars (\$34,000) for recreational equipment for the San Jose senior citizen center in Carlsbad in Eddy county.

Section 22

Section 22. GENERAL FUND--OFFICE OF CULTURAL AFFAIRS --
APPROPRIATIONS.--The following amounts are appropriated from the general fund to the office of cultural affairs for the following purposes:

A. two hundred thousand dollars (\$200,000) to plan, design, renovate, construct improvements to, equip or furnish the New Mexico museum of natural history and science and its annex in Bernalillo county;

~~[B. two hundred thousand dollars (\$200,000) for the purpose of conducting a facilities plan for a new museum complex in Santa Fe to include structural analysis and schematic design or to develop a plan for a new museum administration building for the museum of New Mexico located in Santa Fe county;]~~

C. one million six hundred thousand dollars (\$1,600,000) to house and exhibit the Neutrogena collection in Santa Fe county;

D. one million dollars (\$1,000,000) to plan, design, construct or equip a Hispanic cultural center located in Bernalillo county;

~~[E. two hundred fifty thousand dollars (\$250,000) for the purpose of site acquisition and development and installation of a twenty-five acre, eight-field little league complex, including concession facilities, bleacher seating, domestic and irrigation water systems and appropriate field surface cover at the Balloon Fiesta park located in Bernalillo county;]~~

~~[F. two hundred thirty thousand dollars (\$230,000) for the purpose of planning, designing, constructing and equipping a library at the Navajo community college in Crownpoint located in McKinley county; and]~~

G. two hundred thousand dollars (\$200,000) for the purpose of conducting a facilities plan for a new museum complex in Santa Fe to include structural analysis and schematic design and to develop a plan for a new museum administration building for the museum of New Mexico located in Santa Fe county.

Section 23

Section 23. GENERAL FUND--ALBUQUERQUE TECHNICAL-VOCATIONAL INSTITUTE--APPROPRIATION.--Three hundred fifty thousand dollars (\$350,000) is appropriated from the general fund to the governing board of the Albuquerque technical-vocational institute to purchase and renovate Pajarito elementary school in the Albuquerque public school district located in Bernalillo county.

Section 24

Section 24. GENERAL FUND--DEPARTMENT OF FINANCE AND ADMINISTRATION--APPROPRIATIONS.--The following amounts are appropriated from the general fund to the local government division of the department of finance and administration for the following purposes:

A. two hundred thirty-seven thousand dollars (\$237,000) for the purpose of designing, constructing or equipping a multipurpose welcome center and recreational complex at the "Valencia Y" in the village of Los Lunas located in Valencia county. The appropriation is contingent upon the acquisition or lease of thirteen acres at the "Valencia Y" by the village of Los Lunas;

B. fifty thousand dollars (\$50,000) for the purpose of planning or constructing phase 2 of the youth sports complex located in Sandoval county;

~~C. four hundred thousand dollars (\$400,000) to design, construct or equip a visitor center and office building in Silver City located in Grant county;]~~

D. two hundred fifty thousand dollars (\$250,000) to design, construct or equip a recreation park located in Grant county;

E. fifty thousand dollars (\$50,000) for land acquisition for and planning, designing, constructing, equipping or furnishing a single building to serve as a community center and volunteer fire department facility in the community of Chamita in Rio Arriba county;

F. fifty thousand dollars (\$50,000) for the purpose of renovating the west central youth center in Albuquerque located in Bernalillo county;

G. one hundred thousand dollars (\$100,000) for the purpose of renovating an existing building or planning, designing, constructing, equipping or furnishing an addition to the building for use as an economic development office for a west side youth program in Albuquerque located in Bernalillo county. The appropriation is contingent upon contribution of at least seventy-five thousand dollars (\$75,000) from the city of Albuquerque;

H. one hundred thousand dollars (\$100,000) for the purpose of planning, designing or constructing a multipurpose building for the Westgate little league field located in Bernalillo county;

I. fifty thousand dollars (\$50,000) for the purpose of remodeling the Rio Arriba county courthouse in Tierra Amarilla in order to comply with the federal Americans with Disabilities Act of 1990;

J. seventy-five thousand dollars (\$75,000) to construct improvements to or equip the baseball field at the Jefferson middle school park in Albuquerque in Bernalillo county;

K. seventy-five thousand dollars (\$75,000) to plan, design, construct, repair or equip baseball fields at the McKinley middle school park and Comanche ponding area parks in Albuquerque in Bernalillo county;

L. one hundred thousand dollars (\$100,000) for the purpose of continuing construction on a recreational park and educational camp located in Dona Ana county;

M. one hundred fifty thousand dollars (\$150,000) for the purpose of continuing construction, equipping or furnishing the Chaparral community center located in Dona Ana county;

N. two hundred thousand dollars (\$200,000) to renovate the Las Cruces Santa Fe railroad depot in the city of Las Cruces located in Dona Ana county;

O. two hundred thousand dollars (\$200,000) to plan, design, construct or equip a boys and girls club in the city of Santa Fe located in Santa Fe county;

P. seventy-five thousand dollars (\$75,000) to acquire land, plan or construct a new facility for a juvenile group home in San Juan county;

~~[Q. seventy-five thousand dollars (\$75,000) to plan, design or construct a trail and streetscape along Mountain road in the city of Albuquerque located in Bernalillo county;]~~

R. one hundred fifty thousand dollars (\$150,000) to expand, renovate, improve or equip the arts and crafts laboratory and classroom in the Alameda community center located in Bernalillo county;

S. fifty thousand dollars (\$50,000) to provide a hard surface trail meeting the federal Americans with Disabilities Act of 1990 requirements to connect the open space area located at Alameda boulevard and Rio Grande boulevard to the Rio Grande Valley state park or to convert an existing bridge that spans the Rio Grande for use as a pedestrian-equestrian bridge located in Bernalillo county;

~~[T. one hundred thousand dollars (\$100,000) to build site improvements or purchase equipment and furniture for expansion of the Whittier shelter center in Albuquerque in Bernalillo county;]~~

~~[U. one hundred fifty thousand dollars (\$150,000) to purchase or install a modular building or make improvements at the Santa Barbara Martinez town community center located in Bernalillo county;]~~

V. one hundred thousand dollars (\$100,000) to design, construct or equip a law enforcement substation adjacent to Bennie Chavez community center in Chimayo located in Santa Fe county;

W. sixty-five thousand dollars (\$65,000) to plan or design a community center in Portales in Roosevelt county;

X. one hundred twenty-five thousand dollars (\$125,000) to plan, design or construct new baseball fields for Zia little league in the city of Albuquerque located in Bernalillo county;

Y. one hundred twenty-five thousand dollars (\$125,000) to purchase furniture and equipment for or to plan, design, renovate or bring into compliance with the federal Americans with Disabilities Act of 1990 a temporary community center in the southeast heights of the city of Albuquerque located in Bernalillo county;

Z. one hundred fifty thousand dollars (\$150,000) to design, construct or equip phase I of the Phil Chacon community center in Albuquerque in Bernalillo county;

AA. one hundred twenty-five thousand dollars (\$125,000) to design, construct, renovate, furnish or equip a child care center at the Trumbull community center in Albuquerque in Bernalillo county;

BB. one hundred twenty-five thousand dollars (\$125,000) for repairs or improvements to the Edgewood community and senior center in Santa Fe county;

CC. one hundred fifty thousand dollars (\$150,000) to design, construct or equip a domestic violence shelter in the town of Taos in Taos county;

DD. three hundred thousand dollars (\$300,000) to plan, design or construct a new roof for the Mimbres memorial hospital located in Luna county;

EE. one hundred thousand dollars (\$100,000) for site development for or designing, constructing or equipping a primary care clinic in Thoreau located in McKinley county;

FF. one hundred twenty-five thousand dollars (\$125,000) for phase II of the community center project, including a septic tank, in San Jose in San Miguel county;

~~[GG. one hundred fifty thousand dollars (\$150,000) to design or conduct a study on the feasibility of constructing a joint-use facility for county and educational purposes in the Eldorado area of Santa Fe county or to develop a long-term infrastructure development plan for the Eldorado area of southeastern Santa Fe county;]~~

HH. one hundred thousand dollars (\$100,000) for the purpose of making improvements to the Paradise Hills community center gym located in Bernalillo county;

II. one hundred thousand dollars (\$100,000) to design, build or equip a community center for the town of Texico in Curry county;

JJ. seventy-five thousand dollars (\$75,000) for the purpose of continuing construction of the Espanola marketplace project, also known as the Convento, including design or construction of a museum commemorating New Mexico's missions, in Espanola located in Rio Arriba county;

KK. three hundred thousand dollars (\$300,000) for renovating a multiservice center in the north valley of Albuquerque located in Bernalillo county or making improvements to the center in order to comply with the federal Americans with Disabilities Act of 1990. The appropriation is contingent upon matching funds of three hundred thousand dollars (\$300,000) from the city of Albuquerque;

LL. one hundred thousand dollars (\$100,000) for the purpose of designing, building or equipping improvements to the Walker park recreation area in Alamogordo located in Otero county;

MM. seventy-five thousand dollars (\$75,000) for the purpose of completing renovation of the Muchmore house residential treatment facility located in Bernalillo county for severely emotionally impacted adolescents;

NN. four hundred thousand dollars (\$400,000) to design, remodel, renovate or equip a shelter for victims of domestic violence in Las Cruces in Dona Ana county;

OO. one hundred seventy-five thousand dollars (\$175,000) for the purpose of planning, designing or constructing an enclosed swimming facility on the west side of Albuquerque located in Bernalillo county. The appropriation is contingent upon matching funds from the city of Albuquerque in the amount of one hundred seventy-five thousand dollars (\$175,000);

PP. fifty thousand dollars (\$50,000) for the purpose of proceeding with the phase III development of the street lighting project at Shiprock on the Navajo Nation in San Juan county;

QQ. one hundred seventy-five thousand dollars (\$175,000) for the purpose of beginning phase II of the renovation project for the Court junior high youth center in Las Cruces located in Dona Ana county;

RR. sixty thousand dollars (\$60,000) to plan, design, construct or expand the Branigan cultural center in the city of Las Cruces located in Dona Ana county;

SS. one hundred thousand dollars (\$100,000) to plan, design or construct phase I of the Santa Fe community center on the Santa Fe rodeo grounds in the city of Santa Fe located in Santa Fe county;

TT. one hundred thousand dollars (\$100,000) for the purpose of planning, designing or constructing a branch city library near the intersection of Harper and Barstow streets in the city of Albuquerque located in Bernalillo county. The appropriation is contingent upon one hundred thousand dollars (\$100,000) in matching funds from the city of Albuquerque;

UU. forty-five thousand dollars (\$45,000) for completion of phase I of the Crownpoint park and rodeo in McKinley county, including designing, constructing, equipping or purchasing materials for a boundary fence, installation of portable bleachers or installation of a water system;

VV. twenty-five thousand dollars (\$25,000) for the purpose of completing improvements or equipping a fire station at Pleasant Hill in Curry county;

~~WW. forty-three thousand dollars (\$43,000) to update computers and software for the city of Jal in Lea county;~~

XX. twenty-seven thousand two hundred thirty-one dollars (\$27,231) for construction of an addition to the Jal ambulance building in Lea county;

YY. twenty-five thousand dollars (\$25,000) to repair or improve the community center at San Geronimo in San Miguel county;

ZZ. seventy-five thousand dollars (\$75,000) for the purpose of conducting a feasibility study, a program study or an architectural schematic design for the proposed Museo Cultural de Santa Fe cultural center in the city of Santa Fe located in Santa Fe county;

AAA. one hundred thousand dollars (\$100,000) for site acquisition, design, construction or equipping of a community living facility, vocational building and training center and administration building for persons with disabilities in Las Cruces in Dona Ana county;

BBB. three hundred thousand dollars (\$300,000) for the purpose of renovating, constructing an addition or making improvements to a building and parking lot used for public and family health services in the north valley area of Albuquerque located in Bernalillo county;

CCC. thirty thousand dollars (\$30,000) for the purpose of site preparation or transportation costs to relocate a historical building at the museum complex in the city of Lovington in Lea county;

DDD. one hundred thousand dollars (\$100,000) to design, construct or equip a new addition to and enclose the swimming pool for year-round use at the stroke center in Espanola in Rio Arriba county;

EEE. fifty thousand dollars (\$50,000) to design, construct or equip the El Cerro mission fire substation and the Las Maravillas fire substation located in Valencia county;

FFF. fifty thousand dollars (\$50,000) to make improvements to the sewer system at Blue Hole park in Santa Rosa in Guadalupe county;

GGG. twenty-five thousand dollars (\$25,000) to purchase and equip a dump truck for Mora county;

HHH. fifty thousand dollars (\$50,000) to design, build or equip a public works building in Mora county;

III. one hundred twenty thousand dollars (\$120,000) to purchase a fire truck for and to plan, design or construct the Sunland Park fire station located in Dona Ana county;

JJJ. seventy thousand dollars (\$70,000) to construct and equip a police department and court complex in Carrizozo in Lincoln county;

KKK. seventy-five thousand dollars (\$75,000) for planning, design and site preparation for a little league athletic recreation complex in the Atrisco area south of Central avenue and north of Bridge road in Albuquerque located in Bernalillo county;

LLL. two hundred thirty thousand dollars (\$230,000) for the purpose of acquiring land or designing, constructing or equipping phase I of a regional park and sports complex in Las Cruces located in Dona Ana county;

MMM. fifty thousand dollars (\$50,000) for the purpose of conducting a needs assessment and determining the resources available to enable the construction of a school-community center through a coordinated effort by Santa Fe county, the Eldorado school and the state to be used by Santa Fe county residents in the Eldorado area;

NNN. fifty thousand dollars (\$50,000) for renovations on the Hurley community center in Grant county;

OOO. fifty thousand dollars (\$50,000) to furnish, equip and construct site 8 improvements to the Bayard community center in Grant county;

PPP. seventeen thousand dollars (\$17,000) to construct improvements to the Bayard city library in Grant county;

QQQ. fifty thousand dollars (\$50,000) for the purchase of minivans to be used in multiple-site programs for at-risk youth in Bernalillo county;

RRR. one hundred seventy-five thousand dollars (\$175,000) to construct and equip a multipurpose center in the village of Los Lunas located in Valencia county;

SSS. two hundred thousand dollars (\$200,000) for the purpose of continuing to design, construct and equip the Belen multipurpose recreational facility located in Valencia county;

~~TTT. one hundred sixty thousand dollars (\$160,000) for the purpose of contracting for statuary artwork to be placed in the proposed New Mexico botanical gardens to be located in Albuquerque in Bernalillo county;]~~

UUU. two hundred thousand dollars (\$200,000) to purchase and renovate a building to house the New Mexico business resource center located in Bernalillo county;

VVV. fifty thousand dollars (\$50,000) for park and parking lot improvements, playground equipment and beginning design of the community center and fire station at the community park in Salem in Dona Ana county;

WWW. one hundred fifty thousand dollars (\$150,000) for the purpose of renovating and equipping the Chaparral public health facility located in Dona Ana county;

XXX. fifty thousand dollars (\$50,000) for the purpose of acquiring a mobile health clinic for the memorial medical center in Las Cruces located in Dona Ana county;

YYY. twenty-five thousand dollars (\$25,000) for equipment and renovations of the boys club in the city of Santa Fe located in Santa Fe county;

ZZZ. twenty-five thousand dollars (\$25,000) for equipment and renovations of the girls club in the city of Santa Fe located in Santa Fe county;

AAAA. two hundred fifty thousand dollars (\$250,000) to design, construct and equip a new public library in the vicinity of Harper and Barstow streets in the northeast heights section of Albuquerque in Bernalillo county;

BBBB. one hundred thousand dollars (\$100,000) to design, construct and equip a recreation area for the Altamont little league in Bernalillo county;

CCCC. twenty-five thousand dollars (\$25,000) for the purpose of having the middle Rio Grande conservancy district cover the Pajarito drain from Camino del Valle to Isleta boulevard in Bernalillo county;

DDDD. twenty-five thousand dollars (\$25,000) for the purpose of purchasing land or developing a site for a multipurpose recreation facility at the village

of Bosque
Farms in Valencia county;

EEEE. two hundred fifty thousand dollars (\$250,000) for the purpose of designing, constructing and equipping a multipurpose center for Del Cerro located in Dona Ana county;

FFFF. two hundred thousand dollars (\$200,000) for the purpose of purchasing the Sierra Vista hospital to make it a county entity in Sierra county;

GGGG. fifty thousand dollars (\$50,000) to plan and design a new police-court building, firestation and fire substation in the village of Jemez Springs located in Sandoval county;

HHHH. twenty-five thousand dollars (\$25,000) to purchase office equipment for the Jemez Springs village office located in Sandoval county;

IIII. seventy-five thousand dollars (\$75,000) to make improvements to comply with the federal Americans with Disabilities Act of 1990 and to renovate Bataan park in the city of Albuquerque located in Bernalillo county;

~~[JJJJ. one hundred thousand dollars (\$100,000) to design and develop improvements, make renovations and build an outdoor classroom, in coordination with Zia elementary school, at Zia park in Albuquerque in Bernalillo county;]~~

KKKK. one hundred thirty-six thousand dollars (\$136,000) for the purpose of making lighting improvements to the industrial park sports complex located in Rio Arriba county;

LLLL. sixty thousand dollars (\$60,000) to match other funds for the design, construction and equipping of a business park located in Taos county;

MMMM. sixty thousand dollars (\$60,000) to design, build and equip a new volunteer fire department substation at Melody Ranch near Indian Hills in Torrance county;

NNNN. twenty thousand dollars (\$20,000) to purchase vehicles for the county sheriff's department in Torrance county;

OOOO. twenty thousand dollars (\$20,000) to purchase and equip sheriff's department vehicles in San Miguel county;

PPPP. twenty-five thousand dollars (\$25,000) for improvements to the community center at Bernal in San Miguel county;

QQQQ. twenty-five thousand dollars (\$25,000) to design and construct improvements to the Artesia girls' softball field in Eddy county;

RRRR. one hundred thousand dollars (\$100,000) to plan and design a multipurpose recreational facility in Grants located in Cibola county;

SSSS. one hundred twenty-five thousand dollars (\$125,000) for sewer improvements, including a pumping station to extend sewer lines to the battered families center, in Grants located in Cibola county;

TTTT. fifty thousand dollars (\$50,000) to upgrade and purchase central processing system equipment for the city of Grants located in Cibola county;

UUUU. sixty thousand dollars (\$60,000) to plan and design a new city hall building in the city of Grants located in Cibola county;

VVVV. eighteen thousand dollars (\$18,000) to purchase and equip vehicles for transporting rehabilitation program participants located in McKinley county;

WWWW. forty thousand dollars (\$40,000) for a backhoe for the village of Questa in Taos county;

XXXX. seventy thousand dollars (\$70,000) for youth center equipment for the village of Questa in Taos county;

YYYY. fifty thousand dollars (\$50,000) to renovate the Artesanos de Questa cultural center building in Questa in Taos county;

ZZZZ. fifty thousand dollars (\$50,000) to plan, design, construct, equip or furnish a fire substation in the community of Arroyo Seco in Santa Fe county;

AAAAA. one hundred thousand dollars (\$100,000) for construction of an indoor riding arena to be administered jointly by Taos county and the soil and water conservation district in Taos county;

BBBBB. thirty thousand dollars (\$30,000) to purchase a new ambulance for the town of Red River in Taos county;

CCCCC. thirty thousand dollars (\$30,000) to design, construct or equip a domestic violence shelter in the town of Taos in Taos county;

DDDDD. eighty-nine thousand dollars (\$89,000) for the purpose of providing for the purchase and storage of San Juan-Chama water or flood water by the Rio de Chama acequias for use during periods of water shortage or drought in Rio Arriba county;

EEEE. one hundred twenty-five thousand dollars (\$125,000) for the purpose of planning and designing flood control measures for the city of Espanola in Rio Arriba county;

FFFF. one hundred fifty thousand dollars (\$150,000) to purchase land, design, construct, landscape, furnish and equip the Roswell J.O.Y. center in Chaves county;

GGGG. one hundred fifty thousand dollars (\$150,000) to complete construction of a new facility to house administrative services programs, infant and family programs, programs for persons with disabilities and personal and social development programs in Roswell in Chaves county;

HHHH. one hundred thousand dollars (\$100,000) to design, construct and equip soccer fields in Roswell located in Chaves county;

IIII. twenty-five thousand dollars (\$25,000) for site preparation, purchase and installation of mobile homes or houses to station law enforcement officers in the Lake Arthur or Dunkan areas of Chaves county;

JJJJ. fifty thousand dollars (\$50,000) to purchase and install playground equipment for children with limited physical abilities in Roswell in Chaves county;

KKKK. twenty-five thousand dollars (\$25,000) to design, construct, equip or furnish an addition to the Midway volunteer fire department facility located in Chaves county;

LLLL. fifty thousand dollars (\$50,000) to renovate, relocate or make site improvements to the historical site at Fifth street and Main street in Roswell located in Chaves county;

~~[MMMM. one hundred thousand dollars (\$100,000) for the purpose of purchasing and installing a water sprinkler system for the historic Santa Catarina cemetery in Carlsbad located in Eddy county;]~~

NNNN. forty thousand dollars (\$40,000) to design, construct, renovate, furnish or equip a substation for the Otis volunteer fire department in Eddy county;

OOOO. thirty thousand dollars (\$30,000) to construct drainage improvements and flood control facilities in the new San Jose and Hall addition areas in the city of Carlsbad in Eddy county;

PPPP. one hundred fifty thousand dollars (\$150,000) for phase II of construction of a multipurpose center in Medanales located in Rio Arriba county;

QQQQQ. one hundred thousand dollars (\$100,000) to design, construct, renovate, furnish or equip a public safety complex for municipal court, police and jail facilities in the town of Eunice in Lea county;

RRRRR. twenty thousand dollars (\$20,000) to design, renovate, furnish or equip the teen center in the town of Jal in Lea county, including improvements for compliance with the federal Americans with Disabilities Act of 1990;

SSSSS. one hundred thousand dollars (\$100,000) to design, construct, furnish and equip a southside community center in Hobbs in Lea county;

TTTTT. ten thousand dollars (\$10,000) to design, construct, furnish and equip a concession and restroom building at the baseball and softball complex in the town of Jal in Lea county;

UUUUU. one hundred thousand dollars (\$100,000) to plan, design and construct little league baseball fields in the city of Albuquerque located in Bernalillo county;

VVVVV. fifty thousand dollars (\$50,000) to renovate and remodel a community health clinic building at Mountainair in Torrance county;

WWWWW. eighteen thousand dollars (\$18,000) to purchase a van to transport indigent patients to and from hospital facilities in McKinley county;

XXXXX. two hundred thousand dollars (\$200,000) to plan and design a multipurpose community center in Eagle Nest in Colfax county;

YYYYY. sixty thousand dollars (\$60,000) for the purpose of purchasing, renovating and equipping a building for youth recreational services and programs in Bloomfield in San Juan county;

ZZZZZ. one hundred thousand dollars (\$100,000) for land acquisition and planning and design of an addition to the public library in Portales in Roosevelt county;

AAAAA. forty-five thousand dollars (\$45,000) for purchasing and equipping law enforcement vehicles in Portales in Roosevelt county;

BBBBB. two hundred thousand dollars (\$200,000) for purchasing and equipping solid waste collection vehicles in Portales in Roosevelt county;

CCCCC. forty thousand dollars (\$40,000) for the purpose of making park improvements to the Boles Acres community park in Otero county;

DDDDDD. twenty-five thousand dollars (\$25,000) for renovating and equipping the emergency and radiology facilities at the Quay county hospital in the city of Tucumcari in Quay county;

EEEEEE. ten thousand dollars (\$10,000) to purchase and install equipment in the Tucumcari convention center in Quay county;

FFFFFF. twenty-five thousand dollars (\$25,000) to plan, design and construct an addition to the Harding county community building in Harding county;

~~[GGGGGG. three hundred thousand dollars (\$300,000) to construct and equip the riverwalk amphitheater in the city of Grants located in Cibola county;]~~

HHHHHH. one hundred fifty thousand dollars (\$150,000) to make improvements to Roadrunner little league park in Albuquerque in Bernalillo county;

IIIIII. fifty thousand dollars (\$50,000) to purchase and equip a fire truck for the community of Bent in Otero county;

JJJJJJ. fifty thousand dollars (\$50,000) for the purpose of designing, constructing or equipping a community multipurpose center at San Antonito in Bernalillo county;

KKKKKK. one hundred thousand dollars (\$100,000) for the purpose of constructing and equipping football fields and other athletic fields and facilities at Bullhead park in Albuquerque located in Bernalillo county;

LLLLLL. twenty-five thousand dollars (\$25,000) for the purchase and installation of computer hardware and educational software, including necessary hardwiring and communications connections for the physical setup, for computer-aided instruction at the life long learning center in the town of Bernalillo in Sandoval county;

MMMMMM. twenty-five thousand dollars (\$25,000) for the purchase and installation of computer hardware and educational software, including necessary hardwiring and communications connections for the physical setup, for computer-aided instruction at Los Vecinos community center in Tijeras in Bernalillo county;

NNNNNN. one hundred fifty thousand dollars (\$150,000) for the purpose of designing, constructing and equipping an approximately one thousand five hundred square foot building for the Tatum magistrate court and, if money remains, for completing construction of a building for the Tatum police department located in Lea county;

OOOOOO. twenty-five thousand dollars (\$25,000) for the purpose of completing the Arch community center in Roosevelt county;

PPPPPP. fifty thousand dollars (\$50,000) for the purpose of designing, constructing and equipping an addition to the village of Causey fire department in Roosevelt county;

QQQQQQ. one hundred fifty thousand dollars (\$150,000) for designing, constructing or equipping, including domestic drinking water and appropriate field watering systems, soccer fields in the east mountain area of Bernalillo county; and

RRRRRR. thirty thousand dollars (\$30,000) to design and construct the Tijeras Arroyo trail between Eubank and Four Hills in Albuquerque in Bernalillo county.

Section 25

Section 25. GENERAL FUND--DEPARTMENT OF ENVIRONMENT -- APPROPRIATIONS.--The following amounts are appropriated from the general fund to the department of environment for the following purposes:

A. three hundred thousand dollars (\$300,000) to upgrade and expand a wastewater treatment plant in Hatch in Dona Ana county;

B. one hundred thousand dollars (\$100,000) for the purpose of purchasing and installing a new water tank for and making improvements to the water system for the village of Ramah located in McKinley county;

C. fifty thousand dollars (\$50,000) to make water system improvements for Tres Piedras in Rio Arriba and Taos counties;

D. fifty thousand dollars (\$50,000) to design, inspect or construct sewer system improvements in the village of Mosquero in Harding county;

E. one hundred eighty thousand dollars (\$180,000) for water system improvements in the village of Ruidoso Downs located in Lincoln county;

F. one hundred eighty thousand dollars (\$180,000) for wastewater system repairs or improvements in Ruidoso in Lincoln county;

G. one hundred thousand dollars (\$100,000) for the purpose of making improvements to the domestic water system in Pinon located in Otero county;

H. one hundred thousand dollars (\$100,000) to plan, design, construct or equip a replacement of the Jemez village wastewater system in Sandoval county;

I. one hundred thousand dollars (\$100,000) to complete construction on a portion of a storm drainage system in Artesia located in Eddy county;

J. one hundred thousand dollars (\$100,000) to make improvements to the water system for the Hope water cooperative located in Eddy county;

K. one hundred fifty thousand dollars (\$150,000) to construct phase II of the sanitary sewer collection system for the village of Tijeras located in Bernalillo county;

L. one hundred thousand dollars (\$100,000) to design or construct an expansion of the Yah Ta Hey sewage lagoon located in McKinley county;

M. one hundred fifty thousand dollars (\$150,000) to provide for wastewater collection and treatment facilities in the Anthony water and sanitation district located in Dona Ana county;

N. fifty thousand dollars (\$50,000) to provide for improvements to the Berino mutual domestic water consumers association water system located in Dona Ana county;

O. seventy-five thousand dollars (\$75,000) to extend water lines in Aztec in San Juan county;

P. one hundred thousand dollars (\$100,000) for filtration system improvements in Blanco in San Juan county;

Q. fifty thousand dollars (\$50,000) for sewer and water improvements for the village of Questa in Taos county;

R. two hundred fifty thousand dollars (\$250,000) for the purpose of designing, inspecting or constructing water and sewer system improvements in Belen in Valencia county;

S. seventy-five thousand dollars (\$75,000) to survey, test, engineer or complete other elements of phase I of the San Ysidro main water system located in Sandoval county;

T. three hundred fifty thousand dollars (\$350,000) for the purpose of replacing a water well or making other water systems improvements in the town of Hagerman located in Chaves county;

U. seventy-five thousand dollars (\$75,000) to replace the water storage tank at Santa Rosa in Guadalupe county;

V. ninety thousand dollars (\$90,000) to drill a new well, upgrade the existing well and distribution system or make other improvements to the Rio Chiquito water system located in Santa Fe county;

W. eighty thousand dollars (\$80,000) to design, construct or equip a wetland wastewater treatment facility in Vaughn located in Guadalupe county;

X. seventy thousand dollars (\$70,000) for the purpose of designing, inspecting and constructing water system improvements in Mesquite located in Dona Ana county;

Y. ten thousand dollars (\$10,000) for the purpose of sponsoring an evaluation of the needs for water and wastewater system improvements in the High Valley community in Dona Ana county;

Z. sixty thousand dollars (\$60,000) to replace the water storage tank and make improvements to the domestic water system in Duran in Torrance county;

AA. forty thousand dollars (\$40,000) to provide repairs and improvements to the water storage and delivery system in Estancia in Torrance county;

BB. ten thousand dollars (\$10,000) for closure of the landfill at Pecos in San Miguel county;

CC. thirty thousand dollars (\$30,000) to provide a new well and domestic water system improvements at Madrid in Santa Fe county;

DD. forty thousand dollars (\$40,000) to provide a well and improvements for Acequia de La Cienega in Santa Fe county;

EE. fifty thousand dollars (\$50,000) to construct water system improvements and perform an archaeological survey in the La Vega estates in San Rafael located in Cibola county;

FF. fifty thousand dollars (\$50,000) for construction and repair of and debris removal from the San Mateo water system in San Mateo located in Cibola county;

GG. fifty-five thousand dollars (\$55,000) to continue improvements to and replacement of a water line at Golden acres in the village of Milan located in Cibola county;

HH. two hundred thousand dollars (\$200,000) for the purpose of constructing a water and sewer system on Gun Club road west of Coors road in the south valley of Albuquerque located in Bernalillo county;

II. thirty thousand dollars (\$30,000) for water system improvements for the Tres Piedras mutual domestic water consumers association in Taos county;

JJ. twenty thousand dollars (\$20,000) for sewer and water system improvements in Red River in Taos county;

KK. twenty thousand dollars (\$20,000) for water system improvements for the Ojo Feliz mutual domestic water association in Mora county;

LL. two hundred thousand dollars (\$200,000) to inspect and construct water tank improvements for the city of Santa Rosa in Guadalupe county;

MM. twenty-five thousand dollars (\$25,000) to design, inspect and construct north San Ysidro water system improvements in Ilfeld in San Miguel county;

NN. two hundred fifty thousand dollars (\$250,000) to acquire a water system for the town of Reserve in Catron county;

OO. ten thousand dollars (\$10,000) for a study of the need for improvements to the domestic water system at Butterfield Park in Dona Ana county;

PP. twenty-five thousand dollars (\$25,000) to design, inspect and construct water treatment system improvements in the town of Springer in Colfax county;

QQ. fifty thousand dollars (\$50,000) to design, inspect and construct water and sewer system improvements in Clayton in Union county;

RR. ninety thousand dollars (\$90,000) to make improvements to Mustang lane, including the installation and connection of municipal water and sewer lines in the city of Bloomfield in San Juan county;

SS. two hundred thousand dollars (\$200,000) for the purpose of conducting an environmental impact study of the future site of the spaceport facility located in Dona Ana and Sierra counties; and

TT. one hundred fifty thousand dollars (\$150,000) for the purpose of repairing, improving and extending sewer lines in the village of Melrose located in Curry county.

Section 26

Section 26. GENERAL FUND--ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT--APPROPRIATION.--The following amounts are appropriated from the general fund to the energy, minerals and natural resources department for the following purposes:

A. eighty-three thousand dollars (\$83,000) for the purpose of making capital improvements to existing facilities at Red Rock state park in McKinley county in compliance with the federal Americans with Disabilities Act of 1990; and

B. twenty-five thousand dollars (\$25,000) for the purpose of making improvements to Oliver Lee state park located in Otero county.

Section 27

Section 27. GENERAL FUND--STATE HIGHWAY AND TRANSPORTATION DEPARTMENT--APPROPRIATIONS.--The following amounts are appropriated from the general fund to the state highway and transportation department for the following purposes:

~~[A. three hundred fifty thousand dollars (\$350,000) for the purpose of planning, designing, right-of-way acquisition or construction of two pedestrian overpasses on Gibson boulevard in Albuquerque located in Bernalillo county;]~~

B. ninety-six thousand dollars (\$96,000) for the purpose of planning, designing, constructing or equipping a two-lane bridge at La Cueva located in Sandoval county;

C. fifty thousand dollars (\$50,000) to make improvements, including installing and improving storm drains, to First street in Hurley located in Grant county;

D. one hundred thirty thousand dollars (\$130,000) for the purpose of removing railroad sidings or improving railroad crossings on the Tenth street extension in Alamogordo located in Otero county;

E. three hundred thousand dollars (\$300,000) for the purpose of reconstructing or improving Elks drive in Las Cruces located in Dona Ana county;

F. one hundred thousand dollars (\$100,000) for the purpose of clearing, grading or compacting unimproved roads leading to existing homes or to develop sites in north Albuquerque acres located in Bernalillo county;

~~[G. one hundred thousand dollars (\$100,000) to install chip seal or culverts in Wheatridge estates or Double A estates near state road 467 located in Curry county;]~~

H. two hundred thousand dollars (\$200,000) for street surfacing or improvements in Jal in Lea county;

I. two hundred thousand dollars (\$200,000) for street improvements in Eunice in Lea county;

J. one hundred thousand dollars (\$100,000) for improvements to Motel drive, north of the Petro interchange, in the village of Milan located in Cibola county;

~~[K. one hundred fifty thousand dollars (\$150,000) to plan, design, develop or construct median landscaping on San Pedro boulevard between Montgomery and Osuna boulevards in the city of Albuquerque located in Bernalillo county;]~~

~~[L. one hundred eighty thousand dollars (\$180,000) for the purpose of planning, designing, engineering or constructing roadway infrastructure and streetscape improvements on old U.S. Route 66 from Eighth street to Rio Grande boulevard in Albuquerque located in Bernalillo county;]~~

M. fifty thousand dollars (\$50,000) for the purpose of planning, designing, purchasing, installing and equipping blinking yellow or stop light systems as necessary on Fourth street at both Taft middle and Los Ranchos elementary public schools in the north valley area in Bernalillo county;

N. one hundred fifty thousand dollars (\$150,000) for the purpose of paving two miles of Remuda Ridge and Mutt Nelson roads located in Santa Fe county;

O. twenty-five thousand dollars (\$25,000) to surface and improve Powerway road west of Coors boulevard in the city of Albuquerque located in Bernalillo county;

P. twenty-five thousand dollars (\$25,000) to surface and improve Lakeview road west of Isleta boulevard in the city of Albuquerque located in Bernalillo county;

Q. twenty-five thousand dollars (\$25,000) to surface and improve Barcelona road in the city of Albuquerque located in Bernalillo county;

R. twenty-five thousand dollars (\$25,000) to surface and improve Gun Club road west of Coors boulevard in the city of Albuquerque located in Bernalillo county;

S. fifty thousand dollars (\$50,000) to surface and make improvements to BIA-120 in Candy Kitchen located in Cibola county;

T. forty-five thousand dollars (\$45,000) to continue improvements to and replacement of a water line at Ralph Card road in the village of Milan located in Cibola county;

U. one hundred fifty thousand dollars (\$150,000) to plan, design, pave and make improvements to the streets in the city of Lordsburg located in Hidalgo county;

V. sixty thousand dollars (\$60,000) to surface and improve roads in the west Monterrey addition in Tularosa in Otero county;

W. fifty thousand dollars (\$50,000) for street improvements in and around Lovington in Lea county;

X. one hundred fifty thousand dollars (\$150,000) for road improvements in Curry county; and

Y. fifty thousand dollars (\$50,000) for the purpose of building a monument and adjoining parking area along interstate 25 in Santa Fe county recognizing the historical contribution made to New Mexico by the Mormon battalion.

Section 28

Section 28. GENERAL FUND--NEW MEXICO OFFICE OF INDIAN AFFAIRS--APPROPRIATIONS.--The following amounts are appropriated from the general fund to the New Mexico office of Indian affairs for the following purposes:

A. one hundred thousand dollars (\$100,000) to complete construction of a multipurpose building at the Pueblo of Jemez located in Sandoval county;

B. fifty thousand dollars (\$50,000) to construct and install infrastructure to support the number of tourists who attend an arts and crafts fair held at the Pueblo of Santa Clara located in Rio Arriba county;

C. seventy-five thousand dollars (\$75,000) for planning, designing, remodeling, renovating, equipping or furnishing the New Moon alcoholism treatment center at San Juan Pueblo;

D. one hundred thousand dollars (\$100,000) for the purpose of completing archaeological clearances, environmental assessments, surveys, land preparation, base and roadbed preparation or construction through a basecourse for Deer Springs road, the Nakaibito loop, in the Mexican Springs chapter located in McKinley county;

E. twenty-five thousand dollars (\$25,000) to acquire a site for and plan and design a multipurpose recreational building in Thoreau, located in McKinley county;

F. one hundred fifty thousand dollars (\$150,000) for the purpose of designing, preconstructing, constructing, furnishing or equipping phase II of a multipurpose center in Huerfano located in San Juan county;

~~[G. one hundred thirty thousand dollars (\$130,000) to plan, design, construct, equip or furnish a new Poeh center museum at Pojoaque located in Santa Fe county;]~~

H. seventy-five thousand dollars (\$75,000) to renovate the community center in the community of Acoma located in Cibola county;

I. one hundred fifty thousand dollars (\$150,000) to match federal and other funds for infrastructure and utility construction or other capital improvements at the institute of American Indian arts in Santa Fe county;

J. ninety-three thousand dollars (\$93,000) to provide for electrical house wiring of one hundred homes on the Ramah Navajo reservation located in McKinley county;

K. two hundred thousand dollars (\$200,000) for the purpose of planning, designing or preconstruction work for buildings for the Navajo preparatory school in Farmington in San Juan county;

L. one hundred thousand dollars (\$100,000) to plan and design a recreational area on the Jicarilla Apache Reservation located in Rio Arriba county;

M. eighty-three thousand dollars (\$83,000) for the purpose of designing and constructing water and wastewater systems in the Navajo community of Red Rock south located in McKinley county;

N. forty-two thousand five hundred dollars (\$42,500) for the purpose of equipping, furnishing and purchasing library materials for a multicultural community library on the Jicarilla Apache Reservation located in Rio Arriba county;

O. thirty-five thousand dollars (\$35,000) for the purpose of designing, constructing or expanding the Whitehorse Lake sewage lagoon located in McKinley county;

P. three hundred fifty thousand dollars (\$350,000) for the purpose of purchasing, transporting, installing and equipping a modular building to complete phase II of a cafeteria for students with academic and special needs in Shiprock located in San Juan county;

Q. fifty thousand dollars (\$50,000) to plan and design a fire station in Acoma located in Cibola county;

R. twenty-five thousand dollars (\$25,000) to plan and design a jail facility in Acoma located in Cibola county;

~~[S. fifty thousand dollars (\$50,000) to begin design and construction of an archive and records facility for preservation and storage of historical data in Acoma located in Cibola county;]~~

T. twenty thousand dollars (\$20,000) to continue the purchase, transportation, installation and equipping of a modular unit for the Iyanbito headstart facility in McKinley county;

U. twenty thousand dollars (\$20,000) to renovate and equip the Jones Ranch headstart facility in McKinley county;

V. twenty thousand dollars (\$20,000) to renovate and equip the Chichiltah preschool building in McKinley county;

W. twenty thousand dollars (\$20,000) to renovate and equip the Breadsprings preschool building in McKinley county;

X. one hundred sixty-two thousand dollars (\$162,000) for the following purposes in the following amounts:

(1) eighty-one thousand dollars (\$81,000) for designing, renovating and equipping the athletic fields and facilities at the Santa Fe Indian school located in Santa Fe county; and

(2) eighty-one thousand dollars (\$81,000) for planning, designing, constructing or equipping a new library at the Santa Fe Indian school located in Santa Fe county;

~~[Y. one hundred fifty thousand dollars (\$150,000) for renovations and improvements to the Indian pueblo cultural center in Albuquerque in Bernalillo county;]~~

Z. twenty thousand dollars (\$20,000) to purchase, transport, install or equip a headstart modular building in Becenti in McKinley county;

AA. twenty thousand dollars (\$20,000) to purchase, transport, install or equip a headstart modular building in Whitehorse lake in McKinley county;

BB. twenty thousand dollars (\$20,000) to purchase, transport, install or equip a headstart modular building in Casamero lake in McKinley county;

CC. twenty thousand dollars (\$20,000) to purchase, transport, install or equip a headstart modular building in the community of Baca in McKinley county;

DD. fifty-two thousand four hundred forty dollars (\$52,440) to plan, design and construct a water line project at Pueblo Pintado in McKinley and San Juan counties;

EE. five thousand dollars (\$5,000) to design, construct and equip a softball field in the Navajo chapter of Thoreau in McKinley county; and

FF. sixty thousand dollars (\$60,000) for the purpose of renovating, equipping and constructing improvements to a learning center on the Pueblo of Sandia located in Sandoval county.

Section 29

Section 29. GENERAL FUND--LUNA VOCATIONAL-TECHNICAL INSTITUTE--APPROPRIATION.--Two hundred thousand dollars (\$200,000) is appropriated from the general fund to the governing board of Luna vocational-technical institute to plan, design, remodel, construct, equip or furnish the vocational agriculture facility, to include landscape development and permaculture design, for use as an early childhood education and permaculture center, in San Miguel county.

Section 30

Section 30. GENERAL FUND--NEW MEXICO SCHOOL FOR THE DEAF--APPROPRIATIONS.--The following amounts are appropriated from the general fund to the board of regents of the New Mexico school for the deaf for the following purposes:

A. three hundred thousand dollars (\$300,000) for the purpose of complying with the federal Americans with Disabilities Act of 1990 or to renovate, equip or make improvements to educational, administrative or dormitory buildings at the New Mexico school for the deaf in Santa Fe county;

B. one hundred thousand dollars (\$100,000) for the purpose of making improvements to the Santa Fe campus infrastructure, including buildings, equipment, furnishings, campus lighting or fire hydrant systems, at the New Mexico school for the deaf in Santa Fe county; and

C. two hundred thirty-five thousand dollars (\$235,000) for the purpose of constructing, furnishing and equipping a preschool facility at the New Mexico school for the deaf campus in Bernalillo county.

Section 31

Section 31. GENERAL FUND--REGIONAL JUVENILE SERVICES GRANT FUND--APPROPRIATION.--Three hundred thousand dollars (\$300,000) is appropriated from the general fund to the regional juvenile services grant fund for the purpose of acquiring and preparing a site for or designing, constructing or equipping a multipurpose regional juvenile facility in Gallup located in McKinley county.

Section 32

Section 32. GENERAL FUND--NEW MEXICO MILITARY INSTITUTE--APPROPRIATION.--Five hundred thousand dollars (\$500,000) is appropriated from the

general fund to the board of regents of the New Mexico military institute in Chaves county to rebuild, expand and equip Saunders barracks; for renovation and improvements of Pearson auditorium; or for campus infrastructure improvements related to compliance with the federal Americans with Disabilities Act of 1990.

Section 33

Section 33. GENERAL FUND--STATE DEPARTMENT OF PUBLIC EDUCATION--APPROPRIATIONS.--The following amounts are appropriated from the general fund to the state department of public education for the following purposes:

A. one hundred fifty thousand dollars (\$150,000) to acquire land for new elementary or intermediate schools in the Los Lunas school district in Valencia county;

B. one hundred thousand dollars (\$100,000) to create an outdoor multicultural classroom, to include a tiled patio and horno in an open, protective structure with a southwestern landscape and a security fence, at the Lowell elementary school in Albuquerque in Bernalillo county;

C. one hundred fifteen thousand dollars (\$115,000) to design, construct, renovate or equip Fort Sumner school facilities in De Baca county;

D. two hundred fifty-five thousand dollars (\$255,000) to design, construct or equip two elementary schools in the Tucumcari school district located in Quay county;

E. three hundred fifty thousand dollars (\$350,000) for the purpose of acquiring land, designing, constructing or equipping a new E.E. Torres elementary school in Socorro located in Socorro county;

F. one hundred thousand dollars (\$100,000) to complete construction, equip or furnish the kitchen and dining areas of the Reserve public school main building in Catron county;

G. two hundred thousand dollars (\$200,000) to purchase needed learning technology equipment at Alamosa elementary school, Truman middle school, Atrisco elementary school, Carlos Rey elementary school, Rio Grande high school and Mary Ann Binford elementary school located in Bernalillo county;

H. one hundred thousand dollars (\$100,000) to purchase land for a new elementary school in the town of Dexter located in Chaves county;

I. one hundred thousand dollars (\$100,000) for the purpose of replacing the wastewater treatment plant at the Jemez Valley public schools located in Sandoval county;

J. one hundred fifty thousand dollars (\$150,000) to design, construct or equip additional classrooms or restrooms at the Velarde elementary school located in Rio Arriba county;

K. one hundred twenty-five thousand dollars (\$125,000) to refurbish the cafeteria at Jackson middle school in Bernalillo county;

L. one hundred thousand dollars (\$100,000) for the purpose of phase I construction or equipping of the Gadsden high school fitness center located in Dona Ana county;

M. two hundred fifty thousand dollars (\$250,000) to design, construct or equip a middle school in Rio Rancho located in Sandoval county;

N. one hundred thousand dollars (\$100,000) for the purpose of making improvements to the athletic field at Harrison middle school in the Albuquerque public school district located in Bernalillo county;

O. one hundred fifty thousand dollars (\$150,000) to construct or equip a new high school in the west Las Vegas school district located in San Miguel county;

P. one hundred fifty thousand dollars (\$150,000) to plan, design, construct, equip or furnish a technology center addition to Robertson high school in the Las Vegas city schools district no. 2 in San Miguel county;

Q. sixty thousand dollars (\$60,000) to make improvements to or equip the Tularosa swimming pool in Otero county;

R. one hundred thousand dollars (\$100,000) for the purpose of designing, purchasing, installing or equipping two portable buildings to be used as a combination cafeteria-auditorium facility for the Pecos independent school district at Pecos in San Miguel county;

S. one hundred thousand dollars (\$100,000) to purchase and install computer equipment and educational technology programs for both of the Carlsbad municipal school district's two middle schools in Eddy county;

T. fifty thousand dollars (\$50,000) for a joint municipal-public school project to make improvements to or equip the playground area at E.M. Smith elementary school in Eddy county;

U. two hundred thousand dollars (\$200,000) to install grass at the Monte Vista elementary school in the city of Albuquerque located in Bernalillo county;

V. one hundred twenty-nine thousand dollars (\$129,000) for the purpose of purchasing or installing television distribution systems in the Gadsden independent school district located in Dona Ana county;

~~[W. thirty thousand dollars (\$30,000) for landscaping or site improvements, including equipment and furniture, for Wilson middle school in Albuquerque in Bernalillo county;]~~

X. one hundred fifty thousand dollars (\$150,000) to plan, design, renovate or make improvements to the soccer field at Arroyo del Oso elementary school in the city of Albuquerque in Bernalillo county;

Y. ninety-two thousand dollars (\$92,000) to purchase land or equipment for development of a school agricultural farm for the Texico high school at Texico in Curry county;

Z. one hundred fifty thousand dollars (\$150,000) to construct or equip a weights and wrestling facility for the Taos municipal schools in Taos county;

AA. ninety-five thousand dollars (\$95,000) to plan, design or construct classrooms for or an addition to the Pojoaque intermediate school located in Santa Fe county;

BB. one hundred thousand dollars (\$100,000) to make water and sewer improvements at Sombrillo elementary school located in Santa Fe county;

CC. sixty-six thousand one hundred dollars (\$66,100) for the purpose of planning, designing or constructing a soccer field at Eldorado high school in the city of Albuquerque located in Bernalillo county;

DD. one hundred thousand dollars (\$100,000) to renovate or equip the high school library, including constructing or purchasing new book shelving or purchasing computer equipment, at Tatum high school in Lincoln county;

EE. twenty-five thousand dollars (\$25,000) for the purpose of purchasing playground equipment for Lew Wallace elementary school in Bernalillo county;

FF. twenty-five thousand dollars (\$25,000) for the purpose of purchasing playground equipment for Duranes elementary school in Bernalillo county;

GG. seventy-five thousand dollars (\$75,000) to purchase computer equipment, including hardware and software, for a computer laboratory at Garfield middle school located in Bernalillo county;

HH. seventy-five thousand dollars (\$75,000) to construct a drop-off lane or make other improvements for parking at MacArthur elementary school located in Bernalillo county;

II. fifty thousand dollars (\$50,000) to expand the turf and irrigation of or make improvements to an area to be used for soccer fields by students at Griegos elementary or Valley high school located in Bernalillo county;

JJ. fifty thousand dollars (\$50,000) to study or plan the construction of the Polk middle school swimming pool located in Bernalillo county. The appropriation is contingent upon donation of land for the pool by the Albuquerque public school system with the maintenance and administration of the pool being provided by Bernalillo county;

~~KK. one hundred thirty-four thousand dollars (\$134,000) to purchase or install computer technology in Hawthorne elementary school in Bernalillo county;~~

LL. three hundred twenty-five thousand dollars (\$325,000) to plan, design, construct, equip or furnish a middle school in Rio Rancho in Sandoval county;

MM. one hundred twenty-five thousand dollars (\$125,000) for the purpose of building or equipping soccer fields at Rio Grande high school in Bernalillo county; including demolishing existing basketball courts or reconstructing those courts in another location at the high school;

NN. fifty thousand dollars (\$50,000) for the purpose of planning or designing a student union complex at Rio Grande high school in the Albuquerque public school district located in Bernalillo county;

OO. two hundred thousand dollars (\$200,000) for the purpose of purchasing or installing computer technology equipment for Del Norte high school in Bernalillo county, to establish Del Norte high school as a computer and communication magnet high school;

PP. fifty thousand dollars (\$50,000) to purchase an activity bus for the Corona municipal schools in Lincoln county;

QQ. three hundred fifty thousand dollars (\$350,000) for the purpose of designing, constructing or equipping a classroom and library addition or remodeling existing classrooms at Loving high school in Eddy county;

RR. eighty-five thousand dollars (\$85,000) for improvements at Wagon Mound schools in Mora county;

SS. one hundred forty-two thousand dollars (\$142,000) to design, renovate, remodel or equip a science laboratory and botanical greenhouse for the Texico high school at Texico in Curry county;

TT. one hundred thousand dollars (\$100,000) for the purpose of planning or designing a multipurpose auditorium for the Moriarty public school district located in Torrance county;

UU. one hundred thousand dollars (\$100,000) for the purpose of purchasing educational technology equipment in the Farmington public schools in San Juan county;

~~[VV. twenty-eight thousand five hundred dollars (\$28,500) to provide for educational technology equipment and programs or their installation at Eubank elementary school in Albuquerque in Bernalillo county;]~~

WW. one hundred fifty thousand dollars (\$150,000) for the purpose of purchasing or installing computer technology equipment or establishing two pilot projects for computer-aided instruction in the Santa Fe public school district located in Santa Fe county;

XX. one hundred thousand dollars (\$100,000) to construct or equip an elementary school building for the Penasco independent school district in Taos county;

YY. fifty thousand dollars (\$50,000) to make improvements at Roy school located in Harding county;

ZZ. twenty-five thousand dollars (\$25,000) to renovate and make improvements to the electrical system at Santa Rosa high school located in Guadalupe county;

AAA. two hundred thousand dollars (\$200,000) to match local funds for the building, equipping and furnishing of the West Mesa high school swimming pool on Glenrio road northeast of the high school in Albuquerque located in Bernalillo county;

~~[BBB. five thousand dollars (\$5,000) to purchase instructional materials and supplies for a pilot economic education program for teachers at West Mesa high school, the John Adams middle school and five elementary schools located in the West Mesa area of Albuquerque in Bernalillo county;]~~

CCC. twenty-five thousand dollars (\$25,000) for new computer technology at Susie Rayos Marmom elementary school in Bernalillo county;

DDD. twenty-five thousand dollars (\$25,000) for improvements to the computer technology equipment and programs at John Adams middle school in Bernalillo county;

EEE. twenty-five thousand dollars (\$25,000) for a new computer system and equipment, including printers and software, at the Chaparral elementary school in Bernalillo county;

FFF. twenty-five thousand dollars (\$25,000) for a new computer system and equipment, including printers and software, at the Lavaland elementary school in Bernalillo county;

GGG. twenty-five thousand dollars (\$25,000) for purchase and installation of a new interactive computer network at Valle Vista elementary school in Bernalillo county;

HHH. twenty-five thousand dollars (\$25,000) to refurbish classrooms and locker rooms in the old gymnasium and to refurbish outside bleachers and light poles at West Mesa high school in Bernalillo county;

III. twenty-five thousand dollars (\$25,000) to plan, design, construct, equip and furnish new restroom facilities, including handicap access, at the John Adams middle school in Bernalillo county;

JJJ. forty-five thousand dollars (\$45,000) for the purpose of making various playground improvements at the Reginald F. Chavez elementary school in Albuquerque located in Bernalillo county;

KKK. two hundred thousand dollars (\$200,000) for the purpose of constructing and equipping an addition at the Gil Sanchez elementary school located in Valencia county;

LLL. four hundred fifty thousand dollars (\$450,000) for the purpose of planning, designing, constructing, furnishing or equipping an alternative high school located in Santa Fe county;

MMM. one hundred twelve thousand one hundred sixty dollars (\$112,160) for the purpose of equipping the wood shop at Valley high school in Albuquerque in Bernalillo county;

NNN. one hundred twenty-five thousand dollars (\$125,000) to design, landscape and make other improvements to Washington middle school located in Bernalillo county;

OOO. one hundred twenty-five thousand dollars (\$125,000) to landscape, make improvements to and construct a drop-off lane at Bel Air elementary school located in Bernalillo county;

PPP. fifty thousand dollars (\$50,000) to purchase computer and communication equipment and to renovate and make other improvements to the lecture hall at Albuquerque high school located in Bernalillo county;

QQQ. twenty-five thousand dollars (\$25,000) for the purpose of landscaping and paving, purchasing and installing playground equipment and making

other needed improvements at the Adobe Acres elementary school located in Bernalillo county;

RRR. seventy thousand dollars (\$70,000) to make improvements, including handicap accessibility, only to the Mesilla elementary school playground and no other school playground located in La Mesilla in Dona Ana county;

SSS. forty-three thousand dollars (\$43,000) to design, construct and equip a shaded outdoor classroom, including a concrete slab, a metal-roofed shade structure and metal outdoor furniture, for the Edmond G. Ross elementary school in Albuquerque in Bernalillo county;

TTT. fifty thousand dollars (\$50,000) to make improvements to and equip Bellehaven elementary school park in Albuquerque in Bernalillo county;

UUU. one hundred thousand dollars (\$100,000) to make improvements to and equip Hayes middle school park in Albuquerque in Bernalillo county;

VVV. fifty thousand dollars (\$50,000) to make improvements to and equip Eubank elementary school park in Albuquerque in Bernalillo county;

WWW. one hundred thousand dollars (\$100,000) to make improvements to and equip Madison middle school park in Albuquerque in Bernalillo county;

XXX. one hundred thousand dollars (\$100,000) to make improvements to and equip Grant middle school park in Albuquerque in Bernalillo county;

YYY. one hundred thousand dollars (\$100,000) to create a natural habitat outdoor resource classroom, including a performance stage and a pond with a low-maintenance landscape, at the Mountain View elementary school in Albuquerque in Bernalillo county;

ZZZ. two hundred thousand dollars (\$200,000) for the purpose of completing the design, construction and equipping of an all-weather track and field facility for the Silver consolidated school district located in Grant county;

AAAA. fifty thousand dollars (\$50,000) to design, purchase, build, install and equip a portable building to serve as a cafeteria and auditorium facility at Pecos elementary school in Pecos in San Miguel county;

BBBB. one hundred thousand dollars (\$100,000) for the purpose of site preparation, including demolition, planning, designing, constructing, remodeling, equipping or furnishing the headstart facility in the city of Artesia in Eddy county;

CCCC. twenty-five thousand dollars (\$25,000) to design, construct, remodel and equip restroom facilities at the Penasco school located in Chaves county, which is part of the Artesia school district, in order to comply with the federal Americans with Disabilities Act of 1990;

DDDD. one hundred thousand dollars (\$100,000) for the purpose of renovating the community child care center, improving the street drop-off zone and purchasing equipment to complete the school technology project at Eugene Field elementary school located in Bernalillo county;

EEEE. fifty thousand dollars (\$50,000) for phase I construction and equipping of the Gadsden high school fitness center located in Dona Ana county;

FFFF. four hundred thousand dollars (\$400,000) for various capital projects at Highland high school and its affiliated elementary and middle schools in Bernalillo county;

GGGG. twenty thousand dollars (\$20,000) for supplies, instructional materials and other equipment for the after school academy at Alamosa elementary school in Bernalillo county;

~~[HHHH. twenty-five thousand dollars (\$25,000) for a new computer system and equipment, including printers and software, at the Alamosa elementary school in Bernalillo county;]~~

~~[IIII. fifty thousand dollars (\$50,000) to purchase computers and software for Sierra alternative school in Albuquerque in Bernalillo county;]~~ *[THE OVERSTRUCK MATERIAL HAS BEEN LINE-ITEM VETOED.]*

~~[JJJJ. fifty thousand dollars (\$50,000) to purchase computers and software for Bellehaven elementary school in Albuquerque in Bernalillo county;]~~

~~[KKKK. twenty-five thousand dollars (\$25,000) for the purchase and installation of computer equipment for the Lovington public schools in Lea county;]~~

~~[LLLL. two hundred fifty thousand dollars (\$250,000) for the purchase of computer software and hardware for the Los Ranchos elementary school in Albuquerque in Bernalillo county;]~~

MMMM. thirty thousand dollars (\$30,000) for athletic equipment for Raton high school in the Raton independent school district in Colfax county;

NNNN. twenty-five thousand dollars (\$25,000) to purchase and install educational video equipment in the Maxwell municipal schools in Colfax county;

OOOO. twenty-five thousand dollars (\$25,000) to remodel, renovate and equip Clayton high school in Union county;

PPPP. twenty-five thousand dollars (\$25,000) for the purpose of providing for telecommunications equipment and office resources for a distance education program in northeastern New Mexico;

QQQQ. ten thousand dollars (\$10,000) for additional classrooms in the Alamogordo public schools in Otero county;

RRRR. twenty-five thousand dollars (\$25,000) for the purpose of constructing or making repairs to wildlife exhibits at Apache elementary school in the Albuquerque public school district in Bernalillo county;

~~[SSSS. ten thousand dollars (\$10,000) to purchase and install computer equipment and educational technology for the House municipal schools in Quay county;]~~

~~[TTTT. four hundred fifty thousand dollars (\$450,000) for acquisition and installation of computer hardware, software, furniture and equipment and for performing requisite electrical work to make Jefferson elementary school and College Lane elementary school technology schools in Hobbs in Lea county;]~~

~~[UUUU. four hundred thousand dollars (\$400,000) to purchase computers and other educational technology for the Moriarty school district;]~~

~~[VVVV. two hundred thousand dollars (\$200,000) to purchase computer hardware and educational software and provide teacher training at Duranes elementary school located in Bernalillo county; and]~~

~~[WWWW. one hundred seventy-five thousand dollars (\$175,000) for the purpose of purchasing educational technology equipment for the Farmington public schools;]~~

Section 34

Section 34. GENERAL FUND--SAN JUAN COLLEGE--APPROPRIATIONS.--The following amounts are appropriated from the general fund to the governing board of San Juan college for the following purposes:

A. two hundred ninety-four thousand one hundred sixty-five dollars (\$294,165) for the purpose of designing, constructing or equipping an addition to the computer science building at San Juan college located in San Juan county; and

B. two hundred fifty thousand dollars (\$250,000) for the purpose of designing, constructing or equipping an addition to the vocational building to establish an advanced technology center at San Juan college located in San Juan county.

Section 35

Section 35. GENERAL FUND--UNIVERSITY OF NEW MEXICO --APPROPRIATIONS.-

-The following amounts are appropriated from the general fund to the board of regents of the university of New Mexico for the following purposes:

A. one hundred fifty thousand dollars (\$150,000) for the purpose of completing the renovation of the pavilion or renovating the existing kitchen and snack bar at the university of New Mexico south course in Albuquerque located in Bernalillo county, contingent upon the university providing matching funds of at least one hundred fifty thousand dollars (\$150,000) from nonstate sources;

B. four hundred thousand dollars (\$400,000) to plan, construct or equip renovations for additional seating or to complete construction of a training and weight room in the football stadium at the university of New Mexico located in Bernalillo county;

C. fifty thousand dollars (\$50,000) to purchase and install streetlights on the university of New Mexico campus located in Bernalillo county;

D. one hundred thousand dollars (\$100,000) to acquire land and design, construct and equip an adult education center on the north side of Gallup to be run by the Gallup branch of the university of New Mexico in McKinley county;

E. one hundred thousand dollars (\$100,000) for phase 3 construction of the Gallup instructional laboratory facility of the university of New Mexico located in McKinley county;

F. fifty thousand dollars (\$50,000) for the purpose of purchasing materials, library acquisitions and equipment for the Tireman library in the college of education at the university of New Mexico in Albuquerque located in Bernalillo county;

G. fifty thousand dollars (\$50,000) for United States-Mexico international law projects at the university of New Mexico school of law in Bernalillo county; and

H. three hundred thousand dollars (\$300,000) for the purpose of acquiring medical equipment for the university of New Mexico medical center located in Bernalillo county.

Section 36

Section 36. GENERAL FUND--NEW MEXICO STATE UNIVERSITY --
APPROPRIATIONS.--The following amounts are appropriated from the general fund to the board of regents of New Mexico state university for the following purposes:

A. one hundred thousand dollars (\$100,000) for the purpose of designing, constructing or equipping an addition to and remodeling the existing Aggie memorial stadium located in Dona Ana county;

B. one hundred thousand dollars (\$100,000) for the purpose of purchasing equipment and establishing a binational advanced manufacturing and management educational institute at New Mexico state university located in Dona Ana county; and

C. one hundred fifteen thousand dollars (\$115,000) for the purpose of designing, constructing and equipping a new golf course clubhouse; remodeling and making improvements to the existing clubhouse for classroom, laboratory and faculty offices; or making improvements to the golf course at New Mexico state university located in Dona Ana county.

Section 37

Section 37. GENERAL FUND--DEPARTMENT OF PUBLIC SAFETY --
APPROPRIATIONS.--The following amounts are appropriated from the general fund to the department of public safety for the following purposes:

A. fifteen thousand dollars (\$15,000) for the purpose of purchasing equipment for a narcotics task force in McKinley county;

B. thirty thousand dollars (\$30,000) for the purpose of implementing the provisions of the Missing Persons Information Act if that act is enacted into law by the first session of the forty-second legislature; and

C. one hundred forty thousand dollars (\$140,000) to establish a countywide community-oriented policing program involving all Sandoval county law enforcement agencies. The program shall include a citizen police academy, training and education in community-oriented policing, countywide crime prevention efforts and a countywide crimestoppers program.

Section 38

Section 38. GENERAL FUND--STATE ENGINEER--APPROPRIATION.--
Twenty-five thousand dollars (\$25,000) is appropriated from the general fund to the state engineer for acequia improvements for the west Puerto de Luna ditch in Guadalupe county.

Section 39

Section 39. GENERAL FUND--SECRETARY OF STATE --APPROPRIATION. --Twenty thousand dollars (\$20,000) is appropriated from the general fund to the secretary of state for the purpose of purchasing voting machines for Torrance county.

Section 40

Section 40. GENERAL FUND--NEW MEXICO VETERANS' SERVICE COMMISSION--APPROPRIATION.--Twenty-five thousand dollars (\$25,000) is appropriated from the general fund to the New Mexico veterans' service commission for the purpose of purchasing a vehicle to transport veterans in Hidalgo, Grant, Luna and Sierra counties to veterans' medical facilities.

Section 41

Section 41. GENERAL FUND--TOURISM DEPARTMENT --APPROPRIATIONS. --The following amounts are appropriated from the general fund to the tourism department for the following purposes:

A. twenty-five thousand dollars (\$25,000) to purchase, renovate and equip a building for the Clayton welcome center in Union county; and

B. twenty-five thousand dollars (\$25,000) to plan and design the Raton welcome center in Colfax county.

Section 42

Section 42. GENERAL FUND--MESA TECHNICAL COLLEGE --APPROPRIATION.--Twenty-five thousand dollars (\$25,000) is appropriated from the general fund to the governing board of Mesa technical college in Tucumcari in Quay county to plan and design a child development facility at the college.

Section 43

Section 43. GENERAL FUND--ECONOMIC DEVELOPMENT DEPARTMENT --APPROPRIATION.--One hundred thousand dollars (\$100,000) is appropriated from the general fund to the economic development department for the purpose of designing, building and equipping a wood pellet fuel manufacturing plant at Silver City in Grant county.

Section 44

~~Section 44. GENERAL FUND--CHILDREN, YOUTH AND FAMILIES DEPARTMENT--APPROPRIATION.--One hundred thousand dollars (\$100,000) is appropriated from the general fund to the children, youth and families department for the purpose of purchasing computer equipment for an alternative education youth program in~~

~~Albuquerque in Bernalillo county.~~

Section 45

Section 45. NEW MEXICO IRRIGATION WORKS CONSTRUCTION FUND-- APPROPRIATION.--Three hundred fifty thousand dollars (\$350,000) is appropriated from the New Mexico irrigation works construction fund for expenditure by the state engineer in fiscal years 1995 through 1997 for an irrigation pipeline for the Bluewater Toltec irrigation system in Bluewater village located in Cibola county. Any unexpended or unencumbered balance remaining at the end of fiscal year 1997 shall revert to the New Mexico irrigation works construction fund.

Section 46

Section 46. PUBLIC SCHOOL INSURANCE FUND--APPROPRIATION.--Sixty-six thousand one hundred dollars (\$66,100) is appropriated from the public school insurance fund to the public school insurance authority for expenditure in fiscal years 1996 and 1997 to renovate and make improvements to the administrative offices of the public school insurance authority located in Santa Fe county, in order to comply with the federal Americans with Disabilities Act of 1990. Any unexpended or unencumbered balance remaining at the end of fiscal year 1997 shall not revert.

Section 47

Section 47. STATE LANDS MAINTENANCE FUND--APPROPRIATIONS.--

A. The following amounts are appropriated from the state lands maintenance fund to the state land office for expenditure in fiscal years 1996 and 1997 for the following purposes:

(1) ninety-nine thousand five hundred dollars (\$99,500) to renovate the state land office building located in Santa Fe county, in order to comply with the federal Americans with Disabilities Act of 1990; and

(2) thirty thousand dollars (\$30,000) to perform asbestos abatement at the state land office building located in Santa Fe county.

B. Any unexpended or unencumbered balance remaining at the end of fiscal year 1997 shall revert to the state lands maintenance fund.

Section 48

Section 48. STATE ROAD FUND--APPROPRIATIONS.--

A. The following amounts are appropriated from the state road fund to the state highway and transportation department for expenditure in fiscal years 1996 and 1997 for the following purposes:

(1) two hundred seventy-nine thousand dollars (\$279,000) to replace the roof and repair and make improvements to the electrical and mechanical systems of the Roswell district office located in Chaves county; and

(2) one hundred thirty-seven thousand seven hundred dollars (\$137,700) to replace the roof of the Milan district office located in Cibola county.

B. Any unexpended or unencumbered balance remaining at the end of fiscal year 1997 shall revert to the state road fund.

Section 49

Section 49. MINERS' TRUST FUND--APPROPRIATIONS.--

A. The following amounts are appropriated from the miners' trust fund to the miners' Colfax medical center for the following purposes for expenditure in fiscal years 1995 through 1999:

(1) two million seven hundred thousand dollars (\$2,700,000) to renovate the long-term care facility at miners' Colfax medical center located in Colfax county; and

(2) three hundred three thousand dollars (\$303,000) to design, construct or equip a material warehouse at the miners' Colfax medical center located in Colfax county.

B. Any unexpended or unencumbered balance remaining at the end of fiscal year 1999 shall revert to the miners' trust fund.

Section 50

Section 50. ART IN PUBLIC PLACES.--Pursuant to Section 13-4A-4 NMSA 1978 and where applicable, the appropriations authorized in this act include one percent for the art in public places fund.

Section 51

Section 51. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 23, 47, 48, 49, 50, 53, 62, 77, 84, 98, 123, 125, 137, 143, 149, 168, 171,

182, 190, 196, 197, 199, 216, 222, 239, 241, 242, 244, 245, 249, 251, 253, 256, 258, 259, 272, 296, 297, 304, 312, 313, 321, 322, 328, 344, 349, 354, 383, 387, 388, 397, 422, 424, 435, 441, 442, 445, 448, 450, 463, 466, 468, 469, 471, 486, 488, 491, 492, 504, 509, 510, 522, 523, 524, 526, 527, 536, 538, 540, 550, 571, 586, 600, 601, 617, 620, 626, 638, 647, 649, 665, 667, 669, 671, 673, 684, 703, 704, 705, 719, 720, 736, 738, 747, 749, 780, 789, 794, 797, 802, 803, 821, 828, 830, 865, 881, 913, 946, 952, 953, 958, 961, 975, 1013, 1024, 1028, 1031, 1032, 1052, 1071, 1078 AND 1108 AND SENATE BILL 182 WITH EMERGENCY CLAUSE SIGNED APRIL 7, 1995

CHAPTER 223

WITH LINE-ITEM VETO

MAKING APPROPRIATIONS FOR STATE AGENCIES;.

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

Section 1

Section 1. APPROPRIATION--LEGISLATIVE COUNCIL SERVICE.--Four hundred thousand dollars (\$400,000) is appropriated from the general fund to the legislative council service for expenditure in fiscal year 1996 for the purpose of providing for a legislative information system. Any unexpended or unencumbered balance remaining at the end of fiscal year 1996 shall revert to the general fund.

Section 2

Section 2. APPROPRIATION--SUPREME COURT.--Four million five hundred thousand dollars (\$4,500,000) is appropriated from the general fund to the supreme court for expenditure in fiscal year 1996 for the purpose of providing for eight existing full-time equivalent positions and to purchase hardware, software and implementation services for statewide automation of the district and magistrate courts, including on-line search services. Any unexpended or unencumbered balance remaining at the end of fiscal year 1996 shall revert to the general fund.

Section 3

Section 3. APPROPRIATION--ADMINISTRATIVE OFFICE OF THE DISTRICT ATTORNEYS.--Four hundred fifty thousand dollars (\$450,000) is appropriated from the general fund to the administrative office of the district attorneys for expenditure in fiscal year 1996 for computer equipment, hardware upgrades and software consistent with the district attorneys' statewide automation plan. Any unexpended or unencumbered balance remaining at the end of fiscal year 1996 shall revert to the general fund.

Section 4

Section 4. APPROPRIATION--STATE TREASURER.--Seven hundred sixty thousand three hundred dollars (\$760,300) is appropriated from the general fund to the state treasurer for expenditure in fiscal year 1996 for the purpose of completion of the treasurers' warrant account reconciliation system project and the affiliated two term and two permanent full- time equivalent positions. Any unexpended or unencumbered balance remaining at the end of fiscal year 1996 shall revert to the general fund.

Section 5

Section 5. APPROPRIATION--NEW MEXICO PUBLIC UTILITY COMMISSION. --Four hundred thousand dollars (\$400,000) is appropriated from the general fund to the New Mexico public utility commission for expenditure in fiscal year 1996 for purchase and installation of an office automation network, document management and imaging system. Any unexpended or unencumbered balance remaining at the end of fiscal year 1996 shall revert to the general fund.

Section 6

Section 6. APPROPRIATION--ADMINISTRATIVE OFFICE OF THE DISTRICT ATTORNEYS.--One hundred twenty-one thousand six hundred ninety-eight dollars (\$121,698) is appropriated from the general fund to the administrative office of the district attorneys for expenditure in fiscal year 1996 for the purpose of providing salary increases to the district attorney in each judicial district. Any unexpended or unencumbered balance remaining at the end of fiscal year 1996 shall revert to the general fund.

Section 7

Section 7. APPROPRIATION--ADMINISTRATIVE OFFICE OF THE DISTRICT ATTORNEYS.--One million dollars (\$1,000,000) is appropriated from the general fund to the administrative office of the district attorneys for appropriation in fiscal year 1996 for the purpose of hiring additional staff for district attorneys' offices to fulfill the rights and services mandated by the constitutional amendment establishing victims' rights and the Victims of Crime Act. Any unexpended or unencumbered balance remaining at the end of fiscal year 1996 shall revert to the general fund. The money shall be distributed by the administrative office of the district attorneys to the district attorneys' offices.

Section 8

~~Section 8. APPROPRIATION.--Six hundred sixty-seven thousand dollars (\$667,000) is appropriated from the general fund to the administrative office of the district attorneys, and three hundred thirty-three thousand dollars (\$333,000) is appropriated from the general fund to the public defender department for expenditure in fiscal year 1996 for the purpose of increasing the salaries of New Mexico district attorneys, public defenders and employees to create parity with the equivalent employees within the office of the attorney general. The money appropriated shall be distributed in proportion to the~~

~~number of attorneys and employees across all districts within the state. Any unexpended or unencumbered balance remaining at the end of fiscal year 1996 shall revert to the general fund.~~

Section 9

Section 9. APPROPRIATION--PUBLIC DEFENDER DEPARTMENT.--Three hundred thousand dollars (\$300,000) is appropriated from the general fund to the public defender department for expenditure in fiscal year 1996 for the purpose of paying for contractual services provided by private attorneys and expert witnesses and other operating expenses. Any unexpended or unencumbered balance remaining at the end of fiscal year 1996 shall revert to the general fund.

Section 10

Section 10. APPROPRIATION--DEPARTMENT OF GAME AND FISH.--Four hundred and fifty thousand dollars (\$450,000) is appropriated from the general fund to the conservation services division of the department of game and fish for expenditure in fiscal year 1996 for the purpose of operating that division; provided that the division may expend not more than one hundred thousand dollars (\$100,000) for implementation of the Wildlife Conservation Act. Any unexpended or unencumbered balance remaining at the end of fiscal year 1996 shall revert to the general fund.

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE SUBSTITUTE FOR
HOUSE BILL 785

CHAPTER 224

WITH LINE-ITEM VETOES

RELATING TO POST-SECONDARY EDUCATION; ENACTING THE POST-SECONDARY EDUCATION ARTICULATION ACT; ENACTING THE COLLEGE DISTRICT TAX ACT; CREATING THE EXTENDED LEARNING FUND; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING APPROPRIATIONS.

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

Section 1

Section 1. SHORT TITLE.--Sections 1 through 6 of this act may be cited as the "Post-Secondary Education Articulation Act".

Section 2

Section 2. DEFINITIONS.--As used in the Post-Secondary Education Articulation Act:

A. "articulation" means the transfer of course credit from one institution to another;

B. "commission" means the commission on higher education;

C. "institution" means a public post-secondary educational institution operating in the state; and

D. "module" or "transfer module" means a standardized list of courses or skills established by the commission for which credit is accepted for transfer from one institution to another.

Section 3

Section 3. ARTICULATION PLAN--DEVELOPMENT-- IMPLEMENTATION -- ESTABLISHMENT OF TRANSFER MODULE.--

A. The commission shall establish and maintain a comprehensive statewide plan to provide for the articulation of educational programs and facilitate the transfer of students between institutions.

B. In establishing a statewide articulation plan, the commission shall define, publish and maintain modules of lower-division courses accepted for transfer at all institutions and meeting requirements for lower-division requirements established for associate and baccalaureate degree-granting programs. The commission shall ensure that institutions develop transfer modules that include a minimum of sixty-four hours of lower-division college-level credit.

C. Transfer modules shall include a common general education core component of not less than thirty-five semester hours. This general education core shall include a comprehensive array of lower-division college-level courses designed to demonstrate skills in communication, mathematics, science, social and behavioral science, humanities, fine arts or comparable areas of study coordinated for the purpose of providing a foundation for a liberal education for all programs normally leading to a baccalaureate degree.

Section 4

Section 4. UTILIZATION OF TRANSFER MODULE--TRANSFER OF CREDITS.--

A. Each institution shall accept for transfer course credits earned by a student at any other institution that are included in a transfer module. Transfer credits shall be accepted to meet lower-division graduation requirements of an institution's degree-granting programs.

B. A public post-secondary institution shall not increase requirements for degree-granting programs as a result of the utilization of a transfer module. An institution may specify additional lower-division or upper-division requirements for one or more programs of study provided that those requirements apply equally to transfer students and students originating their study at the institution.

C. The commission shall establish and maintain procedures to identify additional lower-division credit courses in specific disciplines of study such as business, engineering, technology, education, health and arts and sciences that will be transferable among institutions and applicable to requirements for completion of baccalaureate degrees in specific programs of study.

Section 5

Section 5. OVERSIGHT OF ARTICULATION PROGRAMS--COMPLAINT PROCEDURES.--

A. The commission shall establish and maintain a process to monitor and improve articulation through frequent and systematic consultation with institutions. Institutions shall monitor the progress of each transfer student and provide appropriate information to the student's originating institution.

B. The commission shall establish a complaint procedure for transfer students who fail to receive credit for courses contained in a transfer module taken at another institution. The commission may set standards for determining bona fide complaints, including a requirement that students follow institutions' internal procedures for resolving complaints prior to submitting them to the commission. The commission shall investigate all articulation complaints and render decisions as to the appropriateness of the actions of the participants.

C. Prior to December 31 of each year, the commission shall summarize all articulation complaints filed with the commission and the decisions of the commission with regard to those complaints. For those complaints for which the commission finds merit, the commission shall calculate the number of credits refused at the receiving institution and recommend a corresponding reduction of legislative funding to the next session of the legislature.

Section 6

Section 6. REPORTING.--

A. Prior to December 31 of each year, the commission shall report to the legislative finance committee, the legislative education study committee and the governor regarding the status of articulation programs and the transfer of students between institutions.

B. The report developed by the commission shall include an analysis of the number of students transferring between campuses, the number of credits being requested and accepted for transfer, institutions denying transfer of credits and reasons for denial, the progress of transfer students at receiving institutions and a summary of student complaints regarding articulation. The report shall include data and other information obtained on both a statewide and individual institution basis.

C. The report shall identify each institution against which a meritorious complaint has been filed. The report shall summarize the recommendations of the commission with regard to funding reductions at those institutions.

D. All institutions shall provide articulation information required by the commission for the development of the annual report prior to September 30 of each year.

Section 7

Section 7. SHORT TITLE.--Sections 7 through 16 of this act may be cited as the "College District Tax Act".

Section 8

Section 8. DEFINITIONS.--As used in the College District Tax Act:

A. "board" means the governing board of the college district;

B. "college" means a two-year, public post-secondary educational institution organized pursuant to the provisions of the Community College Act, Chapter 21, Article 14 NMSA 1978, the Technical and Vocational Institute Act, Chapter 21, Article 17 NMSA 1978 or the Off-Campus Instruction Act; and

C. "college district" means a district in which a college is located or is proposed to be located, the exterior boundaries of which are determined pursuant to the statutory provisions under which the college is organized.

Section 9

Section 9. PURPOSE.--The purpose of the College District Tax Act is to provide a uniform procedure for the authorization, imposition and collection of tax levies for the operation of college districts and the issuance of college district general obligation and revenue bonds for capital improvements in a college district.

Section 10

Section 10. APPLICATION OF ACT.--The College District Tax Act applies to all educational institutions organized pursuant to the provisions of Chapter 21, Article 14 NMSA 1978, the Community College Act, Chapter 21, Article 17 NMSA 1978, the Technical and Vocational Institute Act and the Off-Campus Instruction Act.

Section 11

Section 11. SPECIAL TAX LEVY FOR COLLEGE DISTRICT OPERATION.--

A. In each college district, the board may call an election within the college district for the purpose of authorizing that board to levy taxes on all taxable property within the district to be used for current operations, maintenance and capital improvements of the college district. The taxes, if authorized as provided in the College District Tax Act, shall be in addition to the taxes authorized for the payment of general obligation bonds pursuant to the provisions of the College District Tax Act. This election shall be for the purpose of allowing the electors, as the term "electors" is used in Article 8, Section 2 of the constitution of New Mexico, to vote on whether to allow the levy and on a specific limitation not to exceed five dollars (\$5.00) on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code. If approved by a majority of the electors voting on the issue, the board of county commissioners, at the direction of the board, shall levy the taxes in an amount certified by the commission on higher education as necessary to meet the annual budget approved by the commission on higher education, but in no event shall the taxes levied exceed the rate limitation approved by the electors nor shall it exceed any lower maximum rate required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 applied to the rate limitation approved by the electors.

B. Levies, assessments and collections and distributions authorized for college district financing shall be made at the same time and in the same manner as levies, assessments and collections and distributions for ad valorem taxes for school districts are made.

C. The board may call an election within the district for the purpose of authorizing the board to raise the levy to a rate not to exceed the maximum authorized in Subsection A of this section, lower the levy or abolish the continuing levy, upon the adoption of a resolution by a majority of the members of the board.

D. Alternatively, an election to raise or lower the rate limitation or to abolish the continuing levy shall be called by the board upon receipt by it of a valid petition. To be valid, the petition shall be signed by electors of the college district in a number equal to ten percent of the number of votes cast in the district for the office of governor at the last general election and shall state the question to be voted upon.

E. If the question to be voted on at an election called pursuant to Subsection D of this section fails, it shall not again be submitted to the voters within two years from the date of the election.

F. Any part of the rate authorized by the electors that is not imposed for reasons other than the rate limitation required by Section 7-37-7.1 NMSA 1978 may be authorized to be imposed by the board without calling an election.

Section 12

Section 12. COLLEGE DISTRICT GENERAL OBLIGATION BONDS--INTEREST -- FORM--PAYMENT.--

A. Any board other than a board created pursuant to the provisions of the Off-Campus Instruction Act, may borrow money for the purpose of erecting and furnishing, constructing, purchasing, remodeling and equipping buildings and utility facilities and making other real property improvements or for purchasing grounds, exclusive of stadiums. To carry out the purposes of the College District Tax Act, the board may issue negotiable coupon general obligation bonds of the college district, if approved by the commission on higher education and then approved at an election by a majority of the qualified electors voting on the issue; provided, however, no bonds shall be issued that create a total bonded indebtedness in the district in excess of three percent of the assessed valuation of the taxable property within the college district as shown in the preceding general assessment, which debt limitation is to be in excess of other existing debt limitations. Bonds shall be sold at a price that does not result in a net effective interest rate exceeding the maximum net effective interest rate permitted by the Public Securities Act. The bonds shall be sold and may be in such denominations as the board determines, and the bonds and the attached coupons shall be payable to the bearer but may also be made registrable as to principal or as to principal and interest.

B. The bonds shall be due and payable serially either annually or semiannually commencing not later than three years from their date. The bonds shall be issued for a term of not less than five or more than twenty years. The form and terms of the bonds, including provisions for their payment and redemption, shall be as determined by the board. If the board so determines, the bonds may be redeemable prior to maturity upon payment of a premium not exceeding three percent of the principal of the bonds. The bonds shall be executed in the name of and on behalf of the college district, signed by the chairman of the board, with the seal of the college district affixed to the bonds, and attested by the secretary of the board. The bonds may be executed and sealed in accordance with the provisions of the Uniform Facsimile Signature of Public Officials Act. Interest coupons shall bear the original or facsimile signature of the chairman of the board.

C. To provide for the payment of the interest and principal of the bonds issued and sold pursuant to the provisions of the College District Tax Act, upon approval of the bonds at an election by a majority of the qualified electors in the college district who voted on the issue, the board of county commissioners shall annually make and levy, during each year in which any bonds are outstanding, an ad valorem tax on all taxable property in the district in an amount sufficient to produce a sum equal to one year's interest on all bonds then outstanding, together with an amount sufficient to pay

the principal on all bonds as they mature. This levy shall not exceed five mills; provided, however, that this five-mill limitation may be exceeded in any year in which the valuation of the property within the college district declines to a level lower than the valuation of the property in the year in which the bonds were issued. The taxes authorized by this subsection shall be levied, assessed and collected at the times and in the manner that ad valorem taxes for school districts are assessed, levied and collected, and it shall be the duty of all tax officials and authorities to cause taxes authorized by this subsection to be levied, assessed and collected.

D. The proceeds obtained from the issuance of the bonds shall not be diverted or expended for any purposes other than those provided in the College District Tax Act; provided that no building shall be built without prior approval of detailed plans by the commission on higher education; and further provided that the expenses incurred in the preparation and sale of the bonds may be paid out of the proceeds from the sale of the bonds.

E. Prior to the issuance and sale of bonds, the attorney general shall approve all bond transcripts and certify his approval or rejection thereof in the same manner as is required by law for the approval of school bonds. Unless otherwise specifically provided, the provisions of the College District Tax Act for the issuance of bonds shall be deemed exclusive of the provisions of all other laws.

Section 13

Section 13. PAYMENT OF GENERAL OBLIGATION BONDS--BOND PROVISIONS.--

A. The principal of and interest on general obligation bonds authorized in the College District Tax Act to be issued, and any prior redemption premiums, shall be payable from the proceeds of general property taxes levied without limitation as to rate or amount, except for the limitation for general obligation bond issuances established in the College District Tax Act, and except to the extent other revenues are made available for that purpose. All bonds shall be the general obligations of the college district, and the full faith and credit of the college district shall be pledged for the payments of the bonds.

B. It may be provided in any proceedings authorizing any bonds under the College District Tax Act that the bond shall recite that it is issued under authority of the College District Tax Act. The recital shall conclusively impart full compliance with all of the provisions of the College District Tax Act, and all bonds issued containing the recital shall be incontestable for any cause whatsoever after their delivery for value.

C. All bonds issued by a college district shall be fully negotiable and constitute negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code as that law is now or may hereafter be in force in this state. If lost or completely destroyed, any bond may be reissued in the form and tenor of the lost or destroyed bond upon the owner furnishing to the satisfaction of the board:

- (1) proof of ownership;
- (2) proof of loss or destruction;
- (3) a surety bond in twice the face amount of the bond and coupons; and
- (4) payment of the cost of preparing and issuing the new bond and coupons.

D. Notwithstanding any other provision of law, the board may in any proceedings authorizing bonds under the College District Tax Act provide for the initial issuance of one or more bonds, in this section called "bond", aggregating the amount of the entire issue, may make such provision for installment payments of the principal amount of any bond as it may consider desirable and may provide for the making of any bond payable to bearer or otherwise, registrable as to principal or as to both principal and interest and, where interest accruing on the bond is not represented by interest coupons, for the endorsing of payments of interest on the bond. The board may further make provisions in any such resolution for the manner and circumstances in and under which any bond may, at the request of the holder of the bond, be converted into bonds of smaller denominations, which bonds of smaller denominations may in turn be either coupon bonds or bonds registrable as to principal or principal and interest.

Section 14

Section 14. REFUNDING BONDS--GENERAL OBLIGATION COLLEGE DISTRICT BONDS.--The board of any college district may, with the approval of the commission on higher education, issue bonds, to be denominated refunding bonds, for the purpose of refunding any of the general obligation bonded indebtedness of the college district. Whenever the board of any college district deems it expedient to issue refunding bonds, it shall adopt a resolution setting out the facts making the issuance of the refunding bonds necessary or advisable, the determination of such necessity or advisability by the board and the amount of refunding bonds that the board deems necessary and advisable to issue. The resolution shall fix the form of the bonds; the rate or rates of interest of the bonds, provided that the net effective interest rate of the bonds shall not exceed the maximum net effective interest rate permitted by the Public Securities Act, as hereafter amended and supplemented; the date of the refunding bonds; the denominations of the refunding bonds; the maturity dates, the last of which shall not be more than twenty years from the date of the refunding bonds; and the place or places of payment within or without the state of both principal and interest. Refunding bonds when issued, except for bonds issued in book entry or similar form without the delivery of physical securities, shall be negotiable in form, shall bear the signature or the facsimile signature of the chairman of the board, with the seal of the college district affixed thereto, and shall be attested by the secretary of the board. All refunding bonds may be exchanged dollar for dollar for the bonds to be refunded or they may be sold as

directed by the board, and the proceeds of the sale shall be applied only to the purpose for which the bonds were issued and the payment of any expenses incidental thereto.

Section 15

Section 15. COLLEGE DISTRICT REVENUE BONDS--REFUNDING BONDS.--

A. The board of any college district may issue revenue bonds for the purpose of constructing, purchasing, improving, remodeling, furnishing or equipping any necessary buildings, structures or facilities of the college district. The revenue bonds shall be payable from and secured by a lien on and pledge of all or any part of any of the revenues, income or receipts of the college district and its board, including without limitation any rentals, rates, charges, tuition and fees or other revenues other than ad valorem tax proceeds available to the college district and its board.

B. The revenue bonds shall be authorized by resolution of the board approved by majority vote of the board. The commission on higher education and the state board of finance shall approve the sale of the bonds.

C. The revenue bonds may be issued in one or more series and shall mature not more than thirty years from their date. The net effective interest rate of the bonds shall not exceed the net effective interest rate as permitted by the Public Securities Act in accordance with the terms and options of redemption authorized in the bond resolution adopted by the board.

D. The board:

(1) may pledge all or any part of its revenues, income or receipts from rentals, rates, charges, tuition and fees or other resources and revenues other than ad valorem tax proceeds for the payment of the bonds, including the payment of principal, interest and any other amounts required or permitted in connection with the bonds in accordance with the bond resolution;

(2) shall fix and collect those pledged rentals, rates, charges, tuition and fees in amounts that shall be at least sufficient, together with other pledged resources, to provide for all payments of principal, interest and any other amounts required in connection with the bonds; to provide for the payment of expenses in connection with the bonds; and, to the extent required by the resolution authorizing the issuance of the bonds, to provide for the payment of operation, maintenance and other expenses in connection with the property, buildings, structures, activities, services, operations or other facilities of the college district; and

(3) may establish and enforce parietal rules for students and others and enter into agreements regarding occupancy, use and availability of facilities and the amounts and collection of pledged revenues, income, receipts, rentals, rates, tuition and

fees or other resources, to assure that all required payments and deposits shall be made pursuant to the bond resolution.

E. Fees for the use by or availability to the students of all or any property, buildings, structures, activities, services, operations or other facilities of the college district may be pledged to the payment of the bonds and shall be fixed and collected from all or any designated part of the students enrolled in the colleges of the college district in the amounts and in the manner determined and provided by the board in the resolution authorizing the issuance of the bonds. Such fees:

(1) may be collected in the full amounts required or permitted under this section, without regard to actual use, availability or existence of any facility, commencing at any time designated by the board;

(2) may be fixed and collected for the use or availability of any specifically described property, buildings, structures, activities, services, operations or other facilities or may be fixed and collected as general fees for the general use or availability of the colleges of the college district; and

(3) whether fixed and collected as specific or general fees, may be pledged to the payment of any issue or series of bonds issued by the board, in the full amounts required or permitted under this section, in addition to and regardless of the existence of any other specific or general fees at the colleges of the college district; provided that the board may restrict its power to pledge such additional specific or general fees in any manner that may be provided in any resolution authorizing the issuance of bonds, and provided further that no such additional specific fees shall be pledged if prohibited by any resolution that authorized the issuance of the bonds that are outstanding at the time of such pledge.

F. A board of a college district may by bond resolution provide for the issuance of refunding bonds to refund any outstanding bonds issued under the College District Tax Act, together with redemption premiums, if any, and interest accrued or to accrue on such bonds. Provisions governing the issuance and sale of bonds under the College District Tax Act govern the issuance and sale of refunding bonds insofar as applicable. Refunding bonds may be exchanged for the outstanding bonds or may be sold and the proceeds used to retire the outstanding bonds. Pending the application of the proceeds of any such refunding bonds with any other available funds to the payment of principal, interest and any redemption premiums on the bonds being refunded, and if so provided or permitted in the bond resolution of the board authorizing the issuance of such refunding bonds to the payment of any interest on such refunding bonds and any expenses incurred in connection with such refunding, such proceeds may be placed in escrow and invested in securities that are unconditionally guaranteed by the United States and that shall mature or that shall be subject to redemption by the holders of the bonds, at the option of the bondholders, not later than the respective dates when the proceeds together with the interest accruing on the bonds will be required for the purposes intended.

Section 16

Section 16. PROCEDURE FOR ELECTION.--

A. In all elections held under the College District Tax Act, the board shall issue a resolution calling for an election. The resolution shall be filed with each county clerk in the college district. The board shall publish the resolution in a newspaper of general circulation in the college district at least once a week for three consecutive weeks, the last insertion to be not less than thirty days prior to the proposed election.

B. All elections held under the College District Tax Act shall be conducted and canvassed in the same manner as municipal school elections, unless otherwise specifically provided in the College District Tax Act.

C. Any person or corporation may institute, in the district court of any county in which the college district affected lies, an action or suit to contest the validity of any proceedings held under the College District Tax Act, but no such suit or action shall be maintained unless it is instituted within ten days after the issuance by the proper official of a certificate or notification of the results of the election.

Section 17

Section 17. EXTENDED LEARNING PROGRAMS--PURPOSE-- COMMISSION ON HIGHER EDUCATION RESPONSIBILITIES--REPORTING.--

A. The commission on higher education shall coordinate the role and participation of public post-secondary higher education institutions in the development and operation of extended learning programs. Extended learning programs shall be established to ensure equitable student access to educational opportunities throughout the state. The commission shall work to ensure access, efficiency, coordination and accountability in the development and operation of the extended learning programs.

B. In coordinating the development and operation of extended learning programs, the commission on higher education shall make awards from the extended learning fund for the purpose of establishing pilot extended learning programs. Pilot programs shall focus on the creation and operation of community-based extended learning centers, the development of regional resources and the expanded use of technology in instruction.

C. Annually, prior to October 1, the commission on higher education shall report to the legislature and the governor on the status of extended learning programs and make recommendations on the funding level for such projects for the upcoming year.

Section 18

Section 18. EXTENDED LEARNING FUND CREATED--DISTRIBUTION OF FUND.--

The "extended learning fund" is created in the state treasury. Money in the fund is appropriated to the commission on higher education for the purpose of making awards to public schools and public post-secondary institutions for the purpose of developing and operating extended learning programs throughout the state. The commission shall establish by regulation a procedure for application and award of money in the fund. Disbursements of the fund shall be made by warrant of the department of finance and administration pursuant to vouchers signed by the executive director of the commission on higher education. Any unexpended or unencumbered balances remaining in the fund at the end of any fiscal year shall not revert but shall remain to the credit of the fund.

Section 19

Section 19. Section 21-2-5.1 NMSA 1978 (being Laws 1988, Chapter 164, Section 1) is amended to read:

"21-2-5.1. FUNDING FORMULA.--

A. The commission on higher education shall develop a funding formula that will provide funding for each institution of higher education to accomplish its mission as determined by a statewide plan.

B. The commission on higher education may include factors in the funding formula, which when implemented will achieve the following:

(1) improve the quality of programs central to each institution's mission;

(2) develop and enhance programs that meet targeted post-secondary educational needs and the related needs of public schools;

(3) eliminate unnecessary, unproductive or duplicative programs;

(4) consider faculty salaries and benefits adjustment to a competitive level with similar institutions in similar states when such compensation adjustments are supported by detailed analyses of faculty workloads and educational outcomes assessments and nonteaching staff salaries and benefits at a competitive level with other similar public or private sector employment in the community in which the institution is situated;

(5) recognize additional costs incurred through increases in enrollment;

(6) provide for equipment and equipment maintenance and library acquisitions and operations since the development of the prior funding formula;

(7) fund off-campus courses and other nontraditional course delivery systems at a level sufficient to allow their development;

(8) provide incentives to institutions to pursue private or alternative funding sources;

(9) encourage the sharing of expertise, equipment and facilities and development of joint instructional programs, research and public service projects;

(10) implement uniform articulation agreements and facilitation of transfer of students between institutions;

(11) encourage energy conservation; and

(12) require mechanisms to track expenditures to ensure greater accountability."

Section 20

Section 20. Section 21-14-5 NMSA 1978 (being Laws 1957, Chapter 143, Section 4, as amended) is amended to read:

"21-14-5. FINANCING OF BRANCH COMMUNITY COLLEGES.-- Financing of branch community colleges shall be by tuition and fees, which shall be set by the board of regents of the parent institution, by gifts and grants and by other funds as may be made available pursuant to the provisions of the College District Tax Act or Sections 21-14-1 through 21-14-11 NMSA 1978."

Section 21

Section 21. Section 21-14A-6 NMSA 1978 (being Laws 1982, Chapter 42, Section 6) is amended to read:

"21-14A-6. FINANCING OF OFF-CAMPUS INSTRUCTION PROGRAMS.-- Financing of off-campus instruction programs shall be by tuition and fees which shall be set by the board of regents of the parent institution, by gifts and grants and by other funds as may be made available, pursuant to the Off-Campus Instruction Act or College District Tax Act."

Section 22

Section 22. Section 21-14-9 NMSA 1978 (being Laws 1973, Chapter 371, Section 1) is amended to read:

"21-14-9. STATE SUPPORT--APPROPRIATION.--

A. The commission on higher education shall recommend an appropriation for each branch community college and junior college based upon the college's financial requirements in relation to its authorized program and its available funds from non-general fund sources; provided, the recommended appropriation shall be an amount not less than three hundred twenty-five dollars (\$325) for each full-time-equivalent student.

B. The commission on higher education shall not recommend an appropriation greater than three hundred twenty-five dollars (\$325) for each full-time-equivalent student for any branch community college that levies a tax at a rate less than one dollar (\$1.00), unless a lower amount is required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon a rate approved by the electors of at least one dollar (\$1.00) on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code, or any branch community college that reduces a previously authorized tax levy, except as required by the operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978."

Section 23

Section 23. Section 21-14A-8 NMSA 1978 (being Laws 1982, Chapter 42, Section 8) is amended to read:

"21-14A-8. STATE SUPPORT--APPROPRIATION.--

A. The commission on higher education shall recommend an appropriation for each off-campus instruction program based upon its financial requirements in relation to its authorized program and its available funds from non-general fund sources.

B. The commission on higher education shall not recommend an appropriation greater than three hundred twenty-five dollars (\$325) for each full-time-equivalent student for any off-campus instruction program that levies a tax at a rate less than two dollars (\$2.00), unless a lower amount is required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon a rate approved by the electors of at least two dollars (\$2.00) on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code, or any off-campus board that reduces a previously authorized tax levy, except as required by the operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978."

Section 24

Section 24. Section 21-16-10 NMSA 1978 (being Laws 1968, Chapter 59, Section 3, as amended by Laws 1988, Chapter 64, Section 4 and also by Laws 1988, Chapter 65, Section 1) is amended to read:

"21-16-10. APPROPRIATION--DISTRIBUTION.--

A. The commission on higher education shall recommend an appropriation for each technical and vocational institute based upon its financial requirements in relation to its authorized program and its available funds from non-general fund sources; provided, the recommended appropriation shall be an amount not less than three hundred twenty-five dollars (\$325) for each full-time-equivalent student.

B. The commission on higher education shall by regulation provide for the method for calculating the number of full-time-equivalent students in technical and vocational institutes. No student shall be included in any calculation of the number of full-time-equivalent students if the student is enrolled in a course, the cost of which is totally reimbursed from federal, state or private sources.

C. The commission on higher education shall not recommend an appropriation greater than three hundred twenty-five dollars (\$325) for each full-time-equivalent student for any technical and vocational institute that levies a tax at a rate less than two dollars (\$2.00), unless a lower amount is required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon a rate approved by the electors of at least two dollars (\$2.00) on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code, or any technical and vocational institute that reduces a previously authorized tax levy, except as required by the operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978."

Section 25

Section 25. Section 21-17-7 NMSA 1978 (being Laws 1973, Chapter 325, Section 2, as amended) is amended to read:

"21-17-7. AREA VOCATIONAL SCHOOL FUND--DISTRIBUTION.--

A. The commission shall recommend an appropriation for an area vocational school based upon expenditure levels determined by the commission in relation to the school's authorized program and its available funds from non-general fund sources.

B. The commission shall by regulation provide the method for calculating the number of full-time-equivalent students in area vocational schools. No student shall be included in any calculation of the number of full-time-equivalent students if the student is enrolled in a course, the cost of which is totally reimbursed from federal, state or private sources. The public school district shall transfer to the area vocational school the tuition and fees for any student who, during the term, is counted in the membership of the public school district and will receive high school credit for coursework at the area vocational school.

C. The commission shall not recommend an appropriation greater than three hundred twenty-five dollars (\$325) for each full-time-equivalent student for any

area vocational school that levies a tax at a rate less than two dollars (\$2.00), unless a lower amount is required by operation of the rate limitation provisions of Section

7-37-7.1 NMSA 1978 upon a rate approved by the electors of at least two dollars (\$2.00) on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code, or any area vocational school that reduces a previously authorized tax levy, except as required by the operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978."

Section 26

~~Section 26. APPROPRIATION--EXTENDED LEARNING.--One hundred seventy-five thousand dollars (\$175,000) is appropriated from the general fund to the extended learning fund for expenditure in fiscal year 1996 and subsequent fiscal years for the purpose of making awards to public schools and public post-secondary institutions in the state for the purpose of developing and operating extended learning programs throughout the state. Any unexpended or unencumbered balance remaining at the end of fiscal year 1995 shall not revert to the general fund.~~

Section 27

~~Section 27. APPROPRIATION--ARTICULATION.--Twenty-five thousand dollars (\$25,000) is appropriated from the general fund to the commission on higher education for expenditure in fiscal year 1996 for the purpose of meeting costs associated with implementation of the Post-Secondary Education Articulation Act. Any unexpended or unencumbered balance remaining at the end of fiscal year 1996 shall revert to the general fund.~~

Section 28

Section 28. TEMPORARY PROVISIONS.--After the effective date of the College District Tax Act:

A. all property tax levies authorized pursuant to provisions of former laws and approved by the electors of a college district to be imposed and collected in a college district for payment of the expenses of operation of the district shall continue in effect and be imposed and collected in accordance with the provisions of the former laws under which the tax levies were authorized;

B. all property tax levies authorized pursuant to provisions of former laws and approved by the electors of a college district to be imposed and collected in a college district for payment of general obligation bonds issued to finance capital improvements in the district shall continue in effect and be imposed and collected in

accordance with the provisions of the former laws under which the tax levies were authorized and the bonds issued;

C. all revenue pledged to the payment of revenue bonds authorized to be issued pursuant to provisions of former laws to finance capital improvements in a college district shall continue to be collected and pledged to the payment of the revenue bonds in accordance with the provisions of the former laws; and

D. no college district shall take any action pursuant to the College District Tax Act to authorize, impose or collect a property tax for the purpose of payment of general obligation bonds issued to finance capital improvements in the district or for the purpose of payment of the expenses of operation of the district at a rate that exceeds, when added to any rate currently imposed for the stated purpose under provisions of former law, the rate of five dollars (\$5.00) on each one thousand dollars (\$1,000) of net taxable value of property in the district for each of the two enumerated purposes.

Section 29

Section 29. REPEAL.--Sections 21-1-26.4 and 21-1-26.5, 21-13-14 through 21-13-18, 21-13-24 and 21-13-26, 21-14-6 through 21-14-8, 21-14-12, 21-14-13 and 21-14-15, 21-14A-7, 21-16-11 and 21-16-12, 21-16-23 and 21-16-24, 21-17-8, 21-17-10 and 21-17-13 (being Laws 1989, Chapter 381, Sections 1 and 2, Laws 1964 (1st S.S.) Chapter 16, Sections 7 and 8, Laws 1966, Chapter 3, Section 3, Laws 1964 (1st S.S.) Chapter 16, Sections 9, 10 and 14, Laws 1992, Chapter 97, Section 1, Laws 1963, Chapter 162, Section 5, Laws 1987, Chapter 22, Section 1, Laws 1972, Chapter 36, Section 1, Laws 1985, Chapter 238, Section 32, Laws 1963, Chapter 162, Section 6, Laws 1965, Chapter 162, Sections 1 and 2, Laws 1989, Chapter 24, Section 1, Laws 1982, Chapter 42, Section 7, Laws 1963, Chapter 108, Sections 8 and 9, Laws 1964 (1st S.S.), Chapter 12, Sections 8 and 9 and Laws 1967, Chapter 177, Sections 7, 9 and 12, as amended) are repealed.

HOUSE BILL 608

1995 STATE OF NEW MEXICO ROSTER OF CONGRESSIONAL, STATE, LEGISLATIVE, DISTRICT & COUNTY OFFICIALS

**STEPHANIE GONZALES
SECRETARY OF STATE
JANUARY 1995**

UNITED STATES SENATORS

JEFF BINGAMAN (D)

Santa F, 1995-2000

625 Silver Ave. SW, Ste. 130
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110 Hart Senate Office Bldg.
Washington, DC 20510 (202) 224-5521

119 E. Marcy, Ste. 101
Santa F, 87501 988-6647

505 S. Main St., 148 Loretto Towne Centre
Las Cruces 88001 523-6561

114 E. 4th, Ste. 103
Roswell 88201 622-7113

PETE V. DOMENICI (R)

Albuquerque 1991-96

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Santa F, 87501 988-6511

Sunbelt Plaza, 1065 S. Main, Ste. I
Bldg. D, Box 13,

Las Cruces 88005 526-5475

140 Federal Bldg. & U.S. Courthouse
Roswell 88201 623-6170

UNITED STATES REPRESENTATIVES

STEVEN H. SCHIFF (R)

1st Congressional District - Albuquerque 1995-96

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2nd Congressional District - Picacho 1995-96

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Las Cruces 88005 527-1771

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Roswell 88201 622-0055

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Santa F, 87501 988-7230

Gallup City Hall
2nd & Aztec, Gallup 87301 722-6522

P.O. Box 1805, San Miguel County Courthouse
Las Vegas 87701 425-7270

602 Mitchell
Clovis 88101 769-3380

STATE OFFICIALS

GARY JOHNSON (R)-Governor 1995-98
State Capitol, Room 400, Santa F, 87503 827-3000

WALTER D. BRADLEY (R)-Lt. Governor 1995-98
State Capitol, Room 417, Santa F, 87503 827-3050

STEPHANIE GONZALES (D)-Secretary of State 1995-98
State Capitol, Room 420, Santa F, 87503 827-3600

ROBERT E. VIGIL (D)-State Auditor 1995-98
PERA Bldg., Room 302, Santa F, 87503 827-4740

MICHAEL A. MONTOYA (D)-State Treasurer 1995-98
NEA Bldg., Santa F, 87503 827-6400

TOM UDALL (D)-Attorney General 1995-98
Bataan Memorial Bldg., P.O. Box 1508,
Santa F, 87503 827-6000

RAY POWELL (D)-Commissioner of Public Lands 1995-98
State Land Office Bldg., Santa F, 87503 827-5760

GLORIA TRISTANI (D)-Corporation Commissioner 1995-2000
PERA Bldg., Santa F, 87503 827-4531

ERIC P. SERNA (D)-Corporation Commissioner 1991-96
PERA Bldg., Santa F, 87503 827-4529

JEROME BLOCK (D)-Corporation Commissioner 1993-98
PERA Bldg., Santa F, 87503 827-4553

JUSTICES OF THE SUPREME COURT
Box 848, Santa F,, New Mexico 87504

Telephone	Term
Joseph F. Baca (D)-Chief Justice	827-4892 1989-96
Richard Ransom (D)-Senior Justice	827-4883 1995-2002
Gene Franchini (D)	827-4880 1991-98
Stanley F. Frost (D)	827-4887 1993-2000
Pamela B. Minzner(D)	827-4889 1995-96

Kathleen Jo Gibson, Chief Clerk
Box 848, Santa F,, New Mexico 87504 827-4860

JUDGES OF THE COURT OF APPEALS

Box 2008, Santa F., New Mexico 87504

Telephone	Term
Rudy S. Apodaca(D)-Chief Judge Santa F, 827-4925 Las Cruces 524-6050	1995-2002
Thomas A. Donnelly (D) 827-4914	1993-2000
A. Joseph Alarid (D) Santa F, 827-4910 Albuquerque 841-4612	1993-2000
Harris L Hartz (R) 841-4626	1991-98
Lynn Pickard (D) 827-4903	1993-98
Bruce D. Black (D) 827-4912	1993-96
Benny E. Flores (D) Santa Fe 827-4925 Las Vegas 454-0038	1993-2000
Richard C. Bosson (D) 827-4906	1994-96
James J. Wechsler(D) 827-4908	1994-98
Michael D. Bustamante(D) 841-4750	1994-2002

Patricia C. Rivera Wallace, Chief Appellate Court Clerk
Box 2008, Santa F., New Mexico 87504
827-4925

LEGISLATIVE LEADERSHIP

SENATE

Officers for

DEMOCRATS

Manny Aragon President Pro Tempore

Edward Lopez Majority Floor Leader

Timothy Jennings Majority Whip

REPUBLICANS

Billy McKibben Minority Floor Leader

Skip Vernon Minority Whip

Margaret Larragoite, Chief Clerk
Steve D. Gallegos, Sergeant at Arms

HOUSE OF REPRESENTATIVES

Officers for

DEMOCRATS

Raymond Sanchez Speaker of the House

Michael Olguin Majority Floor Leader

Ben Lujan Majority Whip

REPUBLICANS

Robert P. Wallach Minority Floor Leader

Kip W. Nicely Minority Whip

Steve Arias, Chief Clerk

Gilbert Baca, Sergeant at Arms

Party Composition of New Mexico Legislature

Amount	
Democratic State Senators	27
Republican State Senators	15
Democratic State Representatives	46
Republican State Representatives	24

Legislative Council Service

311 State Capitol, Santa F., NM 87503 986-4600

STATE SENATORS

1 San Juan Raymond Kysar (R)
300 W. Arrington, Farmington 87401 1993-96

2 San Juan Christine A. Donisthorpe (R)
P.O. Box 746, Bloomfield 87413 1993-96

*3 McKinley & San Juan John Pinto (D)
P.O. Box 163, Tohatchi 87325 1993-96

*4 Cibola & McKinley Gloria Howes (D)
1515 Monterey, Gallup 87301 1993-96

*5 Los Alamos, Rio Arriba & Sandoval Emilio Naranjo (D)
68 Lower San Pedro Rd., Española 87532 1993-96

*6 Mora, Taos & Santa F, Carlos R. Cisneros (D)
P.O. Box 1129, Questa 87566 1993-96

*7 Colfax, Harding Quay,
Union, San Miguel & Curry Patrick H. Lyons (R)
IMA Rt. Box 26, Cuervo 88417 1993-96

*8 DeBaca, Guadalupe,
Lincoln & San Miguel Pete Campos (D)
418 Reynolds Ave., Las Vegas 87701 1993-96

*9 Bernalillo & Sandoval Virgil O. Rhodes (R)
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10 Bernalillo Janice D. Paster (D)
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11 Bernalillo Thomas R. Benavides (D)
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Albuquerque 87105 1993-96

12 Bernalillo Richard M. Romero (D)
907 Silver Ave., SW, Albuquerque 87102 1993-96

13 Bernalillo Tito D. Chavez (D)
3424 Mateo Prado, NW, Albuquerque 87107 1993-96

*14 Bernalillo & Valencia Manny M. Aragon (D)
Drawer Z, Albuquerque 87103 1993-96

15 Bernalillo L. Skip Vernon (R)
Box 3827, Albuquerque 87190 1993-96

16 Bernalillo Tom Rutherford (D)
P.O. Box 1610, Albuquerque 87103 1993-96

17 Bernalillo Shannon Robinson (D)
716 Indiana St., SE, Albuquerque 87108 1993-96

18 Bernalillo Ann J. Riley (D)
10301 Karen NE, Albuquerque 87111 1993-96

*19 Bernalillo, Santa F, & Torrance Duncan Scott (R)
10200 Menaul, NE, Albuquerque 87112 1993-96

20 Bernalillo Michael C. Wiener (R)
Box 13462, Albuquerque 87192 1993-96

21 Bernalillo Tom C. Wray (R)
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*22 Bernalillo, Los Alamos, McKinley

Rio Arriba & Sandoval Leonard Tsosie (D)
P.O. Box 1003, Crownpoint 87313 1993-96

*23 Bernalillo & Sandoval Joseph J. Carraro (R)
10216 Carraro Pl., NW, Albuquerque 87114 1993-96

24 Santa F, Edward J. Lopez(D)
2911 Calle de Oriente, Santa F, 87501 1993-96

25 Santa F, Roman M. Maes III(D)
402 Graham Ave., Santa F, 87501 1993-96

26 Bernalillo Philip J. Maloof(D)
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John Arthur Smith (D)
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*37 Doña Ana, Otero & Sierra Leonard Lee Rawson (R)
Box 996, Las Cruces 88004 1993-96

38 Doña Ana Fernando R. Macias (D)
P.O. Box 1155, Mesilla 88046 1993-96

*39 Bernalillo, Los Alamos, Sandoval
San Miguel, Santa Fe, & Torrance
Elizabeth T. Stefanics (D)
P.O. Box 10127, Santa Fe, 87504 1993-96

40 Otero Dianna J. Duran (R)
917 Indigo Loop, Alamogordo 88310 1993-96

41 Eddy & Lea Gary Don Reagan (D)
P.O. Box 780, Hobbs 88241 1993-96

*42 Curry, Lea & Roosevelt Billy J. McKibben (R)
505 E. Alto, Hobbs 88240 1993-96

***Multi-County Districts**

STATE REPRESENTATIVES

1 San Juan Jerry W. Sandel (D)
716 Rosa St., Farmington 87401 1995-96

2 San Juan David G. Christensen (R)
4605 Samantha Ln., Farmington 87402 1995-96

*3 Rio Arriba & San Juan Sandra L. Townsend (R)
Box 1292, Aztec 87401 1995-96

4 San Juan Wallace Charley (D)
Box 1736, Shiprock 87420 1995-96

5 McKinley R. David Pederson (D)
Box 1712, Gallup 87305 1995-96

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7 Valencia Ron Gentry (D)
312 Michigan St., Belen 87002 1995-96

8 Valencia Fred Luna (D)
1651 Los Lentos NE, Los Lunas 87031 1995-96

*9 McKinley & San Juan Leo C. Watchman, Jr.(D)
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*10 Bernalillo & Valencia Henry Kiki Saavedra (D)
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11 Bernalillo Rick Miera (D)
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12 Bernalillo James G. Taylor (D)
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13 Bernalillo Daniel P. Silva (D)
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14 Bernalillo Richard "Ray" Sanchez (D)
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15 Bernalillo .Raymond G. Sanchez (D)
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16 Bernalillo Albert Gurule (D)
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17 Bernalillo Edward C. Sandoval (D)
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18 Bernalillo Cisco McSorley (D)
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19 Bernalillo Sheryl M. Williams (D)
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20 Bernalillo Ted Hobbs (R)
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21 Bernalillo .Mimi Stewart (D)
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22 Bernalillo .Jerry Lee Alwin (R)
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23 Bernalillo Frank Bird (R)

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24 Bernalillo George D. Buffett (R)
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25 Bernalillo Danice Picraux (D)
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26 Bernalillo Arthur C. Hawkins (R)
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27 Bernalillo Lorenzo A. Larranaga (R)
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28 Bernalillo Gerald E. Weeks (R)
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29 Bernalillo Timothy E. Macko (R)
4628 Rainbow St., NW, Albuquerque 87114 1995-96

30 Bernalillo Pauline K. Gubbels (R)
2818 Las Cruces NE, Albuquerque 87110 1995-96

31 Bernalillo Kip W. Nicely (R)
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33 Doña Ana J. Paul Taylor (D)
Box 133, Mesilla 88046 1995-96

34 Doña Ana Samuel Reyes (R)
Star Route Box 34-B, Mesilla Park 88047 1995-96

35 Doña Ana E. Shirley Baca (D)
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36 Doña Ana William E. Porter (D)
5200 N. Highway 85, Las Cruces 88005 1995-96

37 Doña Ana Thomas G. Dolliver (R)
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*38 Grant, Luna & Sierra Murray Ryan (R)
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*39 Hidalgo & Grant Thomas P. Foy (D)
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*40 Mora, Rio Arriba, San Miguel Nick L. Salazar (D)
Box 1076, San Juan Pueblo 87566 1995-96

*41 Rio Arriba, Sandoval & Taos Debbie A. Rodella (D)
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42 Taos Roberto "Bobby" J. Gonzales (D)
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44 Sandoval Robert A. Perls (D)
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46 Santa F, Ben Lujan (D)
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47 Santa F, Max Coll (D)
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48 Santa F, Luciano "Lucky" Varela (D)
1709 Callejon Zenaida, Santa F, 87501 1995-96

*49 Catron, Socorro, Sierra & Valencia Michael Olguin (D)
701 Liles, Socorro 87801 1995-96

*50 Torrance, Bernalillo & Santa F, Gary K. King (D)
Box 40, Moriarty 87035 1995-96

51 Otero Gloria Vaughn (R)
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52 Doña Ana Delores C. Wright (D)
150 West Lisa, Chaparral 88021 1995-96

53 Otero Terry T. Marquardt (R)
903 New York Ave., Alamogordo 88310 1995-96

54 Eddy Joe M. Stell (D)
22 Colwell Ranch Rd., Carlsbad 88220 1995-96

55 Eddy Robert S. Light (D)
Box 1658, Carlsbad 88220 1995-96

*56 Lincoln, Chaves & Otero W. C. "Dub" Williams (R)
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Richard T. (Dick) Knowles (R)
Box 1577, Roswell 88201 1995-96

*58 Chaves & Eddy Barbara A. Perea Casey(D)
1214 E. First St., Roswell 88201 1995-96

59 Chaves David M. Parsons (R)
607 Golondrina Dr., Roswell 88201 1995-96

60 Sandoval Vince Martinez (D)
525 Christine Dr, Rio Rancho 87174 1995-96

61 Lea Donald L. Whitaker (D)
Box 556, Eunice 88231 1995-96

62 Lea Robert P. Wallach (R)
624 E. Jemez Road, Hobbs 88240 1995-96

*63 Curry & Roosevelt Vincent Gallegos (D)
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64 Curry Anna Marie Crook (R)
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*65 Bernalillo, Cibola, Sandoval James Roger Madalena (D)
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Curry & Roosevelt Wesley L. Grau (D)
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*68 Colfax, Guadalupe, Mora &
San Miguel Jose R. Abeyta (D)

Box 147, Wagon Mound 87752 1995-96

*69 Cibola, McKinley & Sandoval Lynda M. Lovejoy (D)
Box 705, Crownpoint 87313 1995-96

70 San Miguel Samuel F. Vigil (D)
Drawer K, Las Vegas 87701 1995-96

***Multi-County Districts**

DISTRICT JUDGES

	TELEPHONE	TERM
FIRST JUDICIAL DISTRICT		
Santa F,, Los Alamos & Rio Arriba		
Petra J. Maes(D) Div. I, Santa F, 827-5044	827-5056	1991-96
Div. II, Santa F,		
Patricio M. Serna(D) Div. III, Santa F,	827-5047	1991-96
Michael Vigil (D) Div. IV, Santa F,	827-5053	1994-96
Art Encinias(D) Div. V, Santa F,	827-5059	1991-96
Steve Herrera(D) Div. VI, Santa F,	827-5083	1991-96
District Court Clerk Martha A. Frank Box 2268, Santa F, 87504-2268	827-5035 827-5035	
SECOND JUDICIAL DISTRICT		
Bernalillo		
Michael E. Martinez(D) Div. I, Albuquerque	841-7602	1991-96

James F. Blackmer(R) Div. II, Albuquerque	841-7519	1991-96
Tommy Jewell(D) Div. III, Albuquerque	841-7392	1993-96
Frank Allen, Jr.(D) Div. IV, Albuquerque	841-7455	1991-96
Gerard W. Thompson(D) Div. V, Albuquerque	841-7523	1991-96
W.C. "Woody" Smith(D) Div. VI, Albuquerque	841-7484	1991-96
W. Daniel Schneider(D) Div. VII, Albuquerque	841-7493	1994-96
Ross C. Sanchez(D) Div. VIII, Albuquerque	841-7476	1991-96
Burt Cosgrove(R) Div. IX, Albuquerque	841-7481	1991-96
Theresa Baca(D) Div. X, Albuquerque	841-7512	1994-96
Diane Dal Santo (D) Div. XI, Albuquerque	841-7502	1991-96
Gerald R. Cole(D) Div. XII, Albuquerque	841-7434	1991-96
Robert Hayes Scott(R) Div. XIII, Albuquerque	841-7528	1991-96
W. John Brennan(D) Div. XIV, Albuquerque	841-7499	1991-96
H. Richard Blackhurst(R) Div. XV, Albuquerque	841-7472	1991-96
Robert L. Thompson(D) Div. XVI, Albuquerque	841-7515	1991-96

Anne M. Kass(D) 841-7532 1991-96
Div. XVII, Albuquerque

Susan M. Conway(D) 841-7534 1991-96
Div. XVIII, Albuquerque

Albert S. Murdoch(D) 841-7537 1991-96
Div XIX, Albuquerque

William F. Lang(D) 841-7562 1994-96
Div XX, Albuquerque

District Court Clerk
Thomas J. Ruiz 841-7430
Box 488, Albuquerque 87103

THIRD JUDICIAL DISTRICT
Doña Ana

Robert E. Robles(D) 523-8200 1993-96
Div. I, Las Cruces

Graden W. Beal(D) 523-8200 1991-96
Div. II, Las Cruces

James T. Martin(D) 523-8200 1991-96
Div. III, Las Cruces

Jerald A. Valentine(D) 523-8200 1994-96
Div. IV, Las Cruces

Thomas G. Cornish, Jr.(R) 523-8200 1993-96
Div. V, Las Cruces

District Court Clerk
Hugo Gonzalez 523-8200
151 N. Church, Las Cruces 88001

FOURTH JUDICIAL DISTRICT
Guadalupe, Mora & San Miguel

Eugenio S. Mathis(D) 425-7131 1993-96
Div. I, Las Vegas

Jay Gwynne Harris(D) 425-3900 1991-96
Div. II, Las Vegas

District Court Clerk

Marcy Sandoval, Administrator 425-7281
Bin N, Las Vegas 87701

FIFTH JUDICIAL DISTRICT
Lea, Eddy & Chaves

Fred A. Watson(R) 885-4828 1991-96
Div. I, Carlsbad

Alvin F. Jones(D), Chief Judge 625-2411 1991-96
Div. II, Roswell

Ralph W. Gallini(R) 396-8573 1991-96
Div. III, Lovington

Patrick J. Francoeur(D) 396-4430 1991-96
Div. IV, Lovington

James L. Shuler(D) 887-7101 1991-96
Div. V, Carlsbad

William J. Schnedar(D) 624-0859 1991-96
Div. VI, Roswell

Larry Johnson(R) 393-6101 1991-96
Div. VII, Hobbs

William P. "Chip" Johnson(R) 622-0536 1995-96
Div. VII, Roswell

District Court Clerks

Bee J. Clem 622-2212
Box 1776, Roswell 88201

Eleanor Jarnagin 885-4740
Box 1838, Carlsbad 88220

Janie G. Hernandez 396-8571
100 N. Main, Box 6-C, Lovington 88260

SIXTH JUDICIAL DISTRICT
Grant, Hidalgo & Luna

V. Lee Vesely(D) 538-2975 1991-96
Div. I, Silver City

Manuel D.V. Saucedo(D) 546-2344 1991-96
Div. II, Deming

District Court Clerks
Dennis Estrada, Administraotr 542-3411
P.O. Drawer E, Lordsburg 88043

Velia C. Miranda 538-3250
Box 2339, Silver City 88062

Patricia K. Williams 542-3411
Drawer E, Lordsburg 88045

Kay C. Hull 546-9611
Luna County Courthouse, Rm. 40
Deming 88030

SEVENTH JUDICIAL DISTRICT
Catron, Sierra, Socorro & Torrance

Edmund H. Kase, III(D) 835-0050 1991-96
Div. I, Socorro

Leslie C. Smith (R) 835-0050 1991-96
Div., II, Socorro

District Court Clerks

Kathy McClean 894-7167
311 Date St., T. or C. 87901

Kim C. Padilla 835-0050
Drawer 1129, Socorro 87801

Anita Dial 384-2974
Box 78, Estancia 87016

EIGHTH JUDICIAL DISTRICT
Colfax, Union & Taos

Peggy Jean Nelson(D) 445-5584 1991-96

Div. I, Raton

Joseph Edward Caldwell(D) 758-4547 1991-96
Div. II, Taos

District Court Clerks

Jannett Martinez, Ct. Admin. Clerk 758-3173
Box 1885, Taos, 87571

Gloria Tafoya 445-5585
Box 160, Raton 87740

Sally V. Sanchez 374-9577
Box 310, Clayton 88415

NINTH JUDICIAL DISTRICT
Curry & Roosevelt

Stephen Quinn(R) 762-9529 1991-96
Div. I, Clovis

Fred T. Hensley(D) 762-4185 1991-96
Div. II, Clovis

David W. Bonem(D) 1991-96
Div. III, Clovis, Portales
Clovis 769-0963
Portales 356-4464

District Court Clerks
Claudia Wallace, Court Administrator 762-9148
Curry County Courthouse,
Clovis 88101

Delores Gentry 356-4463
Roosevelt County Courthouse,
Portales 88130

TENTH JUDICIAL DISTRICT
Quay, DeBaca & Harding

Ricky D. Purcell(D) 461-4422 1993-96
Div. I, Tucumcari

District Court Clerks

Donna Curnutt 461-2764
Box 1067, Tucumcari 88401

Janean Grissom 355-2896
Box 910, Fort Sumner 88119

Lina Weisdorfer 673-2252
Harding County Courthouse
Mosquero 87733

ELEVENTH JUDICIAL DISTRICT McKinley & San Juan

Benjamin S. Eastburn(D) 334-6151 1991-96
Div. I, Aztec

Joseph L. Rich(D) 722-4341 1991-96
Div. II, Gallup

Wilfred Byron Caton(D) 334-6151 1993-96
Div. III, Aztec

Paul R. Onuska(D) 326-2256 1991-96
Div. IV, Farmington

District Court Clerks

Fran Palochak 863-6816
McKinley County Courthouse
201 W. Hill St., Rm. 21, Gallup 87301

Greg Ireland 334-6151
103 S. Oliver, Aztec 87410

TWELFTH JUDICIAL DISTRICT Lincoln & Otero

Sandra A. Grisham(R) 437-3030 1991-96
Div. I, Alamogordo

Robert M. Doughty, II(D) 434-0573 1991-96
Div. II, Alamogordo

Richard A. Parsons, Sr.(R) 648-2902 1991-96

Div. III, Carrizozo

Frank K. Wilson(R) 439-1333 1994-96
Div IV, Alamogordo

District Court Clerks

Sally Finarelli 437-7310
Otero County Courthouse, Rm. 209
Alamogordo 88310

Margo E. Lindsay 648-2432
Box 725, Carrizozo 88301

THIRTEENTH JUDICIAL DISTRICT
Sandoval, Cibola & Valencia

John W. Pope(D) 865-9654 1994-96
Div. I, Los Lunas

Kenneth G. Brown(D) 867-2861 1991-96
Div. II, Bernalillo

William (Bill) Sanchez(D) 865-4010 1993-96
Div. III, Los Lunas

Martin G. Pearl(D) 287-2104 1991-96
Div. IV, Grants

Louis P. McDonald(D) 867-0563 1993-96
Div. V, Bernalillo

District Court Clerks

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Lisa Bro 287-8831
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DISTRICT ATTORNEYS

FIRST JUDICIAL DISTRICT
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SECOND JUDICIAL DISTRICT

Bernalillo
Robert M. Schwartz(R) 841-7100 1993-96
111 Union Sq., SE
Albuquerque 87102

THIRD JUDICIAL DISTRICT

Dona Ana
G. Greg Valdez 524-6370 1993-96
424 N. Downtown Mall
Las Cruces 88001

FOURTH JUDICIAL DISTRICT

Guadalupe, Mora & San Miguel
Luis B. Juarez(D) 1993-96
P.O. Box 2025, Las Vegas 87701
Las Vegas 425-6746
Mora 387-2277
Santa Rosa 472-3230

FIFTH JUDICIAL DISTRICT

Chaves, Eddy & Lea
Thomas A. Rutledge(R) 1993-96
P.O. Box 1448, Carlsbad 88221-1448
Carlsbad 885-8822
Lovington 396-7616
Roswell 622-4121
Hobbs 397-2471

SIXTH JUDICIAL DISTRICT

Grant, Hidalgo & Luna
Anthony W. White (D) 1993-96
Box 1025, Silver City 88062
Silver City 388-1941

Lordsburg 542-3260
Deming 546-6526

SEVENTH JUDICIAL DISTRICT

Catron, Sierra, Socorro & Torrance
Ron P. Lopez(D) 1993-96
Box 1099, Socorro 87801
Socorro 835-0052
T. or C. 894-9033
Estancia 384-2800

EIGHTH JUDICIAL DISTRICT

Colfax, Union & Taos
Sammy Lawrence Pacheco (D) 1993-96
Drawer E, Taos 87571
Taos 758-8683
Raton 445-5516
Clayton 374-2569

NINTH JUDICIAL DISTRICT

Curry & Roosevelt
Randall M. Harris(D) 1993-96
2nd Fl, W. Annex
Curry County Courthouse, Clovis 88101
Clovis 769-2246
Portales 356-4434

TENTH JUDICIAL DISTRICT

Quay, DeBaca & Harding
Mark I. Bannister, Sr.(D) 461-2075 1993-96
Box 1141, Tucumcari 88401

ELEVENTH JUDICIAL DISTRICT

Division 1
McKinley & San Juan
Alan E. Whitehead(R) 325-7555 1993-96
920 Municipal Dr., Ste. 5
Farmington 87401
Division 2
McKinley & San Juan
Forrest G. Buffington(D) 722-2281 1993-96
McKinley County Courthouse
Gallup 87301

TWELFTH JUDICIAL DISTRICT

Lincoln & Otero
Bert Atkins(D) 437-3640 1993-96
1000 New York Ave.,
Rm. 301, Alamogordo 88310-6998

THIRTEENTH JUDICIAL DISTRICT

Sandoval, Valencia & Cibola
Mike Runnels(D) 1993-96
Box 1919, Los Lunas 87031
Los Lunas 865-9643
Bernalillo 867-2386
Grants 285-4627

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Joyce Bustos, Director
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827-3789

STATE BOARD OF EDUCATION

DISTRICT 1
Bernalillo
Virginia Trujillo(D)
Albuquerque 842-3547 1993-96

DISTRICT 2
Bernalillo
Millie Pogna(R)
Albuquerque 299-6701 1995-98

DISTRICT 3
Bernalillo
Emmalou Rodriguez(D)
Albuquerque 268-9755 1995-98

DISTRICT 4
Bernalillo, Sandoval & Santa F,
Eleanor B. Ortiz(D)
Santa F, 982-2631 1993-96

DISTRICT 5
McKinley, Sandoval & San Juan

Wallace D. Davis(D)
Burnham 696-3323 1995-98
Shiprock 368-4984

DISTRICT 6
Bernalillo, Catron, Cibola,
Grant, Hidalgo, Luna, Socorro,
Torrance & Valencia
Catherine M. Smith(D)
Mimbres 536-9550 1995-98

DISTRICT 7
Doña Ana, Sierra & Otero
Darl N. Miller(R)
Las Cruces 524-9835 1995-98

DISTRICT 8
Chaves, DeBaca, Eddy, Guadalupe,
Lincoln, Otero, Roosevelt,
Santa F, & Torrance
Van W. Witt(R)
Roswell 622-5234 1993-96

DISTRICT 9
Curry, Eddy, Lea, Quay & Roosevelt
Lynn Melton Medlin(R)
Tatum 675-2345 1993-96

DISTRICT 10
Colfax, Guadalupe, Harding,
Los Alamos, Mora, Rio Arriba,
Sandoval, San Juan, Santa F,,
San Miguel, Taos & Union
Rudy Castellano(D)
Questa 586-0421 1993-96

COUNTY OFFICIALS

Bernalillo County
Albuquerque/Bernalillo County Government Center
One Civic Plaza
Albuquerque, New Mexico 87102

COUNTY COMMISSIONERS Telephone

1. Ken Sanchez(D) 1995-98 768-4217
2. Albert "Al" Valdez(D) 1993-96
3. Eugene M. Gilbert(D) 1993-96
4. Barbara J. Seward(R) 1993-96
5. Les Houston(R) 1995-98

COUNTY MANAGER

Juan Vigil
One Civic Plaza NW, 10th Fl. Albuquerque 87102 768-4000

COUNTY CLERK

Judy Dorothy Woodward(D) 1993-96
One Civic Plaza NW, 6th Fl., Albuquerque 87102 768-4090

COUNTY TREASURER

H.R. Fine(R) 1993-96
One Civic Plaza NW, Albuquerque 87102 768-4031

COUNTY ASSESSOR

David Kirk Anderson(R) 1995-98
One Civic Plaza NW, Albuquerque 87102 768-4040

COUNTY SHERIFF

Joe H. Bowdich(D) 1995-98
401 Marquette NW, Albuquerque 87102 766-4100

PROBATE JUDGE

Thomas J. Mescall(R) 1995-98
One Civic Plaza, Albuquerque 87102 766-4247

Bernalillo County Courthouse
401 Roma, NW
Albuquerque, New Mexico 87102

METROPOLITAN COURT JUDGES

Division

- | | |
|--|----------|
| 1 Mark Macaron(R) 1995-98 Albuquerque | 841-8279 |
| 2 Mark Shapiro(D) 1995-98 Albuquerque | 841-8281 |
| 3 Barbara A. Brown(D) 1995-98 Albuquerque | 841-8283 |
| 4 Charles R. Barnhart(R) 1995-98 Albuquerque | 841-8285 |
| 5 Roderick T. Kennedy(R) 1995-98 Albuquerque | 841-8287 |
| 6 Keesha M. Caldwell(R) 1995-98 Albuquerque | 841-8289 |
| 7 Neil C. Candelaria(R) 1995-98 Albuquerque | 841-8291 |
| 8 Joanne Birge(R) 1995-98 Albuquerque | 841-8293 |
| 9 Elizabeth N. Love(D) 1995-98 Albuquerque | 841-8295 |
| 10 Frank William Gentry(R) 1995-98 Albuquerque | 841-8297 |
| 11 Thomas E. Davis(D) 1995-98 Albuquerque | 841-8299 |
| 12 Marie A. Baca(D) 1995-98 Albuquerque | 841-8220 |
| 13 J. Michael Kavanaugh(D) 1995-98 Albuquerque | 841-8193 |
| 14 Theresa A. Gomez(D) 1995-98 Albuquerque | 841-8182 |
| 15 Anna G. Martinez(D) 1995-98 Albuquerque | 841-8165 |

Catron County Courthouse
Box 197
Reserve, New Mexico 87830

COUNTY COMMISSIONERS Telephone

1. John Hand(R) 1995-98
 2. Carl G. Livingston(R) 1995-98
 3. Hugh B. McKeen, Jr.(R) 1995-96
- County Manager**

Danny Fryar
Catron County Courthouse, Box 507
Reserve 87830 533-6423

COUNTY CLERK
Sharon Armijo(D) 1995-96
Catron County Courthouse 533-6400
Box 197, Reserve 87830

COUNTY TREASURER
Janet S. Porter(D) 1995-96
Box 407, Reserve 87830 533-6384

COUNTY ASSESSOR
Susan E. Griffin (R)1995-98
Box 416, Reserve 87830 533-6577

COUNTY SHERIFF
Robert P. Wellborn(D) 1995-98
Box 467, Reserve 87830 533-6222

PROBATE JUDGE
Lillie M. Laney(D) 1995-98
Catron County Courthouse 533-6400
Box 197, Reserve 87830

MAGISTRATE
1 James V. Blancq(R) 1995-98
Box 447, Reserve 87830 533-6474

**Chaves County Courthouse
P.O. Box 1817
Roswell, New Mexico 88201**

COUNTY COMMISSIONERS Telephone

1. Eloy Ortega, Jr.(D) 1995-98
2. Joe H. Adair(R) 1993-96
3. Rory Alan McMinn(R) 1993-96
4. William Alvis Snipes(R) 1993-96
5. Bill Anderson(R) 1995-98

County Manager

Hubert Quintana

Box 1817, Roswell 88202 624-6600

COUNTY CLERK

Rhoda C. Goodloe(R) 1993-96

Box 580, Roswell 88202 624-6614

COUNTY TREASURER

Sally G. Hartman(R) 1993-96

Box 1772, Roswell 88202 624-6618

COUNTY ASSESSOR

Ron Lethgo(R) 1995-98

401 N. Main, Roswell 88201 624-6603

COUNTY SHERIFF

Terrell Tucker(R) 1995-98

Box 1396, Roswell 88202 624-6500

PROBATE JUDGE

Richard G. Bean(D) 1995-98

Box 820, Roswell 88202 622-1105

MAGISTRATES

Division

1 Billy V. Carpenter(D) 1995-98

200 E. 4th, Roswell 88201 624-6088

2 Robert B. Corn(R) 1995-98

200 E. 4th, Roswell 88201 624-6088

Cibola County Courthouse
515 W. High
Grants, New Mexico 87020

COUNTY COMMISSIONERS Telephone

1. Albino Saavedra(D) 1995-98 287-9431, Ext. 103
2. Steve R. Barela(D) 1993-96
3. Earl A. Chavez(D) 1995-98
4. William R. Dawson Jr.(R) 1993-96
5. Bennie Cohoe(D) 1993-96

County Manager

J.R. Murrietta
515 W. High, Grants 87020 287-9431, Ext. 101

COUNTY CLERK

Patricia A. Aragon(D) 1993-96
515 W. High, Grants 87020 287-9431, Ext. 147

COUNTY TREASURER

Alberta C. Gallegos(D) 1993-96
515 W. High, Grants 87020 287-9431, Ext. 132

COUNTY ASSESSOR

Virginia G. Baca(D) 1995-98
515 W. High, Grants 87020 287-9431, Ext. 138

COUNTY SHERIFF

Salvador J. Benavidez(D) 1995-98
515 W. High, Grants 87020 287-9476

PROBATE JUDGE

Corrine C. Padilla(D) 1995-98
515 W. High, Grants 87020 287-9431, Ext. 148

MAGISTRATES

Division

1 Frank Emerson(D) 1995-98
515 W. High, Grants 87020 285-4605
2 Milton J. Griego(D) 1995-98
515 W. High,, Grants, 87020 287-9334

**Colfax County Courthouse
Raton, New Mexico 87740**

COUNTY COMMISSIONERS Telephone

1. Joe M. Gallegos (D) 1995-98 455-9661

2. Frank J. Cimino Jr.(D) 1995-98

3. Marietta G. Shell(D) 1995-96

County Manager

Curtis S. Smith

Box 1498, Raton 87740 445-2906

COUNTY CLERK

Barbara Castillo(D) 1995-96

Box 159, Raton 87740 445-5551

COUNTY TREASURER

Roselee Baca(D) 1995-96

Box 98, Raton 87740 445-3171

COUNTY ASSESSOR

Gene Sisneros(D) 1995-98

Box 427, Raton 87740 445-2314

COUNTY SHERIFF

Jim Maldonado(D) 1995-98

Box 39, Raton 87740 445-5561

PROBATE JUDGE

Ann Phillips(D) 1995-98

Box 159, Raton 87740 445-9565

MAGISTRATES

Division

1 Archie A. Valdez(D) 1995-98
Box 68, Raton 87740 455-2220
2 Fred C. Caldwell(R) 1995-98
P.O. Box 778, Springer 87747 483-2417

Curry County Courthouse
700 N. Main Street
Clovis, New Mexico 88101

COUNTY COMMISSIONERS Telephone

1. Johnny Chavez(D) 1995-98
2. Joel David Snider(D) 1993-96
3. Frank H. Blackburn(D) 1995-98
4. Darrell Bostwick(D) 1993-96
5. Paul D. Barnes(D) 1993-96

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Geneva Cooper
P.O. Box 1822, Clovis 88102-1822 763-6016

COUNTY CLERK

Coni Jo Lyman(D) 1993-96
P.O. Box 1168, Clovis 88102-1168 763-5591

COUNTY TREASURER

Joyce Deavours(D) 1993-96
P.O. Box 897, Clovis 88102-0897 763-3931

COUNTY ASSESSOR

Margie J. Crooks(D) 1995-98
Curry County Courthouse 763-5731

COUNTY SHERIFF

James M. Jackson(R) 1995-98
Box 1043, Clovis 88102-1043 769-2335

PROBATE JUDGE

Michael R. Wells(R) 1995-98
P.O. Box 1168, Clovis 88102-1168 763-5591

MAGISTRATES

Division

1 Caleb J. Chandler(D) 1995-98	
820 Main St., Clovis 88101	762-3766
2 Richard A. Burke(D) 1995-98	
820 Main St., Clovis 88101	762-3766

DeBaca County Courthouse
Fort Sumner, New Mexico 88119

COUNTY COMMISSIONERS Telephone

1. Edward A. Sena(D) 1995-98 355-2601
2. Raymond E. Drake(D) 1995-98
3. Frank McRee(D) 1995-96
Purchasing Agent
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COUNTY CLERK

Shana L. Clever(D) 1995-96
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COUNTY TREASURER

LaHonda Fox(D) 1995-96
Box 389, Fort Sumner 88119 355-7395

COUNTY ASSESSOR

Deborah J. Russ(D) 1995-98
Box 906, Fort Sumner 88119 355-7448

COUNTY SHERIFF

Raymond A. Drake(D) 1995-98
Box 927, Fort Sumner 88119 355-2405

PROBATE JUDGE

Leona Ann Wood(D) 1995-98
Box 941, Fort Sumner 88119 355-7389

MAGISTRATE

Buddy J. Hall(R)(D) 1995-98
Box 24, Fort Sumner 88119 355-7371

**Dona Ana County Courthouse
251 W. Amador Avenue
Las Cruces, New Mexico 88005**

COUNTY COMMISSIONERS Telephone

1. John Schaefer(R) 1995-98
2. Enrique Gonzalez, Jr.(D) 1993-96
3. Dora F. Harp(R) 1995-98
4. Ken Miyagishma(D) 1993-96
5. Joe M. Lujan(D) 1993-96

County Manager

Brent Westmoreland
Dona Ana County Manager's Complex
180 W. Amador Avenue, Las Cruces 525-6601

COUNTY CLERK

Rita Torres(D) 1993-96

Doña Ana County Courthouse 525-6659

COUNTY TREASURER

Delia Garcia Barncastle(R) 1993-96

Doña Ana County Courthouse 525-6684

COUNTY ASSESSOR

Emma Johnson Ortiz(D) 1995-98

Doña Ana County Courthouse 525-6677

COUNTY SHERIFF

Jan Cary(R) 1995-98

Doña Ana County Courthouse 525-1911

PROBATE JUDGE

Bernice H. Maynez(D) 1995-98

Doña Ana County Courthouse 525-6670

MAGISTRATES

Division

1 Oscar C. Fietze(D) 1995-98

125 S. Downtown Mall, Las Cruces 88005 524-2814

2 Benjamin B. Rios(D) 1995-98

125 S. Downtown Mall, Las Cruces 88005 524-2814

3 Patrick J. Curran(R) 1995-98

125 S. Downtown Mall, Las Cruces 88005 524-2814

**Eddy County Courthouse
Carlsbad, New Mexico 88221**

COUNTY COMMISSIONERS Telephone

1. Miranda Darcy(D) 1995-98
2. Fred T. Alvarez(D) 1993-96
3. W.L. "Jay" Mobley, Jr.(D) 1993-96
4. Nancy C. Brantley(R) 1995-98
5. Ray L. Camp(D) 1995-96

County Manager
Stephen Massey
Box 1139, Carlsbad 88221 887-9511

COUNTY CLERK
Karen Davis(D) 1995-98
Box 850, Carlsbad 88221 885-3383

COUNTY TREASURER
Louise L. Greene(D) 1995-98
Box 158, Carlsbad 88221 885-3913

COUNTY ASSESSOR
Anna M. Galindo(D) 1995-98
Box 729, Carlsbad 88221 885-3813

COUNTY SHERIFF
Jack R. Childress(D) 1995-98
Box 1240, Carlsbad 88221 887-7553

PROBATE JUDGE
Charlene Wright(D) 1995-98
Room 100, Eddy County Courthouse 885-4008

MAGISTRATES
Division
1 Bill L. Sadler(D) 1995-98
302 N. Main, Carlsbad 88221 885-3218
2 Renee Y. Forrester(R) 1995-98
302 N. Main, Carlsbad 88221 885-3218
3 Larry E. Wood(D) 1995-98
611 Mahone Dr., Artesia 88210 746-2481

**Grant County Courthouse
Silver City, New Mexico 88061**

COUNTY COMMISSIONERS Telephone

1. Manuel T. Serna(D) 1995-98
2. Zeke P. Santa Maria(D) 1995-98
3. Carl W. Scholl(R) 1995-96

County Manager

Michael H. Clesielski
Box 898, Silver City 88062 538-3338

COUNTY CLERK

Rena Madrid Cope(D) 1995-96
Box 898, Silver City 88062 538-2979

COUNTY TREASURER

Deborah Rivera Madrid(D) 1995-96
Box 89, Silver City 88062 388-1938

COUNTY ASSESSOR

Linda A. Berry Reese(D) 1995-98
Box 972, Silver City 88062 388-1525

COUNTY SHERIFF

Cleofas M. Lopez(D) 1995-98
Box 3020, Silver City 88062 538-3797

PROBATE JUDGE

Benny G. Montes(D) 1995-98
Box 898, Silver City 88062 538-5240

MAGISTRATES

Division

- 1 Ronald M. Hall(D) 1995-98
Box 937, Silver City 88062 538-3811
- 2 Ygnacio B. Morales(D) 1995-98
Box 125, Bayard 88023 537-3042

Guadalupe County Courthouse
420 Park Avenue
Santa Rosa, New Mexico 88435

COUNTY COMMISSIONERS Telephone

1. Arthur Ortega(D) 1995-98
2. Paul R. Madrid(D) 1995-98
3. Cristobal D. Marquez(D) 1995-96

County Manager

Ricardo J. Marquez

Guadalupe County Courthouse 472-3306

COUNTY CLERK

Mary Silva(D) 1995-96

Guadalupe County Courthouse 472-3791

COUNTY TREASURER

Viola C. Pacheco(D) 1995-96

Guadalupe County Courthouse 472-3133

COUNTY ASSESSOR

Carol S. Tapia(D) 1995-98

Guadalupe County Courthouse 472-3738

COUNTY SHERIFF

Arthur Jude Gallegos(D) 1995-98

117 S. 5th St., Santa Rosa 88435 472-3711

PROBATE JUDGE

A.F. (Lalo) Padilla(D) 1995-98

Guadalupe County Courthouse 472-3791

MAGISTRATE

Arcenio C. Sanchez(D) 1995-98
141 S. Fifth Street, Santa Rosa 88435 472-3237

HARDING COUNTY

Box 1002

Mosquero, New Mexico 87733

COUNTY COMMISSIONERS Telephone

1. Jerry R. Hazen(D) 1995-98
2. Michael E. Lewis(D) 1995-98
3. Willis W. Bowman, Jr.(D) 1995-96

Commission Secretary

Arlene Aragon

Harding County Courthouse 673-2927

COUNTY CLERK

Elizabeth Martinez(D) 1995-96

Harding County Courthouse 673-2301

COUNTY TREASURER

Lucille Quintana(D) 1995-96

Harding County Courthouse 673-2928

COUNTY ASSESSOR

Peter K. Callahan(R) 1995-98

Harding County Courthouse 673-2926

COUNTY SHERIFF

Raymond A. Gutierrez(D) 1995-98

Harding County Courthouse 673-2231

PROBATE JUDGE

Diana Lynn Anderson(D) 1995-98
HC 73, Box 157, Roy 87743 485-2504

MAGISTRATE JUDGE

Pedro Antonio Gonzales(R) 1995-98
Box 224, Roy 87743 485-2549

**Hidalgo County Courthouse
300 S. Shakespeare St.
Lordsburg, New Mexico 88045**

COUNTY COMMISSIONERS Telephone

1. Lloyd V. Payne(D) 1995-98
2. David A. Ramos(D) 1995-98
3. John C. Hatch(D) 1995-96

County Manager

Tom Anderson

Hidalgo County Courthouse 542-9428

COUNTY CLERK

Belinda C. Chavez(D) 1995-96

Hidalgo County Courthouse 542-9213

COUNTY TREASURER

Patsy M. Camacho(D) 1995-96

Hidalgo County Courthouse 542-9313

COUNTY ASSESSOR

Robert A. Kerr(D) 1995-98

Hidalgo County Courthouse 542-3433

COUNTY SHERIFF

Robert Hall(R) 1995-98
305 Pyramid St., Lordsburg 88045 542-8827

PROBATE JUDGE

Norma Jean Richins(R) 1995-98
Hidalgo County Courthouse 542-9512

MAGISTRATE

Edward Cramer(R) 1995-98
205 E. 2nd St., Lordsburg 88045 542-3582

**Lea County Courthouse
Lovington, New Mexico 88260**

COUNTY COMMISSIONERS Telephone

1. Dan R. Field(R) 1993-96
2. Kenneth Buster Goff(R) 1995-98
3. Kenneth K. Batson(R) 1995-98
4. Ralph Douglas Littleton(D) 1993-96
5. Erwin Maurice Hughes(D) 1993-96

County Manager

Don Jordan

Lea County Courthouse, Box 4-C, Lovington 88260 396-8521

COUNTY CLERK

Pat Snipes Chappelle(R) 1993-96
Box 1507, Lovington 88260 396-8531

COUNTY TREASURER

Patsy I. Roberts(R) 1993-96
Lea County Courthouse, Box 3-C, Lovington 88260 396-8534

COUNTY ASSESSOR

Melba L. Hamby(D) 1995-98

Lea County Courthouse, Box 2-C, Lovington 88260 396-8527

COUNTY SHERIFF

Bill Lane(D) 1995-98

215 E. Central, Lovington 88260 396-3611

PROBATE JUDGE

Bobbye E. Allen(R) 1995-98

Box 1507, Lovington 88260 396-8521

MAGISTRATES

Division

1 Vickey A. Crawford(R) 1995-98

100 W. Central, Ste. D, Lovington 88260 396-6677

2 Jack D. Bailey(D) 1995-98

114 E. Taylor, Hobbs 88240 397-3621

3 Don Gladden(D) 1995-98

2200 W. Avenue O, P.O. Box 240, Eunice 88231 394-3368

400 S. Highway 18, P.O. Box 507, Jal 88252 395-2740

4 Bethe S. Cunningham(R) 1995-98

Box 918, Tatum 88267 398-5300

5 William A. McBee(R) 1995-98

114 E. Taylor, Hobbs 88240 397-3621

Lincoln County Courthouse

Carrizozo, New Mexico 88301

COUNTY COMMISSIONERS Telephone

1. Stirling T. Spencer(R) 1993-96

2. Lonnie Ray Nunley(D) 1995-98

3. Wilton H. Howell(R) 1993-96

4. William H. Schwetmann (R) 1995-98

5. Monroy A. Montes (R) 1995-98
County Manager
Carolyn Cooney
Box 711, Carrizozo 88301 648-2385

COUNTY CLERK

Martha McKnight Proctor(R) 1995-98
Box 338, Carrizozo 88301 648-2394

COUNTY TREASURER

Joan E. Park(R) 1995-98
Box 709, Carrizozo 88301 648-2397

COUNTY ASSESSOR

Patricia A. Serna(R) 1993-96
Box 38, Carrizozo 88301 648-2306

COUNTY SHERIFF

James C. McSwane(R) 1993-96
Box 278, Carrizozo 88301 648-2342

PROBATE JUDGE

J. O. "Bud" Payne(R) 1993-96
Box 338, Carrizozo 88301 648-2956

MAGISTRATES

Division

1 Gerald Dean, Jr.(R) 1995-98
Box 488, Carrizozo 88301 648-2389
2 William R. Butts(D) 1995-98
Box 2426, Ruidoso 88245 257-7022

Los Alamos County Courthouse

**2300 Trinity Drive
P.O. Box 30
Los Alamos, New Mexico 87544**

COUNTY COUNCIL Telephone
Mary Ginger Welch(D) 1995-96
Denise A. Smith(D) 1995-98
Stretch J.H. Fretwell(R) 1995-96
James M. Greenwood(R) 1995-96
Lewis A. Muir(R) 1995-98
Lawry W. Mann(R) 1995-98
Morris B. Pongratz(R) 1995-98
County Administrator
James M. Flint
Los Alamos County Courthouse 662-8080

COUNTY CLERK
Nita K. Taylor(R) 1995-96
Los Alamos County Courthouse 662-8010

COUNTY ASSESSOR
Everett D. Holmes, Jr.(R) 1995-98
Los Alamos County Courthouse 662-8030

COUNTY SHERIFF
Roy G. Bates(R) 1995-98
Los Alamos County Courthouse 662-8028

PROBATE JUDGE
Anna Chopek(D) 1995-98
Los Alamos County Courthouse 662-8013

MAGISTRATE
R. Elaine Morris(D) 1995-98
1319 Trinity Drive, Los Alamos 87544 662-2727

Luna County Courthouse
700 S. Silver
Deming, New Mexico 88030

COUNTY COMMISSIONERS Telephone

1. Fred M. Herrera(D) 1995-98
2. Ruth S. Coleman(R) 1995-98
3. Thomas N. Lindsay(R) 1995-96

County Manager

Scott Vinson

Luna County Courthouse 546-0494

COUNTY CLERK

Natalie Pacheco(D) 1995-96

Box 1838, Deming 88031 546-0491

COUNTY TREASURER

Victor A. Kostelnik(D) 1995-96

Box 1758, Deming 88031 546-0401

COUNTY ASSESSOR

Margaret A. Hill(D) 1995-98

700 S. Silver St., Deming 88030 546-0404

COUNTY SHERIFF

James McKinney Clay(D) 1995-98

700 S. Silver St., Deming 88030 546-2655

PROBATE JUDGE

B.R. "Dick" Hunt(D) 1995-98

P.O. Box 1838, Luna County Courthouse 546-0491

MAGISTRATE

Frederick G. Gifford(R) 1995-98

121 W. Spruce St., Deming 88031 546-9321

**McKinley County Courthouse
Gallup, New Mexico 87301**

COUNTY COMMISSIONERS Telephone

1. Bennie Shelly(D) 1995-98 863-1400
2. Earnest C. Becenti, Sr.(D) 1995-98
3. Sharon D. Richards(R) 1995-96

County Manager

Irvin Harrison

Box 70, Gallup 87305 722-3868

COUNTY CLERK

Carol K. Sloan(D) 1995-96

Box 1268, Gallup 87301 863-6866

COUNTY TREASURER

Charles Long(D) 1995-96

McKinley County Courthouse 722-4459

COUNTY ASSESSOR

Richard Bowman(D) 1995-98

McKinley County Courthouse 863-3032

COUNTY SHERIFF

Frank Gonzales(D) 1995-98

Box 1209, Gallup 87301 863-3132

PROBATE JUDGE

Charley Long, Sr.(D) 1995-98

McKinley County Courthouse 863-6866

MAGISTRATES

Division

1 Lidio G. Rainaldi(D) 1995-98

Box 37, Gallup 87301 863-4469

2 Karl R. Gillson(D) 1995-98

Box 37, Gallup 87301 722-6636

3 John J. Carey(D) 1995-98

Box 37, Thoreau 87323 862-7779

Mora County Courthouse
Mora, New Mexico 87732

COUNTY COMMISSIONERS Telephone

1. Joseph L. Garcia(D) 1995-98
2. Henry A. Sanchez(D) 1995-98
3. Jacob L. Regensburg(D) 1995-96

County Manager

Isabelle Vigil-Arman

Box 580, Mora 87732 387-5279

COUNTY CLERK

Pauline G. Espinoza(D) 1995-96

Box 360, Mora 87732 387-2448

COUNTY TREASURER

Vicente Duran(D) 1995-96

Box 210, Mora 87732 387-2756

COUNTY ASSESSOR

Mary Jane Sandoval(D) 1995-98

Box 366, Mora 87732 387-5289

COUNTY SHERIFF

Nazario Montoya(D) 1995-98

Box 447, Mora 87732 387-2222

PROBATE JUDGE

Lupe Torrez, Jr.(D) 1995-98

Box 360, Mora 87732 387-5702

MAGISTRATE

Rudy C. Montoya(D) 1995-98
Box 131, Mora 87732 387-2937

**Otero County Courthouse
Alamogordo, New Mexico 88310**

COUNTY COMMISSIONERS Telephone

1. Richard L. Zierlein(R) 1995-98
2. Timothy D. McGinn(R) 1995-98
3. Ronny D. Rardin(R) 1995-96

County Manager

David C. Weitzel

1000 New York Ave., Room 101
Alamogordo 88310-6935 437-7427

COUNTY CLERK

Mary D. Quintana(R) 1995-96
1000 New York Ave., Room 108
Alamogordo 88310-6932 437-4942

COUNTY TREASURER

Elyse Beckman(R) 1995-96
1000 New York Ave., Room 110
Alamogordo 88310-6934 437-2030

COUNTY ASSESSOR

N. Wayne Bennett(R) 1995-98
1000 New York Ave., Room 109
Alamogordo 88310-6994 437-5310

COUNTY SHERIFF

John A. Lee(R) 1995-98
1013 New York Ave.

Alamogordo 88310-6995 437-2210

PROBATE JUDGE

Yvonne W. Oliver(R) 1995-98
1000 New York Ave., Room 108
Alamogordo 88310-6932 437-4943

MAGISTRATES

Division

1 Ray S. Cordova(D) 1995-98
1106 New York Ave., Alamogordo 88310
437-9000

2 Henry M. Prelo(D) 1995-98
1106 New York Ave., Alamogordo 88310
437-9000

Quay County Courthouse

Box 1246

Tucumcari, New Mexico 88401

COUNTY COMMISSIONERS Telephone

1. Jim Bob Hendrickson(R) 1993-96
2. Glenn Briscoe(D) 1993-96
3. Robert E. Thrasher(D) 1995-98

County Manager

Sandra Garley
Box 1246, Tucumcari 88401 461-2112

COUNTY CLERK

Jeannette Maddaford(D) 1995-96
Box 1225, Tucumcari 88401 461-0510
461-0513

COUNTY TREASURER

Johnnie Smith Parish(D) 1995-96
Box 1226, Tucumcari 88401 461-0470

COUNTY ASSESSOR

Harold A. Ferguson(D) 1995-98
Box 1227, Tucumcari 88401 461-1760

COUNTY SHERIFF

Larry W. Hines(D) 1995-98
Box 1321, Tucumcari 88401 461-2720

PROBATE JUDGE

Pat Clark(D) 1995-98
2402 South 2nd St., Tucumcari 88401 461-0154

MAGISTRATE

J. Bronson Moore(D) 1995-98
Box 1301, Tucumcari 88401 461-1700

**Rio Arriba County Courthouse
Tierra Amarilla, New Mexico 87575**

COUNTY COMMISSIONERS Telephone

1. Ray R. Tafoya(D) 1995-98
2. Alfred L. Montoya(D) 1995-98
3. Arthur H. Rodarte(D) 1995-96

County Manager

Lorenzo Valdez
Box 127, Tierra Amarilla 87575 588-7254

COUNTY CLERK

David S. Chavez(D) 1995-96
Box 158, Tierra Amarilla 87575 588-7724
Box 1256, Española 87532 753-1780

COUNTY TREASURER

Robin F. Roybal(D) 1995-96
Box 126, Tierra Amarilla 87575 588-7727

COUNTY ASSESSOR

David R. Salazar(D) 1995-98
Box 88, Tierra Amarilla 87575 588-7726

COUNTY SHERIFF

Nelson E. Cordova(D) 1995-98
Box 98, Tierra Amarilla 87575 588-7271
Box 1256, Española 87532 753-3320

COUNTY SURVEYOR

Rio Arriba County Courthouse 588-7724

PROBATE JUDGE

Lorenzo V. Martinez(D) 1995-98
Box 158, Tierra Amarilla 87575 588-7724

MAGISTRATES

Division

1 Tony F. Martinez(D) 1995-98
Box 538, Chama 87520 756-2278
2 Richard C. Martinez(D) 1995-98
Box 1271, Española 87532 753-2532

**Roosevelt County Courthouse
Portales, New Mexico 88130**

COUNTY COMMISSIONERS Telephone

1. Jake J. Lopez(D) 1993-96
2. David C. Sanders(D) 1993-96
3. Herschel Caviness(D) 1995-98
4. Jimmy D. Parrish(R) 1995-98
5. B.C. "Blonnie" Rea(D) 1995-98

County Manager

Mike Miller

Roosevelt County Courthouse 356-5307

COUNTY CLERK

Maudene Haragan(D) 1993-96

Roosevelt County Courthouse 356-8562

COUNTY TREASURER

Pauline Clark(D) 1993-96

Roosevelt County Courthouse 356-4081

COUNTY ASSESSOR

Thelma Parker(D) 1995-98

Roosevelt County Courthouse 356-6971

COUNTY SHERIFF

Bob W. Dodgin(D) 1995-98

c/o Law Enforcement Center

1700 N. Boston, Portales 356-4409

PROBATE JUDGE

Billy J. Foster(D) 1993-96

Roosevelt County Courthouse 356-8505

MAGISTRATE

Jesse Porter(R) 1995-98

c/o Law Enforcement Center

1700 N. Boston Street, Portales 88130 356-8560

**Sandoval County Courthouse
Bernalillo, New Mexico 87004**

COUNTY COMMISSIONERS Telephone

1. Patrick G. Baca(D) 1995-98
2. Edmund "Joe" Lang(D) 1993-96
3. Mary M. Humphrey(D) 1995-98
4. Patricia A. Thomas(D) 1993-96
5. Robert W. Johnson(D) 1993-96

County Manager

Debbie Hays

Box 40, Bernalillo 87004 867-7500

COUNTY CLERK

Sally G. Padilla(D) 1993-96

Box 40, Bernalillo 87004 867-7572

COUNTY TREASURER

Josephine Gutierrez-Montoya(D) 1993-96

Box 40, Bernalillo 87004 867-7581

COUNTY ASSESSOR

Lorraine Dominguez(D) 1995-98

Box 40, Bernalillo 87004 867-7561

COUNTY SHERIFF

Ray V. Rivera(D) 1995-98

Box 40, Bernalillo 87004 867-7526

PROBATE JUDGE

Stevan J. Schoen(D) 1995-98

Box 40, Bernalillo 87004 867-7572

MAGISTRATES

Division

1 Margaret A. Cassidy-Baca(D) 1995-98

Box 818, Bernalillo 87004 867-5202

2 F. Kenneth Eichwald(D) 1995-98
Box 1497, Cuba 87013 289-3519

San Juan County
112 S. Mesa Verde
Aztec, New Mexico 87410

COUNTY COMMISSIONERS Telephone

1. Billy F. Hillgartner(D) 1995-98
2. Ervin Chavez(D) 1995-98
3. Gordon N. Crane(R) 1993-96
4. Sherry L. Galloway(R) 1993-96
5. John A. Dean, Jr.(D) 1993-96

COUNTY MANAGER

Tony Atkinson
112 S. Mesa Verde, Aztec 87410 334-9481

COUNTY CLERK

Carol Bandy(R) 1993-96
Box 550, Aztec 87410 334-9471

COUNTY TREASURER

Sidney C. Martin(R) 1993-96
112 S. Mesa Verde, Aztec 87410 334-9421

COUNTY ASSESSOR

Marion Farnsworth(R) 1995-98
112 S. Mesa Verde, Aztec 87410 334-6157

COUNTY SHERIFF

Michael L. Davidson(R) 1995-98
105 S. Oliver Dr., Aztec 87410 334-6017

PROBATE JUDGE

Lynette M. Justice(D) 1995-98
Box 550, Aztec 87410 334-9471

MAGISTRATES

Division

1 Carla Vescovi-Dial(R) 1995-98
105 S. Oliver Dr., Aztec 87410 334-9479
2 Linda B. Eaton(D) 1995-98
920 Municipal Dr., Ste. 1, Farmington 87410 326-4338
3 William A. Vincent, Jr.(R) 1995-98
920 Municipal Dr., Ste. 1, Farmington 87401 326-4338

SAN MIGUEL COUNTY

S S

San Miguel County Courthouse
Las Vegas, New Mexico 87701

COUNTY COMMISSIONERS Telephone

1. Frank Griego(D) 1995-98

2. Eloy Gonzales(D) 1993-96
3. Arthur J. Padilla(D) 1995-98
4. Ernesto J. Roybal(D) 1993-96
5. I. Lloyd Herrera(D) 1993-96

COUNTY MANAGER

Francisco Apodaca	425-9334	
San Miguel County Courthouse		425-9333

COUNTY CLERK

Rebecca A. Medina(D) 1993-96		
San Miguel County Courthouse	425-9331	

COUNTY TREASURER

Alfonso E. Ortiz, Jr.(D) 1993-96		
San Miguel County Courthouse	425-9376	

COUNTY ASSESSOR

Cleo Romo Rogers(D) 1995-98		
San Miguel County Courthouse	454-1439	

COUNTY SHERIFF

Philip J. Romero(D) 1995-98		
300 Mills Ave., Las Vegas 87701	425-7589	

PROBATE JUDGE

Horace Lucero(D) 1995-98		
San Miguel County Courthouse	425-9331	

MAGISTRATES

Division

1 Luis Martinez(D) 1995-98		
1900 Hot Springs Blvd., Las Vegas 87701	425-5204	
2 Oliver Hern, Jr.(D) 1995-98		
1900 Hot Springs Blvd., Las Vegas 87701	425-5204	

SANTA F, COUNTY

Santa F,, County Courthouse
Santa F,, New Mexico 87501

COUNTY COMMISSIONERS Telephone

1. Marcos Phillip Trujillo(D) 1995-98
2. Nancy E. Rodriguez(D) 1993-96
3. Javier M. Gonzales(D) 1995-98
4. Richard D. Anaya(D) 1993-96
5. Betty Platts(D) 1993-96

COUNTY MANAGER

Domingo Sanchez, III
Box 276, Santa F,, 87504 986-6231

COUNTY CLERK

Jona G. Armijo(D) 1993-96
Box 1985, Santa F,, 87504 986-6280

COUNTY TREASURER

Angie V. Gonzales(D) 1993-96
Drawer T, Santa F,, 87504 986-6253

COUNTY ASSESSOR

Mercy J. Quintana(D) 1995-98
Box 126, Santa F,, 87504 986-6300

COUNTY SHERIFF

Benjie Montano(D) 1995-98
P.O. Drawer Q, Santa F,, 87504 986-2400

COUNTY SURVEYOR

Morris A. Apodaca(D) 1995-98
Rt. 6, Box 31, Santa F,, 87501 471-3366

PROBATE JUDGE

Lily L. Gonzales(D) 1995-98
Box 1985, Santa F,, 87504 986-6278

MAGISTRATES

Division

1 Bill Dimas(D) 1995-98
Santa F,, 984-9914
2 Angie Vigil Perez(D) 1995-98
Santa F,, 984-9914
3 Richard M. "Buzzy" Padilla(D) 1995-98
Santa F,, 984-9914

SIERRA COUNTY

Sierra County Courthouse
300 Date Street
Truth or Consequences, New Mexico 87901

COUNTY COMMISSIONERS Telephone

1. Ralph E. Gooding(R) 1995-98
2. Kenneth C. Lyon(R) 1995-98
3. Gary L. Whitehead(D) 1995-96

COUNTY MANAGER

Tony Chance
311 Date Street, T. or C. 87901 894-6215

COUNTY CLERK

Lupe Armijo Carrejo(D) 1995-96
311 Date Street, T. or C. 87901 894-2840

COUNTY TREASURER

Sandi Chatfield(R) 1995-96
311 Date Street, T. or C. 87901 894-3524

COUNTY ASSESSOR

Sandra K. Whitehead(D) 1995-98
311 Date Street, T. or C. 87901 894-2589

COUNTY SHERIFF

Ronald D. Brown(D) 1995-98
311 Date Street, T. or C. 87901 894-6617

PROBATE JUDGE

Thomas G. Pestak(R) 1995-98
311 Date Street, T. or C. 87901 894-4416

MAGISTRATE

Totsie Norton Williams(D) 1995-98
Box 607, T. or C. 87901 894-3051

SOCORRO COUNTY

Socorro County Courthouse
Socorro, New Mexico 87801

COUNTY COMMISSIONERS Telephone

1. Gin Ah Jue(R) 1995-98
2. Mike B. Mora(R) 1993-96

3. James Lee Martin(R) 1995-98

4. Daniel H. Romero(D) 1993-96

5. Juan Jose Gutierrez(R) 1993-96

COUNTY MANAGER

Tony Jaramillo

Box I, Socorro 87801 835-0589

COUNTY CLERK

Carmen D. Gallegos(D) 1993-96

Box I, Socorro 87801 835-0423

COUNTY TREASURER

Isabel "Bella" M. Montoya(D) 1993-96

Box KK, Socorro 87801 835-1701

COUNTY ASSESSOR

Andrew B. Sanchez, Jr.(D) 1995-98

Box J, Socorro 87801 835-0714

COUNTY SHERIFF

Lesmen L. Torres(R) 1995-98

Box 581, Socorro 87801 835-0941

PROBATE JUDGE

Ruben Savedra(D) 1995-98

Box I, Socorro 87801 835-0589

MAGISTRATE

Ignacio N. Garcia(D) 1995-98

Box 1022, Socorro 87801 835-2500

TAOS COUNTY

Taos County Courthouse
Box 676
Taos, New Mexico 87571

COUNTY COMMISSIONERS Telephone

1. Celestino Romero(R) 1995-98

2. Sofio D. Ortega(D) 1995-98

3. Gabriel J. Romero(D) 1995-96

CHIEF ADMINISTRATIVE OFFICER

Samuel O. Montoya
Box 1914, Taos 87571 758-8834

COUNTY CLERK

Carmen M. Medina(D) 1995-96
Box 676, Taos 87571 758-8836

COUNTY TREASURER

Rubana Montoya(D) 1995-96
Drawer II, Taos 87571 758-8838

COUNTY ASSESSOR

Charlie I. Gonzales(D) 1995-98
Box 946, Taos 87571 758-8607

COUNTY SHERIFF

Glenn D. Weathers(D) 1995-98
Box 1843, Taos 87571 758-4709

PROBATE JUDGE

Jeannette G. Rael(D) 1995-98
Box 676, Taos 87571 758-8266

MAGISTRATES

Division

1 Erminio E. Martinez(D) 1995-98
Box 1831, Taos 87571 758-4030

Box 1121, Taos 87571
2 Betty J. Gonzales(D) 1995-98
Box 1632, Taos 87571 758-4030

Box 1121, Taos 87571 (Questa) 758-0761

TORRANCE COUNTY

t

Torrance County Courthouse
Estancia, New Mexico 87016

COUNTY COMMISSIONERS Telephone

1. Bill Williams(D) 1995-98
2. Rodger E. Rayner(R) 1995-98
3. Roy B. Spencer(R) 1995-96

COUNTY MANAGER
Ted Reddinger
Box 48, Estancia 87016 384-2418

COUNTY CLERK
Carla M. Clayton(D) 1995-96
Box 48, Estancia 87016 384-2221

COUNTY TREASURER

Marilyn Autrey(R) 1995-96

Box 318, Estancia 87016 384-2241

COUNTY ASSESSOR

Jim Ford(R) 1995-98

Box 258, Estancia 87016 384-2331

COUNTY SHERIFF

Donald L. Lyles(R) 1995-98

Box 498, Estancia 87016 384-2704

PROBATE JUDGE

M. A. Woodburn(R) 1995-98

Box 48, Estancia 87016 384-2221

MAGISTRATE

Steve Jones(D) 1995-98

Box 201, Moriarty 87035 832-4476

Box 274, Estancia 87106 384-2926

UNION COUNTY

Union County Courthouse

Box 430

Clayton, New Mexico 88415

COUNTY COMMISSIONERS Telephone

1. Donald E. Carter(R) 1995-98

2. Fred Bryan Miller(D) 1995-98

3. Eugene E. Podzemny(R) 1995-96

ADMINISTRATIVE ASSISTANT

Della Wetsel

Box 430, Clayton 88415 374-8896

COUNTY CLERK

Freida J. Birdwell(D) 1995-96

Box 430, Clayton 88415 374-9491

COUNTY TREASURER

Carolyn Lorice Wright(D) 1995-96

Box 308, Clayton 88415 374-2331

COUNTY ASSESSOR

Frankie J. Aragon(D) 1995-98

Box 430, Clayton 88415 374-9441

COUNTY SHERIFF

Jesse L. Yeargain(D) 1995-98

Drawer C, Clayton 88415 374-2583

PROBATE JUDGE

Elizabeth Pepper(D) 1995-98

P.O. Box 397, Clayton 88415 374-8137

MAGISTRATE

Dollie Cooper(R) 1995-98

118 Walnut, Clayton 88415 374-9472

VALENCIA

Valencia County Courthouse
Los Lunas, New Mexico 87031

COUNTY COMMISSIONERS Telephone

1. Frank A. Gurule(D) 1995-98
2. Charles D. Eaton(D) 1993-96
3. Salomon Montano(D) 1995-98
4. Richard J. Smrt(R) 1993-96
5. Linda Wilkinson(R) 1993-96

COUNTY MANAGER

Paul H. Gabaldon
Box 1119, Los Lunas 87031 866-2001

COUNTY CLERK

Kandy Cordova(D) 1993-96
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COUNTY TREASURER

James Fernandez(D) 1993-96
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COUNTY ASSESSOR

Cecilia CC Castillo(D) 1995-98
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Juan D. Julian(D) 1995-98
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PROBATE JUDGE

Sally Perea(D) 1995-98
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MAGISTRATES

Division

- 1 Tody Perea(D) 1995-98
121 Don Diego, Los Lunas 87031 865-4637
- 2 Jimmy H. Baca(R) 1995-98
239 N. Main, Belen 87002 864-7509
- 3 John W. "Buddy" Sanchez(R)
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