Laws 1997
1st Regular Session, Forty-Third Legislature

CERTIFICATE OF AUTHENTICATION

STATE OF NEW MEXICO)

) SS:

OFFICE OF THE SECRETARY OF STATE)

I, STEPHANIE GONZALES, Secretary of State of the State of New Mexico, do hereby certify that the printed laws contained herein are true and correct copies of the ENROLLED AND ENGROSSED LAWS that were passed by the Forty-Third State Legislature of New Mexico at its First Session, which convened on the 21st day of January, 1997, and adjourned on the 22nd day of March, 1997, in Santa Fe, the Capital of the State, as said copies appear on file in my office.

I further certify that in preparing the following laws for publication, the texts of the ORIGINAL ENROLLED AND ENGROSSED ACTS have been photographically reproduced without changes and that any errors must be attributed to the original, as certified by the Enrolling and Engrossing and Judiciary Committees of the Forty-Third State Legislature of New Mexico.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of New Mexico.

Done in the City of Santa Fe, the State Capital, this 21st day of April, 1997.

Stephanie Gonzales

Secretary of State

CONSTITUTIONAL AMENDMENT 1 (HJR 19)

A JOINT RESOLUTION

PROPOSING TO AMEND ARTICLE 8, SECTION 1 OF THE CONSTITUTION OF NEW MEXICO TO AUTHORIZE THE LEGISLATURE TO LIMIT INCREASES IN VALUATION OF RESIDENTIAL PROPERTY FOR PROPERTY TAXATION PURPOSES.

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

Section 1

Section 1. It is proposed to amend Article 8, Section 1 of the constitution of New Mexico to read:

"A. Except as provided in Subsection B of this section, taxes levied upon tangible property shall be in proportion to the value thereof, and taxes shall be equal and uniform upon subjects of taxation of the same class. Different methods may be provided by law to determine value of different kinds of property, but the percentage of value against which tax rates are assessed shall not exceed thirty-three and one-third percent.

B. The legislature shall provide by law for the valuation of residential property for property taxation purposes in a manner that limits annual increases in valuation of residential property. The limitation may be applied to classes of residential property taxpayers based on owner-occupancy, age or income. The limitations may be authorized statewide or at the option of a local jurisdiction and may include conditions under which the limitation is applied. Any valuation limitations authorized as a local jurisdiction option shall provide for applying statewide or multi-jurisdictional property tax rates to the value of the property as if the valuation increase limitation did not apply."

Section 2

Section 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date which may be called for that purpose.

HOUSE JOINT RESOLUTION 19

Approved April 11, 1997

CONSTITUTIONAL AMENDMENT 2 (SJR 5)

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 6, SECTION 32 OF THE CONSTITUTION OF NEW MEXICO TO ADD AN ADDITIONAL CITIZEN AND A MAGISTRATE AS MEMBERS OF THE JUDICIAL STANDARDS COMMISSION.

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

Section 1

Section 1. It is proposed to amend Article 6, Section 32 of the constitution of New Mexico to read:

"There is created the "judicial standards commission", consisting of two justices or judges, one magistrate and two lawyers selected as may be provided by law to serve for terms of four years, and six citizens, none of whom is a justice, judge or magistrate of any court or licensed to practice law in this state, who shall be appointed by the governor for five-year staggered terms as may be provided by law. If a position on the commission becomes vacant for any reason, the successor shall be selected by the original appointing authority in the same manner as the original appointment was made and shall serve for the remainder of the term vacated. No act of the commission is valid unless concurred in by a majority of its members. The commission shall select one of the members appointed by the governor to serve as chairman.

In accordance with this section, any justice, judge or magistrate of any court may be disciplined or removed for willful misconduct in office, persistent failure or inability to perform a judge's duties, or habitual intemperance, or he may be retired for disability seriously interfering with the performance of his duties that is, or is likely to become, of a permanent character. The commission may, after investigation it deems necessary, order a hearing to be held before it concerning the discipline, removal or retirement of a justice, judge or magistrate, or the commission may appoint three masters who are justices or judges of courts of record to hear and take evidence in the matter and to report their findings to the commission. After hearing or after considering the record and the findings and report of the masters, if the commission finds good cause, it shall recommend to the supreme court the discipline, removal or retirement of the justice, judge or magistrate.

The supreme court shall review the record of the proceedings on the law and facts and may permit the introduction of additional evidence, and it shall order the discipline, removal or retirement as it

finds just and proper or wholly reject the recommendation. Upon an order for his retirement, any justice, judge or magistrate participating in a statutory retirement program shall be retired with the same rights as if he had retired pursuant to the retirement program. Upon an order for removal, the justice, judge or magistrate shall thereby be removed from office, and his salary shall cease from the date of the order.

All papers filed with the commission or its masters, and proceedings before the commission or its masters, are confidential. The filing of papers and giving of testimony before the commission or its masters is privileged in any action for defamation, except that the record filed by the commission in the supreme court continues privileged but, upon its filing, loses its confidential character, and a writing which was privileged prior to its filing with the commission or its masters does not lose its privilege by the filing. The commission shall promulgate regulations establishing procedures for hearings under this section. No justice or judge who is a member of the commission or supreme court shall participate in any proceeding involving his own discipline, removal or retirement.

This section is alternative to, and cumulative with, the removal of justices, judges and magistrates by impeachment and the original superintending control of the supreme court."

Section 2

Section 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date which may be called for that purpose.

SENATE JOINT RESOLUTION 5, AS AMENDED

Approved April 11, 1997

CONSTITUTIONAL AMENDMENT 3 (SJR 12)

A JOINT RESOLUTION

PROPOSING TO AMEND THE CONSTITUTION OF NEW MEXICO TO PROHIBIT SECOND-TERM COUNTY OFFICIALS FROM HOLDING ADDITIONAL COUNTY OFFICES.

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

Section 1

Section 1. It is proposed to amend Article 10, Section 2 of the constitution of New Mexico to read:

"A. In every county all elected officials shall serve four-year terms, subject to the provisions of Subsection B of this section.

B. In those counties that prior to 1992 have not had four-year terms for elected officials, the assessor, sheriff and probate judge shall be elected to four-year terms and the treasurer and clerk shall be elected to two-year terms in the first election following the adoption of this amendment. In subsequent elections, the treasurer and clerk shall be elected to four-year terms.

C. To provide for staggered county commission terms, in counties with three county commissioners, the terms of no more than two commissioners shall expire in the same year; and in counties with five county commissioners, the terms of no more than three commissioners shall expire in the same year.

D. All county officers, after having served two consecutive four-year terms, shall be ineligible to hold any county office for two years thereafter."

Section 2

Section 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date which may be called for that purpose.

CHAPTER 1

RELATING TO PROCUREMENT; PROVIDING FOR EQUAL TREATMENT OF NEW MEXICO BUSINESSES WITH NEW YORK BUSINESSES IN PROCUREMENT MATTERS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Section 1

Section 1. EQUAL PROCUREMENT ACCESS FOR NEW YORK BUSINESSES.--

A. Certain recent amendments to the New York state procurement statutes have the effect of prohibiting New Mexico businesses from selling goods or providing services to New York state and local governments and quasi- governmental entities. This act eliminates all differential treatment of any kind between New York state business enterprises and New Mexico businesses in New Mexico procurement and thereby negates the application to New Mexico businesses of the New York amendments and protects the access of New Mexico businesses to the New York market.

B. New York state business enterprises shall be treated as New Mexico resident businesses or resident manufactures for all procurement purposes.

Section 2

Section 2. 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 New Mexico resident business or a New York state business enterprise;

(2) "New Mexico 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;

(3) "New York state business enterprise" means a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale or lease or other form of exchange, goods or commodities that are substantially manufactured, produced or assembled in New York state, or services, other than construction services, that are substantially performed within New York state. For purposes of construction services, a New York state business enterprise means a

business enterprise, including a sole proprietorship, partnership or corporation, that has its principal place of business in New York state;

(4) "resident manufacturer" means a person who offers materials grown, produced, processed or manufactured wholly in the state; provided, however, that a New York state business enterprise shall be deemed to be a resident manufacturer solely for the purpose of evaluating the New York state business enterprise's bid against the bid of a resident manufacturer that is now a New York state business enterprise;

(5) "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

(6) "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 non resident 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 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.

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 3

Section 3. Section 13-4-2 NMSA 1978 (being Laws 1984, Chapter 66, Section 2, as amended) is amended to read:

"13-4-2. RESIDENT CONTRACTOR DEFINED--APPLICATION OF PREFERENCE.--

A. "Resident contractor" means a New Mexico resident contractor or a New York state business enterprise.

B. "New Mexico resident contractor" means any person, firm, corporation or other legal entity if, at the time the contract is advertised for bids and at the time bids are opened, it has all required licenses and meets the following requirements:

(1) if the bidder is a corporation, it shall be incorporated in New Mexico and maintain its principal office and place of business in New Mexico, and a majority of its outstanding shares shall be beneficially owned by one or more individual citizens who are domiciled in the state;

(2) if the bidder is a partnership, general or limited, or other legal entity, it shall maintain its principal office and place of business in New Mexico, and the partners or associates owning a majority beneficial interest shall be domiciled in the state. If one or more partners or associates are corporations, a ma jority of the outstanding shares of each corporation shall be beneficially owned by individual citizens who are domiciled in the state. If the entity is a trust, a majority of the beneficial interest of the trust shall be owned by individual citizens who are domiciled in the state;

(3) if the bidder is an individual, he shall maintain his principal office and place of business in New Mexico and the individual shall be a citizen of and domiciled in the state; or

(4) if a bidder who is a telecommunications company as defined by Subsection M of Section 63-9A-3 NMSA 1978 or an affiliate of a telecommunications company has paid unemployment compensation to the employment security division of the labor department at the applicable experience rate for that employer pursuant to the Unemployment Compensation Law on no fewer than ten employees who have performed services subject to contributions for the two-year period prior to issuance of notice to bid, the bidder will be considered to have fulfilled the requirements of Paragraph (1), (2) or (3) of this subsection. A successor to a previously qualified New Mexico contractor or resident contractor, where the creation of the bidder resulted from a court order, is entitled to credit for qualifying contributions paid by the previously qualified New Mexico contractor or resident contractor.

C. "New York state business enterprise" means a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale or lease or other form of exchange, goods or commodities that are substantially manufactured, produced or assembled in New York state, or services, other than construction services, that are substantially performed within New York state. For purposes of construction services, a New York state business enterprise means a business enterprise, including a sole proprietorship, partnership or corporation, that has its principal place of business in New York state.

D. For purposes of this section:

(1) "affiliate" means an entity that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with a telecommunications company through ownership of voting securities representing a majority of the total voting power of that entity; and

(2) "beneficially owned" or "beneficial interest" means exercising actual management and control of all operations, including but not limited to financial decisions, financial liability, labor relations, supervision of field operations, purchases of goods, supplies and services, marketing and sales.

E. When bids are received only from nonresident contractors and resident contractors and the lowest responsible bid is from a nonresident contractor, the contract shall be awarded to the resident contractor whose bid is nearest to the bid price of the otherwise low nonresident contractor if the bid price of the resident contractor is made lower than the bid price of the nonresident contractor when multiplied by a factor of .95.

F. No contractor shall be treated as a resident contractor in the awarding of public works contracts by a state agency or a local public body unless the contractor has qualified with the state purchasing agent as a resident contractor pursuant to this section by making application to the state purchasing agent and receiving from him a certification number. The procedure for application and certification is as follows:

(1) the state purchasing agent shall prepare an application form for certification as a resident contractor, requiring such information and proof as he deems necessary to qualify the applicant under the terms of this section;

(2) the contractor seeking to qualify as a resident contractor shall complete the application form and submit it to the state purchasing agent prior to the submission of a bid on which the contractor desires to be given a preference;

(3) the state purchasing agent shall examine the application and if necessary may seek additional information or proof so as to be assured that the prospective contractor is indeed entitled to certification as a resident contractor. If the application is in proper form, the state purchasing agent shall issue the con tractor a distinctive certification number which is valid until revoked and which, when used on bids and other purchasing documents for state agencies or local public bodies, entitles the contractor to treatment as a resident contractor under Subsection E of this section; and

(4) the certification number issued pursuant to Paragraph (3) of this subsection shall be revoked by the state purchasing agent upon making a determination that the contractor no longer meets the requirements of a resident contractor as defined in this section."

Section 4

Section 4. Section 13-4-5 NMSA 1978 (being Laws 1933, Chapter 19, Section 1, as amended) is amended to read:

"13-4-5. USE OF NEW MEXICO MATERIALS.--

A. In all public works within New Mexico, whether constructed or maintained by the state or by a department, a board, a commission of the state or by any political subdivision thereof, or in any construction or maintenance to which the state or any political subdivision thereof has granted aid, preference shall be given to materials produced, grown, processed or manufactured in New Mexico by citizens or residents of New Mexico or provided or offered by a New York state business enterprise, and such materials shall be used where they are deemed satisfactory for the intended use. In any case where, in the judgment of the different officers, boards, commissions or other authority in this state now or hereafter vested with the power of contracting for material used in the construction or maintenance of public works referred to in this section, it appears that an attempt is being made by producers, growers, processors or manufacturers in the state to form a trust or combination of any kind for the purpose of fixing or regulating the price of materials to be used in any public works to the detriment of or loss to the state, then the provisions of this section shall not apply.

B. As used in this section, "New York state business enterprise" means a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale or lease or other form of exchange, goods or commodities that are substantially manufactured, produced or assembled in New York state, or services, other than construction services, that are substantially performed within New York state. For purposes of construction services, a New York state business enterprise means a business enterprise, including a sole proprietorship, partnership or corporation, that has its principal place of business in New York state."

Section 5

Section 5. 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.

Section 6

Section 6. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 10, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED JANUARY 24, 1997

CHAPTER 2

RELATING TO PROCUREMENT; PROVIDING FOR EQUAL TREATMENT OF NEW MEXICO BUSINESSES WITH NEW YORK BUSINESSES IN PROCUREMENT

MATTERS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Section 1

Section 1. EQUAL PROCUREMENT ACCESS FOR NEW YORK BUSINESSES.--

A. Certain recent amendments to the New York state procurement statutes have the effect of prohibiting New Mexico businesses from selling goods or providing services to New York state and local governments and quasi- governmental entities. This act eliminates all differential treatment of any kind between New York state business enterprises and New Mexico businesses in New Mexico procurement and thereby negates the application to New Mexico businesses of the New York amendments and protects the access of New Mexico businesses to the New York market.

B. New York state business enterprises shall be treated as New Mexico resident businesses or resident manufactures for all procurement purposes.

Section 2

Section 2. 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 New Mexico resident business or a New York state business enterprise;

(2) "New Mexico 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;

(3) "New York state business enterprise" means a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale or lease or other form of exchange, goods or commodities that are substantially manufactured, produced or assembled in New York state, or services, other than construction services, that are substantially performed within New York state. For purposes of construction services, a New York state business enterprise means a business enterprise, including a sole proprietorship, partnership or corporation, that has its principal place of business in New York state;

(4) "resident manufacturer" means a person who offers materials grown, produced, processed or manufactured wholly in the state; provided, however, that a New York state business enterprise shall be deemed to be a resident manufacturer solely for the purpose of evaluating the New York state business enterprise's bid against the bid of a resident manufacturer that is now a New York state business enterprise;

(5) "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

(6) "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 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.

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 3

Section 3. Section 13-4-2 NMSA 1978 (being Laws 1984, Chapter 66, Section 2, as amended) is amended to read:

"13-4-2. RESIDENT CONTRACTOR DEFINED--APPLICATION OF PREFERENCE.--

A. "Resident contractor" means a New Mexico resident contractor or a New York state business enterprise.

B. "New Mexico resident contractor" means any person, firm, corporation or other legal entity if, at the time the contract is advertised for bids and at the time bids are opened, it has all required licenses and meets the following requirements:

(1) if the bidder is a corporation, it shall be incorporated in New Mexico and maintain its principal office and place of business in New Mexico, and a majority of its outstanding shares shall be beneficially owned by one or more individual citizens who are domiciled in the state;

(2) if the bidder is a partnership, general or limited, or other legal entity, it shall maintain its principal office and place of business in New Mexico, and the partners or associates owning a majority beneficial interest shall be domiciled in the state. If one or more partners or associates are corporations, a majority of the outstanding shares of each corporation shall be beneficially owned by individual citizens who are domiciled in the state. If the entity is a trust, a majority of the beneficial interest of the trust shall be owned by individual citizens who are domiciled in the state;

(3) if the bidder is an individual, he shall maintain his principal office and place of business in New Mexico, and the individual shall be a citizen of and domiciled in the state; or

(4) if a bidder who is a telecommunications company as defined by Subsection M of Section 63-9A-3 NMSA 1978 or an affiliate of a telecommunications company has paid unemployment compensation to the employment security division of the labor department at the applicable experience rate for that employer pursuant to the Unemployment Compensation Law on no fewer than ten employees who have performed services subject to contributions for the two-year period prior to issuance of notice to bid, the bidder will be considered to have fulfilled the requirements of Paragraph (1), (2) or (3) of this subsection. A successor to a previously qualified New Mexico contractor or resident contractor, where the creation of the bidder resulted from a court order, is entitled to credit for qualifying contributions paid by the previously qualified New Mexico contractor or resident contractor.

C. "New York state business enterprise" means a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale or lease or other form of exchange, goods or commodities that are substantially manufactured, produced or assembled in New York state, or services, other than construction services, that are substantially performed within New York state. For purposes of construction services, a New York state business enterprise means a business enterprise, including a sole proprietorship, partnership or corporation, that has its principal place of business in New York state;

D. For purposes of this section:

(1) "affiliate" means an entity that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with a telecommunications company through ownership of voting securities representing a majority of the total voting power of that entity; and

(2) "beneficially owned" or "beneficial interest" means exercising actual management and control of all operations, including but not limited to financial decisions, financial liability, labor relations, supervision of field operations, purchases of goods, supplies and services, marketing and sales.

E. When bids are received only from nonresident contractors and resident contractors and the lowest responsible bid is from a nonresident contractor, the contract shall be awarded to the resident contractor whose bid is nearest to the bid price of the otherwise low nonresident contractor if the bid price of the resident contractor is made lower than the bid price of the nonresident contractor when multiplied by a factor of .95.

F. No contractor shall be treated as a resident contractor in the awarding of public works contracts by a state agency or a local public body unless the contractor has qualified with the state purchasing agent as a resident contractor pursuant to this section by making application to the state purchasing agent and receiving from him a certification number. The procedure for application and certification is as follows:

(1) the state purchasing agent shall prepare an application form for certification as a resident contractor, requiring such information and proof as he deems necessary to qualify the applicant under the terms of this section;

(2) the contractor seeking to qualify as a resident contractor shall complete the application form and submit it to the state purchasing agent prior to the submission of a bid on which the contractor desires to be given a preference;

(3) the state purchasing agent shall examine the application and if necessary may seek additional information or proof so as to be assured that the prospective contractor is indeed entitled to certification as a resident contractor. If the application is in proper form, the state purchasing agent shall issue the contractor a distinctive certification number which is valid until revoked and which, when used on bids and other purchasing documents for state agencies or local public bodies, entitles the contractor to treatment as a resident contractor under Subsection E of this section; and

(4) the certification number issued pursuant to Paragraph (3) of this subsection shall be revoked by the state purchasing agent upon making a determination that the contractor no longer meets the requirements of a resident contractor as defined in this section."

Section 4

Section 4. Section 13-4-5 NMSA 1978 (being Laws 1933, Chapter 19, Section 1, as amended) is amended to read:

"13-4-5. USE OF NEW MEXICO MATERIALS.--

A. In all public works within New Mexico, whether constructed or maintained by the state or by a department, a board, a commission of the state or by any political subdivision thereof, or in any construction or maintenance to which the state or any political subdivision thereof has granted aid, preference shall be given to materials produced, grown, processed or manufactured in New Mexico by citizens or residents of New Mexico or provided or offered by a New York state business enterprise, and such materials shall be used where they are deemed satisfactory for the intended use. In any case where, in the judgment of the different officers, boards, commissions or other authority in this state now or hereafter vested with the power of contracting for material used in the construction or maintenance of public works referred to in this section, it appears that an attempt is being made by producers, growers, processors or manufacturers in the state to form a trust or combination of any kind for the purpose of fixing or regulating the price of materials to be used in any public works to the detriment of or loss to the state, then the provisions of this section shall not apply.

B. As used in this section, "New York state business enterprise" means a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale or lease or other form of exchange, goods or commodities that are substantially manufactured, produced or assembled in New York state, or services, other than construction services, that are substantially performed within New York state. For purposes of construction services, a New York state business enterprise means a business enterprise, including a sole proprietorship, partnership or corporation, that has its principal place of business in New York state."

Section 5

Section 5. 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.

Section 6

Section 6. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE BILL 1, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED JANUARY 24, 1997

CHAPTER 3

AMENDING SECTION 13-1-21 NMSA 1978 (BEING LAWS 1979, CHAPTER 72, SECTION 1, AS AMENDED BY LAWS 1997, CHAPTER 1, SECTION 2 AND ALSO BY LAWS 1997, CHAPTER 2, SECTION 2) TO CORRECT AN ERROR; DECLARING AN EMERGENCY.

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 by Laws 1997, Chapter 1, Section 2 and also by Laws 1997, Chapter 2, Section 2) is amended to read:

"13-1-21. APPLICATION OF PREFERENCES.--

A. For the purposes of this section:

(1) "resident business" means a New Mexico resident business or a New York state business enterprise;

(2) "New Mexico 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;

(3) "New York state business enterprise" means a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale or lease or other form of exchange, goods or commodities that are substantially manufactured, produced or assembled in New York state, or services, other than construction services, that are substantially performed within New York state. For purposes of construction services, a New York state business enterprise means a business enterprise, including a sole proprietorship, partnership or corporation, that has its principal place of business in New York state;

(4) "resident manufacturer" means a person who offers materials grown, produced, processed or manufactured wholly in the state; provided, however, that a New York state business enterprise shall be deemed to be a resident manufacturer solely for the purpose of evaluating the New York state business enterprise's bid against the bid of a resident manufacturer that is not a New York state business enterprise;

(5) "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

(6) "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 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.

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. 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.

Section 3

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

SENATE BILL 122,

WITH EMERGENCY CLAUSE

SIGNED JANUARY 29, 1997

CHAPTER 4

RELATING TO THE LEGISLATIVE BRANCH OF GOVERNMENT; APPROPRIATING FUNDS FOR THE EXPENSE OF THE FORTY-THIRD LEGISLATURE, FIRST SESSION, 1997 AND FOR OTHER LEGISLATIVE EXPENSES INCLUDING 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-third 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 eight hundred eighty-nine thousand two hundred fifty-seven dollars ($5,889,257) 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 ----------$ 312,480;

B. per diem for members of the house of representatives ----------$ 520,800;

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 ---------- $ 3,990;

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 ----------$ 6,056;

E. salaries and employee benefits of senate employees ----------$1,530,251;

F. salaries and employee benefits of house of representatives employees ---------- $1,660,380;

G. for expense of the senate not itemized above, four hundred thirty-four thousand dollars ($434,000). No part of this item may be transferred to salaries or employee benefits;

H. for expense of the house of representatives not itemized above, four hundred twenty- four thousand dollars ($424,000). 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 ninety-seven thousand three hundred dollars ($997,300) 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. 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. 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 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-third 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-third 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. one copy 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 six hundred dollars ($600), 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 one dollar ($1.00) unless the director of the legislative council service shall, because of its length, assign a higher price not to exceed ten cents ($.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 fifty dollars ($150) for the entire session.

Section 7

Section 7. There is appropriated from the general fund to the legislative council service for fiscal year 1998 unless otherwise indicated, to be disbursed on vouchers signed by the director of the legislative council service, the following:

A. Personal Services $ 1,928,400

Employee Benefits 618,300

Travel 84,800

Maintenance & Repairs 48,500

Supplies & Materials 41,200

Contractual Services 202,900

OperatingCosts 268,600

Other Operating Costs 189,000

Capital Outlay 77,500

Out-of-State Travel 70,500

Total $ 3,529,700;

~~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 1998, the sum of nine hundred twenty-five thousand two hundred dollars ($925,200); 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 a statewide legislative intern program, the sum of twenty-five thousand dollars ($25,000).

Section 8

Section 8. The legislative council shall conduct a study on the feasibility of providing permanent staff support for the legislative leaders of the house and senate.

Section 9

Section 9. There is appropriated from the cash balances of the legislative council service from Subsection J of Section 2 of Chapter 1 of Laws 1995 to the legislative council service one hundred twenty-five thousand dollars ($125,000) for expenditure in fiscal years 1997 and 1998 for the legislative match for legislative retirement required pursuant to State of New Mexico, ex rel., Attorney General Tom Udall v. Public Employees Retirement Board, et al.

Section 10

Section 10. There is appropriated from the general fund to the legislative finance committee for fiscal year 1998, to be disbursed on vouchers signed by the chairman of the committee or his designated representative, the following:

Personal Services	$ 1,584,900
Employee Benefits	466,000
Travel	108,500
Maintenance & Repairs	11,000
Supplies & Materials	26,700
Contractual Services	156,400
Operating Costs	109,100
Capital Outlay	12,200
Out-of-State Travel	34,500
Total	$ 2,509,300.

Section 11

Section 11. There is appropriated from the general fund to the legislative education study committee for fiscal year 1998, to be disbursed on vouchers signed by the chairman of the committee or his designated representative, the following:

A. Personal Services	$ 444,717
Employee Benefits	123,400
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 $ 687,817;	

and

~~B. for necessary personnel, contracts, supplies and travel expenses for strategic planning for public education, the sum of eighty-two thousand dollars ($82,000) for fiscal years 1997 and 1998.~~

Section 12

Section 12. There is appropriated from the general fund to the legislative council service for the interim duties of the senate rules committee the sum of twenty- one thousand six hundred dollars ($21,600) for fiscal year 1998.

Section 13

Section 13. There is appropriated from the general fund to the legislative council service for expenditure in fiscal year 1998 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 $ 190,400

Employee Benefits 60,900

Travel 1,900

Maintenance&Repairs 45

Supplies 1,000

Contractual Services 2,100

OperatingCosts 3,775

Out-of-StateTravel 16,500

Total $ 276,769

Section 14

Section 14. There is appropriated from the general fund to the legislative council service for expenditure in fiscal year 1998 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 $ 192,481

Employee Benefits 59,302

Travel 2,100

Maintenance & Repairs 225

Supplies 1,000

Contractual Services 2,100

Operating Costs 3,775

Out-of-State Travel 11,472

Total $ 272,455.

Section 15

Section 15. CATEGORY TRANSFER.--Amounts set out in Sections ~~7, 9,~~ 10, 11, 13 and 14 of this act are provided for informational purposes only and may be freely transferred among categories.

Section 16

Section 16. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 1, AS AMENDED

WITH EMERGENCY CLAUSE AND

CERTIFICATE OF CORRECTIONS

SIGNED JANUARY 30, 1997

CHAPTER 5

RELATING TO PUBLIC MONEY; DEFINING EMERGENCY FOR THE PURPOSE OF EMERGENCY LOANS AND GRANTS MADE BY THE STATE BOARD OF FINANCE.

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

Section 1

Section 1. Section 6-1-2 NMSA 1978 (being Laws 1959, Chapter 139, Section 1, as amended) is amended to read:

"6-1-2. STATE BOARD OF FINANCE--LOANS AND GRANTS OF EMERGENCY FUNDS.--If the state board of finance determines that an emergency exists that warrants such action, it may lend or grant to any state agency, board, commission, municipal corporation or other political subdivision organized under the laws of the state that sum of money the board determines reasonable and appropriate from any funds appropriated to the board for use in meeting emergencies. As used in this section, "emergency" means an unforeseen occurrence or circumstance severely affecting the quality of government services and requiring the immediate expenditure of money that:

A. is not within the available resources of the state agency, board, commission, municipal corporation or other political subdivision as determined by the state board of finance; and

B. if subject to appropriation, cannot reasonably await appropriation by the next regular session of the legislature."

HOUSE BILL 74, AS AMENDED

CHAPTER 6

RELATING TO CAPITAL EXPENDITURES; CHANGING THE PURPOSE OF A GENERAL FUND APPROPRIATION; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1

Section 1. GENERAL FUND--CHANGE OF PURPOSE-- APPROPRIATION.--The balance of the proceeds from the general fund appropriation to the local government division of the department of finance and administration for the acquisition of land to be used as the site of a community fire station at Chamisal in Taos county pursuant to Paragraph (30) of Subsection B of Section 49 of Chapter 148 of Laws 1994 and as extended pursuant to Laws 1995, Chapter 218, Section 26 shall not be expended for that purpose but is reauthorized and appropriated to the local government division of the department of finance and administration to plan or construct a fire substation in Chamisal in Taos county. Any unexpended or unencumbered balance remaining at the end of fiscal year 1999 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 155

WITH EMERGENCY CLAUSE

SIGNED MARCH 10, 1997

CHAPTER 7

RELATING TO HEALTH INSURANCE; REQUIRING COVERAGE FOR INDIVIDUALS WITH DIABETES; 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 New Mexico Insurance Code, Section 59A-22-41 NMSA 1978, is enacted to read:

"59A-22-41. COVERAGE FOR INDIVIDUALS WITH DIABETES.--

A. Each individual and group health insurance policy, health care plan, certificate of health insurance and managed health care plan delivered or issued for delivery in this state shall provide coverage for individuals with insulin-using diabetes, with non- insulin-using diabetes and with elevated blood glucose levels induced by pregnancy. This coverage shall be a basic health care benefit and shall entitle each individual to the medically accepted standard of medical care for diabetes and benefits for diabetes treatment as well as diabetes supplies, and this coverage shall not be reduced or eliminated.

B. Coverage for individuals with diabetes may be subject to deductibles and coinsurance consistent with those imposed on other benefits under the same policy, plan or certificate, as long as the annual deductibles or coinsurance for benefits are no greater than the annual deductibles or coinsurance established for similar benefits within a given policy.

C. When prescribed or diagnosed by a health care practitioner with prescribing authority, all individuals with diabetes as described in Subsection A of this section enrolled in health policies described in that subsection shall be entitled to the following equipment, supplies and appliances to treat diabetes:

(1) blood glucose monitors, including those for the legally blind;

(2) test strips for blood glucose monitors;

(3) visual reading urine and ketone strips;

(4) lancets and lancet devices;

(5) insulin;

(6) injection aids, including those adaptable to meet the needs of the legally blind;

(7) syringes;

(8) prescriptive oral agents for controlling blood sugar levels;

(9) medically necessary podiatric appliances for prevention of feet complications associated with diabetes, including therapeutic molded or depth-inlay shoes, functional orthotics, custom molded inserts, replacement inserts, preventive devices and shoe modifications for prevention and treatment; and

(10) glucagon emergency kits.

D. When prescribed or diagnosed by a health care practitioner with prescribing authority, all individuals with diabetes as described in Subsection A of this section enrolled in health policies described in that subsection shall be entitled to the following basic health care benefits:

(1) diabetes self-management training that shall be provided by a certified, registered or licensed health care professional with recent education in diabetes management, which shall be limited to:

(a) medically necessary visits upon the diagnosis of diabetes;

(b) visits following a physician diagnosis that represents a significant change in the patient's symptoms or condition that warrants changes in the patient's self-management; and

(c) visits when re-education or refresher training is prescribed by a health care practitioner with prescribing authority; and

(2) medical nutrition therapy related to diabetes management.

E. When new or improved equipment, appliances, prescription drugs for the treatment of diabetes, insulin or supplies for the treatment of diabetes are approved by the food and drug administration, all individual or group health insurance policies as described in Subsection A of this section shall:

(1) maintain an adequate formulary to provide these resources to individuals with diabetes; and

(2) guarantee reimbursement or coverage for the equipment, appliances, prescription drug, insulin or supplies described in this subsection within the limits of the health care plan, policy or certificate.

F. The provisions of Subsections A through E of this section shall be enforced by the superintendent.

G. The provisions of this section shall not apply to short-term travel, accident-only or limited or specified disease policies.

H. For purposes of this section:

(1) "basic health care benefits":

(a) means benefits for medically necessary services consisting of preventive care, emergency care, inpatient and outpatient hospital and physician care, diagnostic laboratory and diagnostic and therapeutic radiological services; and

(b) does not include mental health services or services for alcohol or drug abuse, dental or vision services or long-term rehabilitation treatment; and

(2) "managed health care plan" means a health benefit plan offered by a health care insurer that provides for the delivery of comprehensive basic health care services and medically necessary services to individuals enrolled in the plan through its own employed health care providers or by contracting with selected or participating health care providers. A managed health care plan includes only those plans that provide comprehensive basic health care services to enrollees on a prepaid, capitated basis, including the following:

(a) health maintenance organizations;

(b) preferred provider organizations;

(c) individual practice associations;

(d) competitive medical plans;

(e) exclusive provider organizations;

(f) integrated delivery systems;

(g) independent physician-provider organizations;

(h) physician hospital-provider organizations; and

(i) managed care services organizations."

Section 2

Section 2. Section 59A-23-4 NMSA 1978 (being Laws 1984, Chapter 127, Section 463, as amended) is amended to read:

"59A-23-4. OTHER PROVISIONS APPLICABLE.--

A. No blanket or group health insurance policy or contract shall contain any provision relative to notice or proof of loss or the time for paying benefits or the time within which suit may be brought upon the policy that in the superintendent's opinion is less favorable to the insured than would be permitted in the required or optional provisions for individual health insurance policies as set forth in Chapter 59A, Article 22 NMSA 1978.

B. The following provisions of Chapter 59A, Article 22 NMSA 1978 shall also apply as to Chapter 59A, Article 23 NMSA 1978 and blanket and group health insurance contracts:

(1) Section 59A-22-1 NMSA 1978, except Subsection C of that section; and

(2) Section 59A-22-32 NMSA 1978.

C. The following provisions of Chapter 59A, Article 22 NMSA 1978 shall also apply as to group health insurance contracts:

(1) Section 59A-22-33 NMSA 1978;

(2) Section 59A-22-34 NMSA 1978;

(3) Section 59A-22-34.1 NMSA 1978;

(4) Section 59A-22-35 NMSA 1978;

(5) Section 59A-22-36 NMSA 1978;

(6) Section 59A-22-39 NMSA 1978;

(7) Section 59A-22-40 NMSA 1978; and

(8) Section 59A-22-41 NMSA 1978."

Section 3

Section 3. A new section of the Health Maintenance Organization Law, Section 59A-46-43 NMSA 1978, is enacted to read:

"59A-46-43. COVERAGE FOR INDIVIDUALS WITH DIABETES.--

A. Each individual and group health maintenance organization contract delivered or issued for delivery in this state shall provide coverage for individuals with insulin-using diabetes, with non- insulin-using diabetes and with elevated blood glucose levels induced by pregnancy. This coverage shall be a basic health care service and

shall entitle each individual to the medically accepted standard of medical care for diabetes and benefits for diabetes treatment as well as diabetes supplies, and this coverage shall not be reduced or eliminated.

B. Coverage for individuals with diabetes may be subject to deductibles and coinsurance consistent with those imposed on other benefits under the same contract, as long as the annual deductibles or coinsurance for benefits are no greater than the annual deductibles or coinsurance established for similar benefits within a given contract.

C. When prescribed or diagnosed by a health care practitioner with prescribing authority, all individuals with diabetes as described in Subsection A of this section enrolled under an individual or group health maintenance organization contract shall be entitled to the following equipment, supplies and appliances to treat diabetes:

(1) blood glucose monitors, including those for the legally blind;

(2) test strips for blood glucose monitors;

(3) visual reading urine and ketone strips;

(4) lancets and lancet devices;

(5) insulin;

(6) injection aids, including those adaptable to meet the needs of the legally blind;

(7) syringes;

(8) prescriptive oral agents for controlling blood sugar levels;

(9) medically necessary podiatric appliances for prevention of feet complications associated with diabetes, including therapeutic molded or depth-inlay shoes, functional orthotics, custom molded inserts, replacement inserts, preventive devices and shoe modifications for prevention and treatment; and

(10) glucagon emergency kits.

D. When prescribed or diagnosed by a health care practitioner with prescribing authority, all individuals with diabetes as described in Subsection A of this section enrolled under an individual or group health maintenance contract shall be entitled to the following basic health care services:

(1) diabetes self-management training that shall be provided by a certified, registered or licensed health care professional with recent education in diabetes management, which shall be limited to:

(a) medically necessary visits upon the diagnosis of diabetes;

(b) visits following a physician diagnosis that represents a significant change in the patient's symptoms or condition that warrants changes in the patient's self-management; and

(c) visits when re-education or refresher training is prescribed by a health care practitioner with prescribing authority; and

(2) medical nutrition therapy related to diabetes management.

E. When new or improved equipment, appliances, prescription drugs for the treatment of diabetes, insulin or supplies for the treatment of diabetes are approved by the food and drug administration, each individual or group health maintenance organization contract shall:

(1) maintain an adequate formulary to provide these resources to individuals with diabetes; and

(2) guarantee reimbursement or coverage for the equipment, appliances, prescription drug, insulin or supplies described in this subsection within the limits of the health care plan, policy or certificate.

F. The provisions of Subsections A through E of this section shall be enforced by the superintendent.

G. The provisions of this section shall not apply to short-term travel, accident-only or limited or specified disease policies."

Section 4

Section 4. Section 59A-47-33 NMSA 1978 (being Laws 1984, Chapter 127, Section 879.32, as amended by Laws 1994, Chapter 64, Section 10 and also by Laws 1994, Chapter 75, Section 34) is amended to read:

"59A-47-33. OTHER PROVISIONS APPLICABLE.--The provisions of the Insurance Code other than Chapter 59A, Article 47 NMSA 1978 shall not apply to health care plans except as expressly provided in the Insurance Code and that article. To the extent reasonable and not inconsistent with the provisions of that article, the following articles and provisions of the Insurance Code shall also apply to health care plans, their promoters, sponsors, directors, officers, employees, agents, solicitors and other

representatives; and, for the purposes of such applicability, a health care plan may therein be referred to as an "insurer":

A. Chapter 59A, Article 1 NMSA 1978;

B. Chapter 59A, Article 2 NMSA 1978;

C. Chapter 59A, Article 4 NMSA 1978;

D. Subsection C of Section 59A-5-22 NMSA 1978;

E. Sections 59A-6-2 through 59A-6-4 and 59A-6-6 NMSA 1978;

F. Section 59A-7-11 NMSA 1978;

G. Chapter 59A, Article 8 NMSA 1978;

H. Chapter 59A, Article 10 NMSA 1978;

I. Section 59A-12-22 NMSA 1978;

J. Chapter 59A, Article 16 NMSA 1978;

K. Chapter 59A, Article 18 NMSA 1978;

L. Chapter 59A, Article 19 NMSA 1978;

M. Subsections B through E of Section 59A-22-5 NMSA 1978;

N. Section 59A-22-34.1 NMSA 1978;

O. Section 59A-22-39 NMSA 1978;

P. Section 59A-22-40 NMSA 1978;

Q. Section 59A-22-41 NMSA 1978;

R. Sections 59A-34-9 through 59A-34-13 and 59A-34-23 NMSA 1978;

S. Chapter 59A, Article 37 NMSA 1978, except Section 59A-37-7 NMSA 1978; and

T. Section 59A-46-15 NMSA 1978."

Section 5

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 1998.

HOUSE BILL 571, AS AMENDED

CHAPTER 8

RELATING TO COURTS; ENACTING THE UNIFORM CERTIFICATION OF QUESTIONS OF LAW ACT; ESTABLISHING PROCEDURES FOR CERTIFYING QUESTIONS OF LAW; REPEALING 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.--This act may be cited as the "Uniform Certification of Questions of Law Act".

Section 2

Section 2. DEFINITIONS.--As used in the Uniform Certification of Questions of Law Act:

A. "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; and

B. "tribe" means a tribe, band or village of Native Americans that is recognized by federal law or formally acknowledged by a state.

Section 3

Section 3. POWER TO CERTIFY.--The supreme court or the court of appeals of this state, on the motion of a party to pending litigation or its own motion, may certify a question of law to the highest court of another state, a tribe, Canada, a Canadian province or territory, Mexico or a Mexican state if:

A. the pending litigation involves a question to be decided under the law of the other jurisdiction;

B. the answer to the question may be determinative of an issue in the pending litigation; and

C. the question is one for which an answer is not provided by a controlling appellate decision, constitutional provision or statute of the other jurisdiction.

Section 4

Section 4. POWER TO ANSWER.--The supreme court of this state may answer a question of law certified to it by a court of the United States or by an appellate court of another state, a tribe, Canada, a Canadian province or territory, Mexico or a Mexican state if the answer may be determinative of an issue in pending litigation in the certifying court and there is no controlling appellate decision, constitutional provision or statute of this state.

Section 5

Section 5. POWER TO REFORMULATE QUESTION.--The supreme court of this state may reformulate a question of law certified to it.

Section 6

Section 6. CERTIFICATION ORDER--RECORD.--The court certifying a question of law to the supreme court of this state shall issue a certification order and forward it to the supreme court of this state. Before responding to a certified question, the supreme court of this state may require the certifying court to deliver all or part of its record to the supreme court of this state.

Section 7

Section 7. CONTENTS OF CERTIFICATION ORDER.--

A. A certification order must contain:

(1) the question of law to be answered;

(2) the facts relevant to the question, showing fully the nature of the controversy out of which the question arose;

(3) a statement acknowledging that the supreme court of this state, acting as the receiving court, may reformulate the question; and

(4) the names and addresses of counsel of record and parties appearing without counsel.

B. If the parties cannot agree upon a statement of facts, the certifying court shall determine the relevant facts and state them as part of its certification order.

Section 8

Section 8. NOTICE--RESPONSE.--The supreme court of this state, acting as a receiving court, shall notify the certifying court of acceptance or rejection of the question and, in accordance with notions of comity and fairness, respond to an accepted certified question as soon as practicable.

Section 9

Section 9. PROCEDURES.--After the supreme court of this state has accepted a certified question, proceedings are governed by the rules and statutes governing briefs, arguments and other appellate procedures. Procedures for certification from this state to a receiving court are those provided in the rules and statutes of the receiving forum.

Section 10

Section 10. OPINION.--The supreme court of this state shall state in a written opinion the law answering the certified question and send a copy of the opinion to the certifying court, counsel of record and parties appearing without counsel.

Section 11

Section 11. COST OF CERTIFICATION.--Fees and costs are the same as in civil appeals docketed before the supreme court of this state and must be equally divided between the parties, unless otherwise ordered by the certifying court.

Section 12

Section 12. SEVERABILITY.--If any provision of the Uniform Certification of Questions of Law Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

Section 13

Section 13. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--The Uniform Certification of Questions of Law Act shall be applied and construed to effectuate its general purpose to make uniform law with respect to the subject of that act among states enacting it.

Section 14

Section 14. REPEAL.--Section 34-2-8 NMSA 1978 (being Laws 1975, Chapter 72, Section 1, as amended) is repealed.

Section 15

Section 15. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 89

CHAPTER 9

RELATING TO FAMILY LAW; PROVIDING PROCEDURES FOR RECONCILIATION OF MULTIPLE CHILD-SUPPORT ORDERS; CLARIFYING PROCEDURES FOR INCOME-WITHHOLDING ORDERS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE UNIFORM INTERSTATE FAMILY SUPPORT ACT.

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

Section 1

Section 1. Section 40-6A-101 NMSA 1978 (being Laws 1994, Chapter 107, Section 101) is amended to read:

"40-6A-101. DEFINITIONS.--As used in the Uniform Interstate Family Support Act:

(1) "child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent;

(2) "child-support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state;

(3) "duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse or former spouse, including an unsatisfied obligation to provide support;

(4) "home state" means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period;

(5) "income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state;

(6) "income-withholding order" means an order or other legal process directed to an obligor's employer or other debtor to withhold support from the income of the obligor;

(7) "initiating state" means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under the Uniform Interstate Family Support Act or a law or procedure substantially similar to that act, the Uniform Reciprocal Enforcement of Support Act or the Revised Uniform Reciprocal Enforcement of Support Act;

(8) "initiating tribunal" means the authorized tribunal in an initiating state;

(9) "issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage;

(10) "issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage;

(11) "law" includes decisional and statutory law and rules and regulations having the force of law;

(12) "obligee" means:

(i) an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

(ii) a state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or

(iii) an individual seeking a judgment determining parentage of the individual's child;

(13) "obligor" means an individual or the estate of a decedent:

(i) who owes or is alleged to owe a duty of support;

(ii) who is alleged but has not been adjudicated to be a parent of a child; or

(iii) who is liable under a support order;

(14) "register" means to record a support order or judgment determining parentage in the appropriate tribunal of this state;

(15) "registering tribunal" means a tribunal in which a support order is registered;

(16) "responding state" means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under the Uniform Interstate Family Support Act or law or procedure substantially similar to that act, the Uniform Reciprocal Enforcement of Support Act or the Revised Uniform Reciprocal Enforcement of Support Act;

(17) "responding tribunal" means the authorized tribunal in a responding state;

(18) "spousal support order" means a support order for a spouse or former spouse of the obligor;

(19) "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. "State" includes an Indian tribe and a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under the Uniform Interstate Family Support Act, the Uniform Reciprocal Enforcement of Support Act or the Revised Uniform Reciprocal Enforcement of Support Act;

(20) "support enforcement agency" means a public official or agency authorized to seek:

(i) enforcement of support orders or laws relating to the duty of support;

(ii) establishment or modification of child support;

(iii) determination of parentage; or

(iv) to locate obligors or their assets;

(21) "support order" means a judgment, decree or order, whether temporary, final or subject to modification, for the benefit of a child, a spouse or a former spouse, which provides for monetary support, health care, arrearages or reimbursement, and may include related costs and fees, interest, income withholding, attorney's fees and other relief; and

(22) "tribunal" means a court, administrative agency or quasi- judicial entity authorized to establish, enforce or modify support orders or to determine parentage."

Section 2

Section 2. Section 40-6A-102 NMSA 1978 (being Laws 1994, Chapter 107, Section 102) is amended to read:

"40-6A-102. TRIBUNAL OF STATE.--The district courts are the tribunals of this state."

Section 3

Section 3. Section 40-6A-203 NMSA 1978 (being Laws 1994, Chapter 107, Section 203) is amended to read:

"40-6A-203. INITIATING AND RESPONDING TRIBUNAL OF STATE.--Under the Uniform Interstate Family Support Act, a tribunal of this state may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state."

Section 4

Section 4. Section 40-6A-205 NMSA 1978 (being Laws 1994, Chapter 107, Section 205) is amended to read:

"40-6A-205. CONTINUING, EXCLUSIVE JURISDICTION.--

(a) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a child-support order:

(1) as long as this state remains the residence of the obligor, the individual obligee or the child for whose benefit the support order is issued; or

(2) until all of the parties who are individuals have filed written consents with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

(b) A tribunal of this state issuing a child-support order consistent with the law of this state may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to a law substantially similar to the Uniform Interstate Family Support Act.

(c) If a child-support order of this state is modified by a tribunal of another state pursuant to a law substantially similar to the Uniform Interstate Family Support Act, a tribunal of this state loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this state and may only:

(1) enforce the order that was modified as to amounts accruing before the modification;

(2) enforce nonmodifiable aspects of that order; and

(3) provide other appropriate relief for violations of that order which occurred before the effective date of the modification.

(d) A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child-support order pursuant to a law substantially similar to the Uniform Interstate Family Support Act.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

(f) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this state may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state."

Section 5

Section 5. Section 40-6A-207 NMSA 1978 (being Laws 1994, Chapter 107, Section 207) is amended to read:

"40-6A-207. RECOGNITION OF CONTROLLING CHILD-SUPPORT ORDER.--

(a) If a proceeding is brought under the Uniform Interstate Family Support Act and only one tribunal has issued a child-support order, the order of that tribunal controls and must be so recognized.

(b) If a proceeding is brought under the Uniform Interstate Family Support Act and two or more child-support orders have been issued by tribunals of this state or another state with regard to the same obligor and child, a tribunal of this state shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

(1) if only one of the tribunals would have continuing, exclusive jurisdiction under the Uniform Interstate Family Support Act, the order of that tribunal controls and shall be so recognized;

(2) if more than one of the tribunals would have continuing, exclusive jurisdiction under the Uniform Interstate Family Support Act, an order issued by a tribunal in the current home state of the child controls and must be so recognized, but if an order has not been issued in the current home state of the child, the order most recently issued controls and must be so recognized; and

(3) if none of the tribunals would have continuing, exclusive jurisdiction under the Uniform Interstate Family Support Act, the tribunal of this state having jurisdiction over the parties shall issue a child-support order, which controls and must be so recognized.

(c) If two or more child-support orders have been issued for the same obligor and child and if the obligor or the individual obligee resides in this state, a party may request a tribunal of this state to determine which order controls and must be so recognized under Subsection (b) of this section. The request must be accompanied by a certified copy of every support order in effect. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(d) The tribunal that issued the controlling order under Subsection (a), (b) or (c) of this section is the tribunal that has continuing, exclusive jurisdiction under Section 40-6A-205 NMSA 1978.

(e) A tribunal of this state that determines by order the identity of the controlling order under Paragraph (1) or (2) of Subsection (b) of this section or which issues a new controlling order under Paragraph (3) of Subsection (b) of this section shall state in that order the basis upon which the tribunal made its determination.

(f) Within thirty days after issuance of an order determining the identity of the controlling order, the party obtaining the order shall file a certified copy of it with each tribunal that issued or registered an earlier order of child support. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order."

Section 6

Section 6. Section 40-6A-303 NMSA 1978 (being Laws 1994, Chapter 107, Section 303) is amended to read:

"40-6A-303. APPLICATION OF LAW OF STATE.--Except as otherwise provided by the Uniform Interstate Family Support Act, a responding tribunal of this state:

(1) shall apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and

(2) shall determine the duty of support and the amount payable in accordance with the law and support guidelines of this state."

Section 7

Section 7. Section 40-6A-304 NMSA 1978 (being Laws 1994, Chapter 107, Section 304) is amended to read:

"40-6A-304. DUTIES OF INITIATING TRIBUNAL.--

(a) Upon the filing of a petition authorized by the Uniform Interstate Family Support Act, an initiating tribunal of this state shall forward three copies of the petition and its accompanying documents:

(1) to the responding tribunal or appropriate support enforcement agency in the responding state; or

(2) if the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(b) If a responding state has not enacted the Uniform Interstate Family Support Act or a law or procedure substantially similar to that act, a tribunal of this state may issue a certificate or other document and make findings required by the law of the responding state. If the responding state is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding state."

Section 8

Section 8. Section 40-6A-305 NMSA 1978 (being Laws 1994, Chapter 107, Section 305) is amended to read:

"40-6A-305. DUTIES AND POWERS OF RESPONDING TRIBUNAL.--

(a) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to Subsection (c) of Section 40-6A-301 NMSA 1978, it shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.

(b) A responding tribunal of this state, to the extent otherwise authorized by law, may do one or more of the following:

(1) issue or enforce a support order, modify a child-support order or render a judgment to determine parentage;

(2) order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(3) order income withholding;

(4) determine the amount of any arrearage and specify a method of payment;

(5) enforce orders by civil or criminal contempt, or both;

(6) set aside property for satisfaction of the support order;

(7) place liens and order execution on the obligor's property;

(8) order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment and telephone number at the place of employment;

(9) issue a bench warrant for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;

(10) order the obligor to seek appropriate employment by specified methods;

(11) award reasonable attorney's fees and other fees and costs; and

(12) grant any other available remedy.

(c) A responding tribunal of this state shall include in a support order issued under the Uniform Interstate Family Support Act, or in the documents accompanying the order, the calculations on which the support order is based.

(d) A responding tribunal of this state may not condition the payment of a support order issued under the Uniform Interstate Family Support Act upon compliance by a party with provisions for visitation.

(e) If a responding tribunal of this state issues an order under the Uniform Interstate Family Support Act, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any."

Section 9

Section 9. Section 40-6A-306 NMSA 1978 (being Laws 1994, Chapter 107, Section 306) is amended to read:

"40-6A-306. INAPPROPRIATE TRIBUNAL.--If a petition or comparable pleading is received by an inappropriate tribunal of this state, it shall forward the pleading and accompanying documents to an appropriate tribunal in this state or another state and notify the petitioner where and when the pleading was sent."

Section 10

Section 10. Section 40-6A-307 NMSA 1978 (being Laws 1994, Chapter 107, Section 307) is amended to read:

"40-6A-307. DUTIES OF SUPPORT ENFORCEMENT AGENCY.--

(a) A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding under the Uniform Interstate Family Support Act.

(b) A support enforcement agency that is providing services to the petitioner as appropriate shall:

(1) take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent;

(2) request an appropriate tribunal to set a date, time and place for a hearing;

(3) make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(4) within two days, exclusive of Saturdays, Sundays and legal holidays, after receipt of a written notice from an initiating, responding or registering tribunal, send a copy of the notice to the petitioner;

(5) within two days, exclusive of Saturdays, Sundays and legal holidays, after receipt of a written communication from the respondent or the respondent's attorney, send a copy of the communication to the petitioner; and

(6) notify the petitioner if jurisdiction over the respondent cannot be obtained.

(c) The Uniform Interstate Family Support Act does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency."

Section 11

Section 11. Section 40-6A-501 NMSA 1978 (being Laws 1994, Chapter 107, Section 501) is amended to read:

"40-6A-501. EMPLOYER'S RECEIPT OF INCOME-WITHHOLDING ORDER OF ANOTHER STATE.--An income-withholding order issued in another state may be sent

to the obligor's employer without first filing a petition or comparable pleading or registering the order with a tribunal of this state."

Section 12

Section 12. Section 40-6A-502 NMSA 1978 (being Laws 1994, Chapter 107, Section 502) is repealed and a new Section 40-6A-502 NMSA 1978 is enacted to read:

"40-6A-502. EMPLOYER'S COMPLIANCE WITH INCOME- WITHOLDING ORDER OF ANOTHER STATE.--

(a) Upon receipt of an income-witholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

(b) The employer shall treat an income-witholding order issued in another state that appears regular on its face as if it had been issued by a tribunal of this state.

(c) Except as otherwise provided in Subsection (d) of this section and Section 40-6A-503 NMSA 1978 the employer shall withhold and distribute the funds as directed in the withholding order by complying with terms of the order that specify:

(1) the duration and amount of periodic payments of current child support, stated as a sum certain;

(2) the person or agency designated to receive payments and the address to which the payments are to be forwarded;

(3) medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;

(4) the amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal and the obligee's attorney, stated as sums certain; and

(5) the amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

(d) An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

(1) the employer's fee for processing an income- withholding order;

(2) the maximum amount permitted to be withheld from the obligor's income; and

(3) the times within which the employer must implement the withholding order and forward the child-support payment."

Section 13

Section 13. A new section of the Uniform Interstate Family Support Act, Section 40-6A-503 NMSA 1978, is enacted to read:

"40-6A-503. COMPLIANCE WITH MULTIPLE INCOME- WITHHOLDING ORDERS.--If an obligor's employer receives multiple income- withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the multiple orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for multiple child-support obligees."

Section 14

Section 14. A new section of the Uniform Interstate Family Support Act, Section 40-6A-504 NMSA 1978, is enacted to read:

"40-6A-504. IMMUNITY FROM CIVIL LIABILITY.--An employer who complies with an income-withholding order issued in another state in accordance with this article is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income."

Section 15

Section 15. A new section of the Uniform Interstate Family Support Act, Section 40-6A-505 NMSA 1978, is enacted to read:

"40-6A-505. PENALTIES FOR NONCOMPLIANCE.--An employer who willfully fails to comply with an income-withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state."

Section 16

Section 16. A new section of the Uniform Interstate Family Support Act, Section 40-6A-506 NMSA 1978, is enacted to read:

"40-6A-506. CONTEST BY OBLIGOR.--

(a) An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this

state in the same manner as if the order had been issued by a tribunal of this state. Section 40-6A-604 NMSA 1978 applies to the contest.

(b) The obligor shall give notice of the contest to:

(1) a support enforcement agency providing services to the obligee;

(2) each employer that has directly received an income- withholding order; and

(3) the person or agency designated to receive payments in the income-withholding order or, if no person or agency is designated, to the obligee."

Section 17

Section 17. A new section of the Uniform Interstate Family Support Act, Section 40-6A-507 NMSA 1978, is enacted to read:

"40-6A-507. ADMINISTRATIVE ENFORCEMENT OF ORDERS.--

(a) A party seeking to enforce a support order or an income- withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this state.

(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to the Uniform Interstate Family Support Act."

Section 18

Section 18. Section 40-6A-605 NMSA 1978 (being Laws 1994, Chapter 107, Section 605) is amended to read:

"40-6A-605. NOTICE OF REGISTRATION OF ORDER.--

(a) When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. The notice shall be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) The notice shall inform the nonregistering party:

(1) that a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(2) that a hearing to contest the validity or enforcement of the registered order must be requested within twenty days after notice;

(3) that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearage and precludes further contest of that order with respect to any matter that could have been asserted; and

(4) of the amount of any alleged arrearage.

(c) Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer."

Section 19

Section 19. Section 40-6A-606 NMSA 1978 (being Laws 1994, Chapter 107, Section 606) is amended to read:

"40-6A-606. PROCEDURE TO CONTEST VALIDITY OR ENFORCEMENT OF REGISTERED ORDER.--

(a) A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within twenty days after notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order or to contest the remedies being sought or the amount of any alleged arrearage pursuant to Section 40-6A-607 NMSA 1978.

(b) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time and place of the hearing."

Section 20

Section 20. Section 40-6A-611 NMSA 1978 (being Laws 1994, Chapter 107, Section 611) is amended to read:

"40-6A-611. MODIFICATION OF CHILD-SUPPORT ORDER OF ANOTHER STATE.--

(a) After a child-support order issued in another state has been registered in this state, the responding tribunal of this state may modify that order only if Section 40-6A-613 NMSA 1978 does not apply and after notice and hearing it finds that:

(1) the following requirements are met:

(i) the child, the individual obligee and the obligor do not reside in the issuing state;

(ii) a petitioner who is a nonresident of this state seeks modification; and

(iii) the respondent is subject to the personal jurisdiction of the tribunal of this state; or

(2) the child or a party who is an individual is subject to the personal jurisdiction of the tribunal of this state and all of the parties who are individuals have filed written consents in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under the Uniform Interstate Family Support Act, the consent otherwise required of an individual residing in this state is not required for the tribunal to assume jurisdiction to modify the child-support order.

(b) Modification of a registered child-support order is subject to the same requirements, procedures and defenses that apply to the modification of an order issued by a tribunal of this state, and the order may be enforced and satisfied in the same manner.

(c) A tribunal of this state may not modify any aspect of a child- support order that may not be modified under the law of the issuing state. If two or more tribunals have issued child-support orders for the same obligor and child, the order that controls and shall be so recognized under Section 40-6A-207 NMSA 1978 establishes the aspects of the support order which are nonmodifiable.

(d) On issuance of an order modifying a child-support order issued in another state, a tribunal of this state becomes the tribunal having continuing, exclusive jurisdiction."

Section 21

Section 21. A new section of the Uniform Interstate Family Support Act, Section 40-6A-613 NMSA 1978, is enacted to read:

"40-6A-613. JURISDICTION TO MODIFY CHILD-SUPPORT ORDER OF ANOTHER STATE WHEN INDIVIDUAL PARTIES RESIDE IN THIS STATE.--

(a) If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child-support order in a proceeding to register that order.

(b) A tribunal of this state exercising jurisdiction under this section shall apply the provisions of Articles 1 and 2 and this article of the Uniform Interstate Family Support Act and the procedural and substantive law of this state to the proceeding for enforcement or modification. Articles 3, 4, 5, 7 and 8 of the Uniform Interstate Family Support Act do not apply."

Section 22

Section 22. A new section of the Uniform Interstate Family Support Act, Section 40-6A-614 NMSA 1978, is enacted to read:

"40-6A-614. NOTICE TO ISSUING TRIBUNAL OF MODIFICATION.--Within thirty days after issuance of a modified child-support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction."

Section 23

Section 23. Section 40-6A-902 NMSA 1978 (being Laws 1994, Chapter 107, Section 902) is amended to read:

"40-6A-902. SHORT TITLE.--Chapter 40, Article 6A NMSA 1978 may be cited as the "Uniform Interstate Family Support Act"."

Section 24

Section 24. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 90, AS AMENDED

CHAPTER 10

RELATING TO CRIMINAL LAW; CHANGING THE ELEMENTS OF THE CRIMINAL OFFENSE OF STALKING; CREATING THE CRIMINAL OFFENSE OF AGGRAVATED

STALKING; PRESCRIBING PENALTIES; 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 Criminal Code is enacted to read:

"SHORT TITLE.--Sections 1 through 5 of this act may be cited as the "Harassment and Stalking Act".

Section 2

Section 2. A new section of the Criminal Code is enacted to read:

"HARASSMENT--PENALTIES.--

A. Harassment consists of knowingly pursuing a pattern of conduct that is intended to annoy, seriously alarm or terrorize another person and that serves no lawful purpose. The conduct must be such that it would cause a reasonable person to suffer substantial emotional distress.

B. Whoever commits harassment is guilty of a misdemeanor."

Section 3

Section 3. A new section of the Criminal Code is enacted to read:

"STALKING--PENALTIES.--

A. Stalking consists of a person knowingly pursuing a pattern of conduct that would cause a reasonable person to feel frightened, intimidated or threatened. The alleged stalker must intend to place another person in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint or the alleged stalker must intend to cause a reasonable person to fear for his safety or the safety of a household member. In furtherance of the stalking, the alleged stalker must commit one or more of the following acts on more than one occasion:

(1) following another person, in a place other than the residence of the alleged stalker;

(2) placing another person under surveillance by being present outside that person's residence, school, workplace or motor vehicle or any other place frequented by that person, other than the residence of the alleged stalker; or

(3) harassing another person.

B. 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 the purposes of this section.

C. Whoever commits stalking is guilty of a misdemeanor. Upon a second or subsequent conviction, the offender is guilty of a fourth degree felony.

D. In addition to any punishment provided pursuant to the provisions of this section, the court shall order a person convicted of stalking to participate in and complete a program of professional counseling at his own expense."

Section 4

Section 4. A new section of the Criminal Code is enacted to read:

"AGGRAVATED STALKING--PENALTIES.--

A. Aggravated stalking consists of stalking perpetrated by a person:

(1) who knowingly violates a permanent or temporary order of protection issued by a court, except that mutual violations of such orders may constitute a defense to aggravated stalking;

(2) in violation of a court order setting conditions of release and bond;

(3) when the person is in possession of a deadly weapon; or

(4) when the victim is less than sixteen years of age.

B. Whoever commits aggravated stalking is guilty of a fourth degree felony. Upon a second or subsequent conviction, the offender is guilty of a third degree felony.

C. In addition to any punishment provided pursuant to the provisions of this section, the court shall order a person convicted of aggravated stalking to participate in and complete a program of professional counseling at his own expense."

Section 5

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

"EXCEPTIONS.--The provisions of the Stalking Act do not apply to:

A. picketing or public demonstrations that are lawful or that arise out of a bona fide labor dispute; or

B. a peace officer in the performance of his duties."

Section 6

Section 6. Section 31-26-3 NMSA 1978 (being Laws 1994, Chapter 144, Section 3) is amended to read:

"31-26-3. DEFINITIONS.--As used in the Victims of Crime Act:

A. "court" means magistrate court, metropolitan court, children's court, district court, the court of appeals or the supreme court;

B. "criminal offense" means:

(1) negligent arson resulting in death or bodily injury, as provided in Subsection B of Section 30-17-5 NMSA 1978;

(2) aggravated arson, as provided in Section

30-17-6 NMSA 1978;

(3) aggravated assault, as provided in Section 30-3-2 NMSA 1978;

(4) aggravated battery, as provided in Section 30-3-5 NMSA 1978;

(5) dangerous use of explosives, as provided in Section 30-7-5 NMSA 1978;

(6) negligent use of a deadly weapon, as provided in Section 30-7-4 NMSA 1978;

(7) murder, as provided in Section 30-2- 1 NMSA 1978;

(8) voluntary manslaughter, as provided in Section 30-2-3 NMSA 1978;

(9) involuntary manslaughter, as provided in Section 30-2-3 NMSA 1978;

(10) kidnapping, as provided in Section 30-4-1 NMSA 1978;

(11) criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978;

(12) criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978;

(13) armed robbery, as provided in Section 30-16-2 NMSA 1978;

(14) homicide by vehicle, as provided in Section 66-8-101 NMSA 1978;

(15) great bodily injury by vehicle, as provided in Section 66-8-101 NMSA 1978;

(16) abandonment or abuse of a child, as provided in Section 30-6-1 NMSA 1978; or

(17) stalking or aggravated stalking, as provided in the Stalking Act;

C. "court proceeding" means a hearing, argument or other action scheduled by and held before a court;

D. "family member" means a spouse, child, sibling, parent or grandparent;

E. "formally charged" means the filing of an indictment, the filing of a criminal information pursuant to a bind-over order, the filing of a petition or the setting of a preliminary hearing;

F. "victim" means an individual against whom a criminal offense is committed. "Victim" also means a family member or a victim's representative when the individual against whom a criminal offense was committed is a minor, is incompetent or is a homicide victim; and

G. "victim's representative" means an individual designated by a victim or appointed by the court to act in the best interests of the victim."

Section 7

Section 7. REPEAL.--Sections 30-3A-1 through 30-3A- 4 NMSA 1978 (being Laws 1993, Chapter 86, Sections 1 through 4, as amended) are repealed.

Section 8

Section 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 211, AS AMENDED

CHAPTER 11

RELATING TO COMMUNITY CORRECTIONS; REVISING THE CRITERIA FOR DETERMINING WHICH CRIMINAL OFFENDERS MAY BE PLACED IN COMMUNITY-BASED SETTINGS; AMENDING A SECTION OF THE ADULT COMMUNITY CORRECTIONS ACT.

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

Section 1

Section 1. Section 33-9-5 NMSA 1978 (being Laws 1983, Chapter 202, Section 5, as amended) is amended to read:

"33-9-5. CRITERIA FOR APPLICATIONS.--

A. Counties, municipalities or private organizations, individually or jointly, may apply for grants from the fund, including grants for counties or municipalities to purchase contractual services from private organizations, provided that:

(1) the application is for funding a program with priority use being for criminal offenders selected pursuant to the provisions of Section 33-9-7 NMSA 1978;

(2) the applicant certifies that it is willing and able to operate the program according to standards provided by the department, which may include the negotiation of a contract between the offender and program staff with provisions such as deductions from employment income for applicable victim restitution, family support, room and board, savings and weekly allowance. In addition to monetary restitution, to the extent practical, or if monetary restitution is not applicable, the contract may include provision for community service restitution for a specific number of hours;

(3) the applicant demonstrates the support of key components of the criminal justice system;

(4) the applicant, if a private organization, demonstrates the support of the county and municipality where the program will provide services;

(5) the applicant certifies that it will utilize volunteer services as an integral portion of the program to the maximum extent feasible; and

(6) no class A county as defined in Section 4-44-1 NMSA 1978, alone or in conjunction with any municipality within a class A county, shall receive more than forty-nine percent of any money appropriated to the fund.

B. Notwithstanding the provisions of Subsection A of this section:

(1) the department may utilize the fund to place individuals eligible for parole in community- based settings. The department may also utilize the fund to place criminal offenders within twelve months of eligibility for parole in community-based settings, provided that the criminal offender has never been convicted of a felony offense involving the use of a firearm. The adult parole board may, in its discretion, require participation by a criminal offender in a program as a condition of parole pursuant to the provisions of Section 31-21-10 NMSA 1978; and

(2) the department may authorize use of the fund for adults who are not criminal offenders with prior department approval, if the priority use does not result in full utilization of the fund or the capacity of a program, or the department may authorize additional programs or additional funding for existing programs.

C. The department may utilize not more than twenty-five percent of the fund to contract directly for programs, including programs for New Mexico Indian tribes and pueblos for diversion of state law offenders, or to establish programs operated by the department; provided, however, that the department may utilize up to sixty percent of the fund to operate adult community corrections programs if, after a reasonable effort to solicit proposals, there are no satisfactory proposals from a community where it is determined that a program is necessary or if it becomes necessary to cancel a program as provided in the contract.

D. The department shall establish additional guidelines for allocation of funds under the Adult Community Corrections Act. An applicant shall retain the authority to accept or reject the placement of any person in a program."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 310, AS AMENDED

CHAPTER 12

RELATING TO CAMPAIGN PRACTICES; AMENDING THE CAMPAIGN REPORTING ACT TO CHANGE PRE-ELECTION REPORTING REQUIREMENTS AND LATE FILING PENALTIES.

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

Section 1

Section 1. Section 1-19-29 NMSA 1978 (being Laws 1993, Chapter 46, Section 5, as amended) 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 5:00 p.m. on the Thursday 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 2

Section 2. 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 Thursday 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, intentionally incomplete or late report of expenditures and contributions due on the Thursday 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."

HOUSE BILL 405, AS AMENDED

CHAPTER 13

RELATING TO CAPITAL EXPENDITURES; CHANGING THE PURPOSE OF A GENERAL FUND APPROPRIATION TO THE STATE DEPARTMENT OF PUBLIC EDUCATION FOR IMPROVEMENTS AT JACKSON MIDDLE SCHOOL IN BERNALILLO COUNTY; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1

Section 1. GENERAL FUND--STATE DEPARTMENT OF PUBLIC EDUCATION--CHANGE IN PURPOSE--APPROPRIATION.--The balance of the general fund appropriation made to the state department of public education pursuant to Subsection K of Section 33 of Chapter 222 of Laws 1995 for the purpose of refurbishing the cafeteria at Jackson middle school in Bernalillo county shall not be expended for its original purpose but is appropriated to the state department of public education to develop a student commons area in a southern courtyard to alleviate the current problem of inadequate drainage at Jackson middle school in Bernalillo county.

Section 2

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

HOUSE BILL 526

WITH EMERGENCY CLAUSE

SIGNED MARCH 17, 1997

CHAPTER 14

RELATING TO MOTOR VEHICLE DEALER FRANCHISES; LIMITING THE TIME PERIOD FOR CERTAIN AUDITS.

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

Section 1

Section 1. Section 57-16-7 NMSA 1978 (being Laws 1973, Chapter 6, Section 7, as amended) is amended to read:

"57-16-7. WARRANTY CLAIMS--PAYMENT.--

A. Every manufacturer, distributor or representative shall properly fulfill any warranty agreement and adequately and fairly compensate each of its motor vehicle dealers for labor, parts and other expenses incurred by the dealer to perform the required warranty repairs. All compensation for labor shall be the same as the dealer would have made to and collected from an individual retail customer for the same repairs if performed in the normal course of business not covered by a warranty. Compensation for parts shall be in an amount not less than the manufacturer's warranty

reimbursement rate for parts or the amount received by the motor vehicle dealer from retail customers for parts used in non-warranty work of like kind. All claims made by motor vehicle dealers pursuant to provisions of this section and Section 57-16-6 NMSA 1978 shall be paid within thirty days following their approval. All claims shall be either approved or disapproved within thirty days after their receipt, and when any claim is disapproved, the motor vehicle dealer who submits it shall be notified in writing of its disapproval within that period, and each notice shall state the specific grounds upon which the disapproval is based. Any special handling of claims required by the manufacturer, distributor or representative not uniformly required of all dealers of that make may be enforced only after thirty days' notice in writing and upon good and sufficient reason. A manufacturer or distributor may audit a warranty claim only during the twelve-month period immediately following payment or credit issued for the claim; however, this limitation shall not apply if there is a reasonable suspicion of fraud.

B. The provisions of this section shall not apply to recreational travel trailers or to parts of systems, fixtures, appliances, furnishings, accessories and features of motor homes."

Section 2

Section 2. A new section of Chapter 57, Article 16 NMSA 1978 is enacted to read:

" SALES AND SERVICE INCENTIVES--AUDIT.--A manufacturer or distributor may audit a claim for sales and service incentives only during the twenty-four month period immediately following payment or credit issued for the claim; however, this limitation shall not apply if there is a reasonable suspicion of fraud."

HOUSE BILL 570

CHAPTER 15

RELATING TO ELECTIONS; REQUIRING A COURT TO RENDER A DECISION WITHIN TEN DAYS ON A PETITION FILED BY A CANDIDATE WHO WAS DISQUALIFIED FROM THE BALLOT; AMENDING A SECTION OF THE PRIMARY ELECTION LAW.

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

Section 1

Section 1. Section 1-8-26 NMSA 1978 (being Laws 1975, Chapter 295, Section 12, as amended) is amended to read:

"1-8-26. PRIMARY ELECTION LAW--TIME OF FILING-- DOCUMENTS NECESSARY TO QUALIFY FOR BALLOT--CHALLENGE.--

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 those documents, is qualified to have his name placed on the ballot. The proper filing officer shall mail the notice no later than 5:00 p.m. on the Tuesday following the filing date.

E. If a candidate is notified by the proper filing officer that he is not qualified to have his name appear on the ballot, the candidate may challenge that decision by filing a petition with the district court within ten days of the notification. The district court shall hear and render a decision on the matter within ten days after the petition is filed."

HOUSE BILL 974

CHAPTER 16

RELATING TO LAND GRANTS; REVISING ELECTION PROCEDURES FOR THE NUESTRA SENORA DEL ROSARIO, SAN FERNANDO Y SANTIAGO LAND GRANT; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 49-8-1 NMSA 1978 (being Laws 1909, Chapter 52, Section 1) is amended to read:

"49-8-1. NUESTRA SENORA DEL ROSARIO, SAN FERNANDO Y SANTIAGO GRANT--TRUSTEES--ELECTION.--The government and control of the common lands of the land grant known as the "Nuestra Senora del Rosario, San Fernando y Santiago land grant" is vested in five trustees, to be known officially as "the board of trustees of the Nuestra Senora del Rosario, San Fernando y Santiago land grant", who shall be elected biennially by the owners of interests in the grant either by inheritance from the original grantees or by purchase from an heir."

Section 2

Section 2. Section 49-8-2 NMSA 1978 (being Laws 1909, Chapter 52, Section 2) is amended to read:

"49-8-2. ELECTIONS--RIGHT TO VOTE.--

A. On the first Monday of April of each alternate year, an election shall be held after the trustees have given at least seven days notice thereof by posting not less than five notices in conspicuous places within the grant, which shall include the post offices at Truchas, Cordova, formerly known as Quemado, and Chimayo. Except as provided in Chapter 49, Article 8 NMSA 1978, the election shall be conducted as nearly as practical in the same manner as provided in the Election Code for the conduct of general elections, provided that the board of trustees of the Nuestra Senora del Rosario, San Fernando y Santiago land grant and the secretary of the board shall perform the functions designated in that code for the county commission and the county clerk, respectively, and provided further that no registration shall be required. Official ballots for voting shall contain the names of not less than five owners of interests in the grant. The five persons receiving the highest number of votes shall be elected as trustees for the ensuing two years.

B. At all elections, every owner of an undivided interest in the grant shall be entitled to one vote. The trustees in charge of the election shall prepare from the best information obtainable a list of all owners of interest in the grant and shall deliver the list to their successors. Any person claiming to be the owner of an interest whose claim is not admitted by the trustees may file with them an oath in writing, stating that he is an owner and giving as fully as he can the chain of title to his interest. If his claim is substantiated by the oaths in writing of two owners of such interests, he shall be permitted to vote at the election."

Section 3

Section 3. Section 49-8-3 NMSA 1978 (being Laws 1909, Chapter 52, Section 3) is amended to read:

"49-8-3. OFFICERS--MEETING--VACANCIES.--The members of the board of trustees so elected shall meet within one week after the election and organize by the election of a president, secretary and treasurer who shall perform such duties as may

be required of them by the board. A majority of the board shall constitute a quorum for the transaction of business. All meetings of the board shall be open to all owners of interests in the grant, who shall have the right to be present and to be heard on all matters on which they may be interested. If a vacancy occurs in the board, the remaining members shall fill the vacancy by appointment until the next election. The board may make such rules as to its meetings and order of business as it deems proper."

Section 4

Section 4. Section 49-8-4 NMSA 1978 (being Laws 1909, Chapter 52, Section 4) is amended to read:

"49-8-4. BOARD OF TRUSTEES--POWERS.--The board of trustees shall have the following general powers:

A. to control, care for and manage the common lands of the grant and all the property pertaining thereto, to prescribe the terms on which they may be used and to make all necessary and proper regulations for the government thereof;

B. to sue and be sued under the title set forth in Section 49-8-1 NMSA 1978;

C. to lease any portions of the common land or the pasturage thereon and to sell any timber, wood, stone, grass or other product or personal property of the grant;

D. to pay all taxes and other expenses due on the common land; and

E. in case the income exceeds the expenses, to expend the balance to benefit all the owners equitably or for improvements upon the common land that will be for the general benefit of the owners.

The board of trustees shall make a report in writing of its transactions during the preceding year, including an account of all money received and expended, at the opening of the annual meeting of the owners."

HOUSE BILL 1172

CHAPTER 17

RELATING TO FIREWORKS; LIMITING THE SALE OR USE OF FIREWORKS UNDER CERTAIN CIRCUMSTANCES; CHANGING DUTIES PERTAINING TO RECORDS; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 60-2C-1 NMSA 1978 (being Laws 1989, Chapter 346, Section 1) is amended to read:

"60-2C-1. SHORT TITLE.--Chapter 60, Article 2C NMSA 1978 may be cited as the "Fireworks Licensing and Safety Act"."

Section 2

Section 2. Section 60-2C-2 NMSA 1978 (being Laws 1989, Chapter 346, Section 2, as amended) is amended to read:

"60-2C-2. DEFINITIONS.--As used in the Fireworks Licensing and Safety Act:

A. "chaser" means a paper or cardboard tube venting out the fuse end of the tube that contains no more than twenty grams of chemical composition and travels along the ground, often producing a whistling effect or other noise; an explosive composition not to exceed fifty milligrams may be included to produce a report;

B. "chemical composition" includes all pyrotechnic and explosive composition contained in a fireworks device, but does not include inert materials such as clay used for plugs or organic matter such as rice hulls used for density control;

C. "cone fountain" means a cardboard or heavy paper cone containing no more than fifty grams of pyrotechnic composition that has the same effect as a cylindrical fountain; and when more than one cone is mounted on a common base, total pyrotechnic composition shall not exceed two hundred grams;

D. "crackling device" means a sphere or paper tube that contains no more than twenty grams of pyrotechnic composition that produces a flash of light and a mild, audible crackling effect upon ignition, which effect is not considered to be an explosion; crackling devices are not subject to the fifty-milligram limit of firecrackers;

E. "cylindrical fountain" means a cylindrical tube containing not more than seventy-five grams of pyrotechnic composition that produces a shower of colored sparks and sometimes a whistling effect or smoke; the device may be provided with a spike for insertion into the ground or a wood or plastic base for placing on the ground or a wood or cardboard handle to be hand held; and when more than one tube is mounted on a common base, total pyrotechnic composition shall not exceed two hundred grams;

F. "display distributor" means any person, firm or corporation selling display fireworks;

G. "display fireworks" means devices primarily intended for commercial displays that are designed to produce visible or audible effects by combustion,

deflagration or detonation, including salutes containing more than one hundred thirty milligrams of explosive composition; aerial shells containing more than forty grams of chemical composition exclusive of lift charge; and other exhibition display items that exceed the limits for permissible fireworks;

H. "distributor" means any person, firm or corporation selling fireworks to wholesalers and retailers for resale;

I. "explosive composition" means any chemical compound or mixture, the primary purpose of which is to function by explosion, producing an audible effect in a fireworks device;

J. "firecracker" means a small, paper-wrapped or cardboard tube containing no more than fifty milligrams of explosive composition that produces noise and a flash of light; provided that firecrackers used in aerial devices may contain up to one hundred thirty milligrams of explosive composition per report;

K. "fireworks" means devices intended to produce a visible or audible effect by combustion, deflagration or detonation and are categorized as "permissible fireworks" or "display fireworks";

L. "flitter sparkler" means a narrow paper tube attached to a stick or wire and filled with no more than five grams of pyrotechnic composition that produces color and sparks upon ignition and the paper at one end of the tube is ignited to make the device function;

M. "ground spinner" means a small, rapidly spinning device containing no more than twenty grams of pyrotechnic composition venting out an orifice usually on the side of the tube that when ignited produces a shower of sparks and color; "ground spinner" is similar in operation to wheel, but is intended to be placed flat on the ground and ignited;

N. "helicopter" or "aerial spinner" means a tube containing no more than twenty grams of chemical composition with a propeller or blade attached that spins rapidly as it rises into the air with a visible or audible effect sometimes produced at or near the height of flight;

O. "illuminating torch" means a cylindrical tube containing no more than one hundred grams of pyrotechnic composition that produces a colored flame upon ignition and may be spiked, based or hand held; and when more than one tube is mounted on a common base, total pyrotechnic composition shall not exceed two hundred grams;

P. "manufacturer" means any person, firm or corporation engaged in the manufacture of fireworks;

Q. "mine" or "shell" means a heavy cardboard or paper tube usually attached to a wooden or plastic base and containing no more than forty grams of chemical composition plus not more than twenty grams of lift charge per tube that individually expels pellets of pressed pyrotechnic composition that burn with bright color in a star effect, or other devices propelled into the air, and that contains components producing reports containing a maximum one hundred thirty milligrams of explosive composition per report; a mine may contain more than one tube, but the tubes must fire in sequence upon ignition of one external fuse and the total chemical composition, including lift charges, of a multiple tube device shall not exceed two hundred grams;

R. "missile-type rocket" means a device similar to a stick-type rocket in size, composition and effect that uses fins rather than a stick for guidance and stability and that contains no more than twenty grams of chemical composition;

S. "permissible fireworks" means fireworks legal for sale to and use in New Mexico by the general public;

T. "pyrotechnic composition" means a chemical mixture that on burning and without explosion produces visible or brilliant displays or bright lights or whistles or motion;

U. "retailer" means any person, firm or corporation purchasing fireworks for resale to consumers;

V. "roman candle" means a heavy paper or cardboard tube containing no more than twenty grams of chemical composition that individually expels pellets of pressed pyrotechnic composition that burn with bright color in a star effect;

W. "specialty retailer" means any person, firm or corporation purchasing permissible fireworks for year-round resale in permanent retail stores whose primary business is tourism;

X. "stick-type rocket" means a cylindrical tube containing no more than twenty grams of chemical composition with a wooden stick attached for guidance and stability that rises into the air upon ignition and produces a burst of color or sound at or near the height of flight;

Y. "toy smoke device" means a small plastic or paper item containing no more than one hundred grams of pyrotechnic composition that produces white or colored smoke as the primary effect;

Z. "wheel" means a pyrotechnic device that is made to attach to a post or other surface that revolves, producing a shower of color and sparks and sometimes a whistling effect, and that may have one or more drivers, each of which contains no more than sixty grams of pyrotechnic composition and the total wheel contains no more than two hundred grams total pyrotechnic composition; and

AA. "wholesaler" means any person, firm or corporation purchasing fireworks for resale to retailers."

Section 3

Section 3. Section 60-2C-3 NMSA 1978 (being Laws 1989, Chapter 346, Section 3, as amended) is amended to read:

"60-2C-3. LICENSE OR PERMIT REQUIRED FOR SALE OF FIREWORKS--ADMINISTRATION--PERMITS AND LICENSES.--

A. No person may sell, hold for sale, import, distribute or offer for sale, as manufacturer, distributor, wholesaler or retailer, any fireworks in this state unless such person has first obtained the appropriate license or permit.

B. The state fire marshal shall enforce the Fireworks Licensing and Safety Act. All license applications shall be submitted to the office of the state fire marshal. All retailers shall be required to purchase a retail fireworks permit for each retail location. The retail permit may be purchased from any licensed manufacturer, distributor or wholesaler or from the state fire marshal's office. Retail permits may be purchased at any time by the licensed manufacturer, distributor or wholesaler in books of twenty permits per book from the state fire marshal. Permits shall be numbered, and it shall be the responsibility of the licensed manufacturer, distributor or wholesaler to keep records of the purchases of these permits and to submit these records to the state fire marshal semi-annually on January 31 and July 31 of each year. Each semi-annual report is to cover the preceding six-month period. Retail permits that are unsold may be exchanged for new permits.

C. The state fire marshal shall appoint the deputies and employees required to carry out the provisions of the Fireworks Licensing and Safety Act. The state fire marshal may also appoint any commissioned law enforcement officer or duly appointed fire chief or his designee with approval from the local governing body required to carry out the provisions of that act.

D. The state fire board shall formulate, adopt, promulgate and amend or revise rules and regulations for the safe handling of fireworks."

Section 4

Section 4. Section 60-2C-4 NMSA 1978 (being Laws 1989, Chapter 346, Section 4, as amended) is amended to read:

"60-2C-4. LICENSE AND PERMIT FEES.--

A. An applicant for a license or permit under the Fireworks Licensing and Safety Act shall pay to the state fire marshal's office the following fees, which shall not be refundable:

(1) manufacturer license $1,500;

(2) distributor license. 2,000;

(3) wholesaler license 1,000;

(4) display distributor. 1,000;

(5) specialty retailer license . . 750;

or

(6) retailer permit. . . . . 100.

B. All licenses and permits shall be issued for one year beginning on February 1 of each year. All licenses and permits shall be issued within thirty days from the date of receipt of application, except that no application shall be processed during each holiday selling period in which permissible fireworks may be sold.

C. Licenses issued under the Fireworks Licensing and Safety Act shall not be restricted in number or limited to any person without cause. Municipalities and counties may require licenses or permits and reasonable fees, not to exceed fifty dollars ($50.00), for the sale of fireworks.

D. Permit and license fees paid to the state fire marshal's office shall be deposited in the fire protection fund to be used by the state fire marshal to enforce and carry out the provisions and purposes of the Fireworks Licensing and Safety Act."

Section 5

Section 5. Section 60-2C-7 NMSA 1978 (being Laws 1989, Chapter 346, Section 7, as amended) is amended to read:

"60-2C-7. PERMISSIBLE FIREWORKS.--

A. Permissible fireworks are:

(1) ground and hand-held sparkling and smoke devices:

(a) cone fountains;

(b) crackling devices;

(c) cylindrical fountains;

(d) flitter sparklers;

(e) ground spinners;

(f) illuminating torches;

(g) toy smoke devices; and

(h) wheels;

(2) aerial devices:

(a) aerial spinners;

(b) helicopters;

(c) mines;

(d) missile-type rockets; and

(e) roman candles;

(f) shells; and

(g) stick-type rockets, except as provided in Subsection B of this section;

(3) ground audible devices:

(a) chasers; and

(b) firecrackers.

B. Stick-type rockets having a tube less than a one-quarter-inch inside diameter are not permissible fireworks.

C. A municipality or county shall not by ordinance regulate and prohibit the sale or use of any permissible firework except aerial devices and ground audible devices."

Section 6

Section 6. Section 60-2C-8 NMSA 1978 (being Laws 1989, Chapter 346, Section 8, as amended) is amended to read:

"60-2C-8. RETAIL SALES OR STORAGE OF FIREWORKS-- REGULATED ACTIVITIES.--

A. No fireworks may be sold at retail without a retail permit. The permit shall be at the location where the retail sale takes place.

B. It is unlawful to offer for sale or to sell any fireworks to children under the age of sixteen years or to any intoxicated person.

C. At all places where fireworks are stored, sold or displayed, the words "NO SMOKING" shall be posted in letters at least four inches in height. Smoking, open flames and any ignition source are prohibited within twenty-five feet of any fireworks stock.

D. No fireworks shall be stored, kept, sold or discharged within fifty feet of any gasoline pump or gasoline bulk station or any building in which gasoline or volatile liquids are sold in quantities in excess of one gallon, except in stores where cleaners, paints and oils are handled in sealed containers only.

E. All fireworks permittees and licensees shall keep and maintain upon the premises a fire extinguisher bearing an underwriters laboratories incorporated rated capacity of at least five-pound ABC per five hundred square feet of space used for fireworks sales or storage.

F. A sales clerk who is at least sixteen years of age shall be on duty to serve consumers at the time of purchase or delivery. Permissible fireworks may be offered for sale only at state-permitted or state-licensed retail locations.

G. No fireworks shall be discharged within one hundred fifty feet of any fireworks retail sales location.

H. No fireworks shall be sold or used on state forest land.

I. No person shall ignite any fireworks within a motor vehicle or throw fireworks from a motor vehicle, nor shall any person place or throw any ignited article of fireworks into or at a motor vehicle or at or near any person or group of people.

J. Any fireworks devices that are readily accessible to handling by consumers or purchasers in a retail sales location shall have their exposed fuses protected in a manner to protect against accidental ignition of an item by a spark, cigarette ash or other ignition source. If the fuse is a thread-wrapped safety fuse which has been coated with a nonflammable coating, only the outside end of the safety fuse shall be covered. If the fuse is not a safety fuse, then the entire fuse shall be covered.

K. Permissible fireworks may be sold at retail between June 20 and July 6 of each year and six days preceding and including new year's day and three days

preceding and including Chinese new year, the sixteenth of September and Cinco de Mayo of each year, except that permissible fireworks may be sold all year in permanent retail stores whose primary business is tourism."

Section 7

Section 7. Section 60-2C-9 NMSA 1978 (being Laws 1989, Chapter 346, Section 9, as amended) is amended to read:

"60-2C-9. DISPLAY FIREWORKS.--Except as provided in Section 9 of this act, nothing in the Fireworks Licensing and Safety Act shall prohibit the display of display fireworks, except that any individual, association, partnership, corporation, organization, county or municipality shall secure a written permit from the governing body of the county or municipality where the display is to be fired and the display fireworks shall be purchased from a distributor or display distributor licensed by the state fire marshal and the bureau of alcohol, tobacco and firearms at the United States department of the treasury."

Section 8

Section 8. A new section of the Fireworks Licensing and Safety Act is enacted to read:

"NOVELTIES NOT FIREWORKS.--Novelties are not fireworks and are not subject to the provisions of the Fireworks Licensing and Safety Act. For the purposes of this section, "novelties" means devices containing small amounts of pyrotechnic or explosive composition that produce limited visible or audible effects, including party poppers, snappers, snakes, glowworms, sparklers or toy caps and devices intended to produce unique visual or audible effects that contain sixteen milligrams or less of explosive composition and limited amounts of other pyrotechnic composition, including cigarette loads, trick matches, explosive auto alarms and other trick noisemakers."

Section 9

Section 9. A new section of the Fireworks Licensing and Safety Act is enacted to read:

"EXTREME DROUGHT CONDITIONS--RESTRICTED SALE AND USE.--

A. The state fire board may hold a hearing to determine if fireworks restrictions should be imposed in all or a portion of the state affected by extreme drought conditions. The findings of the state fire board shall be based on current drought indices published by the national weather service and any other relevant information supplied by the U.S. forest service and the U.S. department of agriculture.

B. Pursuant to any hearing under paragraph A of this section, the state fire board shall issue a proclamation declaring an extreme drought condition in all or a portion of the state if the board determines such conditions exist. The state fire board's proclamation:

(1) shall ban the sale and use of missile-type rockets, helicopters, aerial spinners, stick-type rockets and ground audible devices within the affected drought area;

(2) shall give local governments the power to:

(a) limit the use within their jurisdictions of any fireworks not listed in Paragraph (1) of this subsection to areas that are paved or barren or that have a readily accessible source of water for use by the homeowner or the general public; and

(b) ban or restrict the sale or use of display fireworks; and

(3) may ban or restrict the use of any type of fireworks on state lands within the affected drought area.

C. The state fire board's proclamation declaring an extreme drought condition shall be issued before twenty days prior to any holiday for which fireworks may be sold.

D. Except as otherwise provided in this subsection, a proclamation shall be effective for thirty days, and the state fire board may issue succeeding proclamations if extreme drought conditions warrant. A proclamation may be modified or rescinded within its thirty-day period by the state fire board upon conducting an emergency hearing to determine if weather conditions improve sufficiently to alleviate fire dangers."

Section 10

Section 10. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE BILL 195, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED MARCH 18, 1997

CHAPTER 18

RELATING TO LIVESTOCK; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978 PERTAINING TO THE NEW MEXICO BEEF COUNCIL.

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

Section 1

Section 1. Section 77-2A-1 NMSA 1978 (being Laws 1979, Chapter 197, Section 1) is amended to read:

"77-2A-l. SHORT TITLE.--Chapter 77, Article 2A NMSA 1978 may be cited as the "New Mexico Beef Council Act"."

Section 2

Section 2. Section 77-2A-4 NMSA 1978 (being Laws 1979, Chapter 197, Section 4, as amended) is amended to read:

"77-2A-4. MEMBERS' QUALIFICATIONS.--All members of the council shall be producers, citizens of the United States and bona fide residents of New Mexico. Each member shall at the time of his appointment and during his entire term receive a substantial portion of his income from the branch of the business he represents on the council. In making his appointments, the director shall appoint one member to represent fluid milk producers, five to represent beef producers, one to represent breeders of registered purebreds and two to represent commercial cattle feeders. Appointments of council members are to be made from lists of individuals recommended by farm organizations, producer associations and individual producers."

Section 3

Section 3. Section 77-2A-6 NMSA 1978 (being Laws 1979, Chapter 197, Section 6, as amended) is amended to read:

"77-2A-6. DUTIES--POWERS.--

A. The council shall:

(1) conduct marketing programs, including promotion, education and research programs relating to cattle and beef products;

(2) submit to the director a detailed annual budget for the council on a fiscal year basis;

(3) bond officers and employees of the council who receive and disburse council funds;

(4) keep detailed and accurate records of all receipts and disbursements, have those records audited annually and keep the audit available for inspection in the council office;

(5) establish procedures for the adoption of regulations that will provide for input from producers;

(6) determine and publish each year the assessment rates to be collected by the board; and

(7) employ staff not to exceed four persons.

B. The council may:

(1) contract for scientific research to discover and improve the commercial value of beef and products thereof;

(2) disseminate reliable information showing the value of beef and its products for any purpose for which they may be found useful and profitable;

(3) make grants to research agencies for financing studies or for the purchase or acquisition of facilities necessary to carry out the purposes of the council as authorized by the New Mexico Beef Council Act;

(4) cooperate with any local, state or national organizations or agencies, whether created by law or voluntary, engaged in work or activities similar to that of the council and enter into contracts with those organizations or agencies and expend funds in connection therewith for carrying on joint programs;

(5) study legislation, state and federal, with respect to tariffs, duties, reciprocal trade agreements, import quotas and other matters concerning the effect on the beef industry and represent and protect the interests of the beef industry with respect to any legislation or proposed legislation or executive action that may affect that industry;

(6) enter into contracts that it deems appropriate to the carrying out of the purposes of the council as authorized by that act;

(7) sue and be sued as a council without individual liability for acts of the council within the scope of the powers conferred upon it by that act;

(8) appoint subordinate officers and employees of the council, prescribe their duties and fix their compensation;

(9) adopt regulations for the exercise of its powers and duties. A copy of all council regulations shall be filed with the department; and

(10) cooperate with other state beef councils or agencies in the collection of assessments."

Section 4

Section 4. Section 77-2A-7.1 NMSA 1978 (being Laws 1983, Chapter 228, Section 3, as amended) is amended to read:

"77-2A-7.1. ASSESSMENTS.--There is levied and imposed upon all cattle involved in a transfer of ownership in this state an assessment to be called the "council assessment". The council assessment is to be fixed by the council at a rate of not more than one dollar ($1.00) per head. The board shall collect this council assessment or the federal domestic assessment imposed pursuant to the Beef Promotion and Research Act of 1985 at the same time and in the same manner as the fee charged for the state brand inspection required upon the movement of those cattle. The board shall not deliver the certificate of inspection or permit the cattle to move until all fees have been paid. The proceeds of the council assessment shall be remitted by the board to the council at the end of each month, along with information that will allow the council to make necessary refunds. At the request of the board, the council shall reimburse the board for the responsible and necessary expenses incurred for such collections and information at not more than four cents ($.04) per head on only those cattle involved in a transfer of ownership."

Section 5

Section 5. REPEAL.--Section 77-2A-7.2 NMSA 1978 (being Laws 1983, Chapter 228, Section 4, as amended) is repealed.

HOUSE BILL 76

CHAPTER 19

RELATING TO EDUCATION; MAKING ASSOCIATIONS AND ORGANIZATIONS INVOLVED IN PUBLIC SCHOOL ACTIVITIES SUBJECT TO THE OPEN MEETINGS ACT.

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

Section 1

Section 1. Section 22-2-2 NMSA 1978 (being Laws 1967, Chapter 16, Section 5, as amended) is amended to read:

"22-2-2. STATE BOARD--DUTIES.--Without limiting those powers granted to the state board pursuant to Section 22-2-1 NMSA 1978, the state board shall perform the following duties:

A. properly and uniformly enforce the provisions of the Public School Code;

B. determine policy for the operation of all public schools and vocational education programs in the state;

C. appoint a state superintendent;

D. purchase and loan instructional material to students pursuant to the Instructional Material Law and adopt regulations relating to the use and operation of instructional material depositories in the instructional material distribution process;

E. designate courses of instruction to be taught in all public schools in the state;

F. assess and evaluate all state institutions and those private schools that desire state accreditation;

G. determine the qualifications for and issue a certificate to any person teaching, assisting teachers, supervising an instructional program, counseling, providing special instructional services or administering in public schools, according to law and according to a system of classification adopted and published by the state board;

H. suspend or revoke a certificate held by a certified school instructor or certified school administrator, according to law, for incompetency, immorality or for any other good and just cause;

I. make full and complete reports on consolidation of school districts to the legislature;

J. prescribe courses of instruction, requirements for graduation and standards for all public schools, for private schools seeking state accreditation and for the educational programs conducted in state institutions other than New Mexico military institute;

K. adopt regulations for the administration of all public schools and bylaws for its own administration;

L. require periodic reports on forms prescribed by it from all public schools and attendance reports from private schools;

M. authorize adult educational programs to be conducted in schools under its jurisdiction and adopt and promulgate regulations governing all such adult educational programs;

N. require any school under its jurisdiction that sponsors athletic programs involving sports to mandate that the participating student obtain catastrophic health and accident insurance coverage, such coverage to be offered through the school and issued by an insurance company duly licensed pursuant to the laws of New Mexico;

O. require all accrediting agencies for public schools in the state to act with its approval;

P. accept and receive all grants of money from the federal government or any other agency for public school purposes and disburse the money in the manner and for the purpose specified in the grant;

Q. require prior approval for any educational program in a public school that is to be conducted, sponsored, carried on or caused to be carried on by a private organization or agency;

R. approve or disapprove all rules or regulations promulgated by any association or organization attempting to regulate any public school activity and invalidate any rule or regulation in conflict with any regulation promulgated by the state board. The state board shall require any association or organization attempting to regulate any public school activity to comply with the provisions of the Open Meetings Act and be subject to the inspection of the Public Records Act. The state board may require performance and financial audits of any association or organization attempting to regulate any public school activity. The state board shall have no power or control over the rules or regulations or the bylaws governing the administration of the internal organization of the association or organization;

S. review decisions made by the governing board or officials of any organization or association regulating any public school activity, and any decision of the state board shall be final in respect thereto;

T. accept or reject any charitable gift, grant, devise or bequest. The particular gift, grant, devise or bequest accepted shall be considered an asset of the state;

U. establish and maintain regional centers, at its discretion, for conducting cooperative services between public schools and school districts within and among those regions and to facilitate regulation and evaluation of school programs;

V. assess and evaluate for accreditation purposes at least one-third of all public schools each year through visits by department of education personnel to investigate the adequacy of pupil gain in standard required subject matter, adequacy of pupil activities, functional feasibility of public school and school district organization, adequacy of staff preparation and other matters bearing upon the education of the students;

W. provide for management and other necessary personnel to operate any public school or school district that has failed to meet requirements of law, state board standards or state board regulations; provided that the operation of the public school or school district shall not include any consolidation or reorganization without the approval of the local board of that school district. Until such time as requirements of law, standards or regulations have been met and compliance is assured, the powers and duties of the local school board shall be suspended;

X. establish and implement a plan that provides for technical assistance to local school boards through workshops and other in-service training methods; provided, however, that no plan shall require mandatory attendance by any member of a local school board;

Y. submit a plan applying for funds available under Public Law 94-142 and disburse these funds in the manner and for the purposes specified in the plan; and

Z. enforce requirements for home schools. Upon finding that a home school is not in compliance with law, the state board shall have authority to order that a student attend a public school or a private school."

HOUSE BILL 641, AS AMENDED

CHAPTER 20

RELATING TO TAXATION; CHANGING THE PURPOSES AND EXTENDING THE TIME PERIOD FOR WHICH THE COUNTY HOSPITAL EMERGENCY GROSS RECEIPTS TAX MAY BE IMPOSED; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 4-62-1 NMSA 1978 (being Laws 1992, Chapter 95, Section 1, as amended) 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 J 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 the acquisition of rights of way;

(6) purchasing, acquiring, constructing, making additions to, enlarging, bettering, extending or equipping 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. A general determination by the governing body that facilities or equipment are reasonably related to and 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 a fire district project shall not be pledged to the bonds issued for a 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. A general determination by the governing body of the county that facilities or equipment are reasonably related to and constitute a part of a specified fire district project shall be conclusive if set forth in the proceedings authorizing the 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. Hospital emergency gross receipts tax revenue bonds may be issued for acquisition, equipping, remodeling or improvement of a county hospital facility. A county may pledge irrevocably, to the payment of the interest on and principal of the hospital emergency gross receipts tax revenue bonds, any or all of the revenues received by the county from a county hospital emergency gross receipts tax imposed pursuant to Section 7-20E-12.1 NMSA 1978 and dedicated to payment of bonds or a loan for acquisition, equipping, remodeling or improvement of a county hospital facility.

K. 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.

L. No bonds may be issued by a county, other than an H class county, a class B county as defined in Section 4-36-8 NMSA 1978 or a class A county as described in Section 4-36-10 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.

M. 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, the gasoline tax or the county hospital emergency gross receipts 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.

N. 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.

O. 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 2

Section 2. Section 7-20E-12.1 NMSA 1978 (being Laws 1994, Chapter 14, Section 1, as amended) is amended to read:

"7-20E-12.1. COUNTY HOSPITAL EMERGENCY GROSS RECEIPTS TAX--AUTHORITY TO IMPOSE--USE OF PROCEEDS.--

A. A majority of the members of a governing body may enact an ordinance imposing an excise tax on any person engaging in business in the county for the privilege of engaging in business. The rate of the tax shall be one-fourth of one percent of the gross receipts of the person engaging in business. The tax shall be imposed for a period of not more than two years from the effective date of the ordinance imposing the tax. The tax may be imposed for an additional period not to exceed three years from the date of the ordinance imposing the tax for that period. On or after July 1, 1997, the tax may be imposed for an additional period necessary for payment of bonds or a loan for acquisition, equipping, remodeling or improvement of a county hospital facility, but the period shall not exceed twenty years from the effective date of the ordinance imposing the tax for that period.

B. The tax imposed by this section may be referred to as the "county hospital emergency gross receipts tax".

C. At the time of enacting the ordinance imposing the tax authorized in this section:

(1) if the effective date of the tax is prior to July 1, 1997, the governing body shall dedicate the revenue for current operations and maintenance of a hospital owned by the county or a hospital with whom the county has entered into a health care facilities contract; provided that a majority of the members of a governing body may enact an ordinance to change the purposes for which the revenue from a previously imposed tax is dedicated and to dedicate that revenue during the remainder of the tax imposition period to payment of bonds or a loan for acquisition, equipping, remodeling or improvement of a county hospital facility; and

(2) if the effective date of the tax is on or after July 1, 1997, the governing body shall dedicate the revenue for the period of time the tax is imposed to payment of a bond or loan for acquisition, equipping, remodeling and improvement of a county hospital facility.

D. As used in this section, "county" means a class B county with a population of less than ten thousand according to the 1990 federal decennial census and with a net taxable value for rate-setting purposes for the 1993 property tax year in excess of one hundred million dollars ($100,000,000)."

Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 1048

CHAPTER 21

REPEALING THE INTERSTATE COMPACT ON AGRICULTURAL GRAIN MARKETING.

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

Section 1

Section 1. REPEAL.--Section 11-12-1 NMSA 1978 (being Laws 1987, Chapter 239, Section 1) is repealed.

HOUSE BILL 40

CHAPTER 22

RELATING TO HEALTH INSURANCE; PRESERVING ADJUSTED COMMUNITY RATING FOR INDIVIDUAL AND GROUP PLANS.

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

Section 1

Section 1. Section 59A-18-13.1 NMSA 1978 (being Laws 1994, Chapter 75, Section 26) is amended to read:

"59A-18-13.1. ADJUSTED COMMUNITY RATING.--

A. Every insurer, fraternal benefit society, health maintenance organization or nonprofit health care plan that provides primary health insurance or health care coverage insuring or covering major medical expenses shall, in determining the initial year's premium charged for an individual, use only the rating factors of age, gender, geographic area of the place of employment and smoking practices except that for individual policies the rating factor of the individual's place of residence may be used instead of the geographic area of the individual's place of employment. In determining the initial and any subsequent year's rate, the difference in rates in any one age group that may be charged on the basis of a person's gender shall not exceed another person's rates in the age group by more than twenty percent of the lower rate, and no person's rate shall exceed the rate of any other person with similar family composition by more than two hundred fifty percent of the lower rate, except that the rates for children under the age of nineteen or children aged nineteen to twenty-five who are full-time students may be lower than the bottom rates in the two hundred fifty percent band. The rating factor restrictions shall not prohibit an insurer, society, organization or plan from offering rates that differ depending upon family composition.

B. The superintendent shall adopt regulations to implement the provisions of this section."

Section 2

Section 2. Section 59A-23B-6 NMSA 1978 (being Laws 1991, Chapter 111, Section 6, as amended) is amended to read:

"59A-23B-6. FORMS AND RATES--APPROVAL OF THE SUPERINTENDENT OF INSURANCE--ADJUSTED COMMUNITY RATING.--

A. All policy or plan forms, including applications, enrollment forms, policies, plans, certificates, evidences of coverage, riders, amendments, endorsements and disclosure forms, shall be submitted to the department of insurance for approval prior to use.

B. No policy or plan may be issued in the state unless the rates have first been filed with and approved by the superintendent of insurance. This subsection shall not apply to policies or plans subject to the Small Group Rate and Renewability Act.

C. In determining the initial year's premium or rate charged for coverage under a policy or plan, the only rating factors that may be used are age, gender, geographic area of the place of employment and smoking practices except that for individual policies the rating factor of the individual's place of residence may be used instead of the geographic area of the individual's place of employment. In determining the initial and any subsequent year's rate, the difference in rates in any one age group that may be charged on the basis of a person's gender shall not exceed another person's rates in the age group by more than twenty percent of the lower rate, and no person's rate shall exceed the rate of any other person with similar family composition by more than two hundred fifty percent of the lower rate, except that the rates for children under the age of nineteen or children aged nineteen to twenty-five who are full-time students may be lower than the bottom rates in the two hundred fifty percent band. The rating factor restrictions shall not prohibit an insurer, society, organization or plan from offering rates that differ depending upon family composition.

D. The superintendent of insurance shall adopt regulations to implement the provisions of this section."

Section 3

Section 3. Section 59A-23C-5.1 NMSA 1978 (being Laws 1994, Chapter 75, Section 33) is amended to read:

"59A-23C-5.1. ADJUSTED COMMUNITY RATING.--

A. A health benefit plan that is offered by a carrier to a small employer shall be offered without regard to the health status of any individual in the group, except as provided in the Small Group Rate and Renewability Act. The only rating factors that may be used to determine the initial year's premium charged a group, subject to the maximum rate variation provided in this section for all rating factors, are the group members':

(1) ages;

(2) gender;

(3) geographic areas of the places of employment; or

(4) smoking practices.

B. In determining the initial and any subsequent year's rate, the difference in rates in any one age group that may be charged on the basis of a person's gender

shall not exceed another person's rates in the age group by more than twenty percent of the lower rate, and no person's rate shall exceed the rate of any other person with similar family composition by more than two hundred fifty percent of the lower rate, except that the rates for children under the age of nineteen or children aged nineteen to twenty-five who are full-time students may be lower than the bottom rates in the two hundred fifty percent band. The rating factor restrictions shall not prohibit a carrier from offering rates that differ depending upon family composition.

C. The superintendent shall adopt regulations to implement the provisions of this section."

Section 4

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 359, AS AMENDED

CHAPTER 23

RELATING TO BANKING; CHANGING PROVISIONS IN THE BANKING ACT AND IN THE CONSUMER CREDIT BANK ACT.

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

Section 1

Section 1. Section 58-1-1 NMSA 1978 (being Laws 1963, Chapter 305, Section 1) is amended to read:

"58-1-1. SHORT TITLE.-- Chapter 58, Articles 1, 2 through 6 and 8 NMSA 1978 may be cited as the "Banking Act"."

Section 2

Section 2. Section 58-1-21 NMSA 1978 (being Laws 1963, Chapter 305, Section 21, as amended) is amended to read:

"58-1-21. LOANS.--

A. A state bank may lend on the security of the personal obligation of the borrower.

B. A state bank may lend on the security of personal property but shall not make any loan on the security of its own stock, of stock of another bank where the

borrower owns, controls or holds with the power to vote ten percent or more of the outstanding voting securities of both that bank and the lending bank or of its obligation subordinate to deposits.

C. Any state bank may make real estate loans secured by liens upon unimproved real estate, upon improved real estate, including improved farmland and improved business and residential properties, and upon real estate to be improved by a building to be constructed or in the process of construction in an amount that when added to the amount unpaid upon prior mortgages, liens and encumbrances, if any, upon the real estate does not exceed the respective proportions of appraised value as provided in this section. A loan secured by real estate within the meaning of this section shall be in the form of an obligation secured by a mortgage, trust deed or other instrument, which shall constitute a lien on real estate in fee or under such rules and regulations as may be prescribed by the director and any state bank may purchase or sell any obligations so secured in whole or in part. The amount of any such loan made shall not exceed sixty-six and two-thirds percent of the appraised value if the real estate is unimproved, eighty percent of the appraised value if the real estate is improved by off-site improvements such as streets, water, sewers or other utilities, seventy-five percent of the appraised value if the real estate is in the process of being improved by a building to be constructed or in the process of construction or ninety percent of the appraised value if the real estate is improved by a building . If any such loan exceeds sixty-six and two-thirds percent of the appraised value of the real estate or if the real estate is improved with a one to four-family dwelling, installment payments shall be required that are sufficient to amortize the entire principal of the loan within a period of not more than thirty years. However:

(1) the limitations and restrictions set forth in this subsection shall not prevent the renewal or extension of loans heretofore made and shall not apply to real estate loans that are guaranteed or insured by the United States or an agency thereof or by a state or agency or instrumentality thereof; and

(2) loans that are guaranteed or insured as described in Paragraph (1) of this subsection shall not be taken into account in determining the amount of real estate loans that a state bank may make in relation to its capital and surplus or its time and savings deposits or in determining the amount of real estate loans secured by other than first liens; and where the collateral for any loan consists partly of real estate security and partly of other security, only the amount by which the loan exceeds the value as collateral of such other security shall be considered a loan upon the security of real estate, and in no event shall a loan be considered as a real estate loan where there is a valid and binding agreement that is entered into by a financially responsible lender or other party either directly with the bank that is for the benefit of or has been assigned to the bank and pursuant to which agreement the lender or other party is required to advance to the bank within sixty months from the date of the making of the loan the full amount of the loan to be made by the bank upon the security of real estate. The amount unpaid upon any real estate loan secured by other than a first lien, when added to the amount unpaid upon prior mortgages, liens and encumbrances, shall not exceed in an

aggregate sum twenty percent of the amount of the capital stock of the bank paid in and unimpaired plus twenty percent of the amount of its unimpaired surplus fund.

D. Any state bank may make real estate loans secured by liens upon forest tracts that are properly managed in all respects. The loans shall be in the form of an obligation or obligations secured by mortgage, trust deed or other such instrument; and any state bank may purchase or sell any obligations so secured in whole or in part. The amount of any such loan, when added to the amount unpaid upon prior mortgages, liens and encumbrances, if any, shall not exceed sixty-six and two-thirds percent of the appraised fair market value of the growing timber, lands and improvements thereon offered as security, and the loan shall be made upon such terms and conditions as to assure that at no time shall the loan balance, when added to the amount unpaid upon prior mortgages, liens and encumbrances, if any, exceed sixty-six and two-thirds percent of the original appraised total value of the property then remaining. No such loan shall be made for a longer term than three years; except that a loan may be made for a term not longer than fifteen years if the loan is secured by an amortized mortgage, deed of trust or other such instrument under the terms of which the installment payments are sufficient to amortize the principal of the loan within a period of not more than fifteen years and at a rate of at least six and two-thirds percent per year. All such loans secured by liens upon forest tracts shall be included in the permissible aggregate of all real estate loans and, when secured by other than first liens, in the permissible aggregate of all real estate loans secured by other than first liens prescribed in Paragraph (2) of Subsection C of this section, but no state bank shall make forest tract loans in an aggregate sum in excess of fifty percent of its capital stock paid in and unimpaired plus fifty percent of its unimpaired surplus fund.

E. Loans made to finance the construction of a building and having maturities of not to exceed sixty months where there is a valid and binding agreement entered into by a financially responsible lender or other party to advance the full amount of the bank's loan upon completion of the building and loans made to finance the construction of residential or farm buildings and having maturities of not to exceed forty-two months may be considered as real estate loans if the loans qualify under this section, or such loans may be classed as commercial loans whether or not secured by a mortgage or similar lien on the real estate upon which the building is being constructed, at the option of each state bank that may have an interest in the loan; provided that no state bank shall invest in or be liable on any such loans classed as commercial loans under this subsection in an aggregate amount in excess of one hundred percent of its actually paid-in and unimpaired capital plus one hundred percent of its unimpaired surplus fund.

F. Notes representing loans made under this section to finance the construction of residential or farm buildings and having maturities of not to exceed nine months shall be eligible for discount as commercial paper if accompanied by a valid and binding agreement to advance the full amount of the loan upon the completion of the building entered into by an individual, partnership, association or corporation acceptable to the discounting bank.

G. Loans made to any borrower where the bank looks for repayment by relying primarily on the borrower's general credit standing and forecast of income, with or without other security, or loans secured by an assignment of rents under a lease and where the bank wishes to take a mortgage, deed of trust or other instrument upon real estate, whether or not constituting a first lien, as a precaution against contingencies and loans in which the small business administration cooperates through agreements to participate in an immediate or deferred or guaranteed basis under the Small Business Act shall not be considered as real estate loans within the meaning of this section but shall be classed as commercial loans.

H. A state bank may make loans upon the security of real estate that do not comply with the limitations and restrictions in this section if the total unpaid amount loaned, exclusive of loans that subsequently comply with those limitations and restrictions, does not exceed five percent of the amount that a state bank may invest in real estate loans. The total unpaid amount so loaned shall be included in the aggregate sum that the bank may invest in real estate loans.

I. Loans made pursuant to this section shall be subject to such conditions and limitations as the director may prescribe by rule or regulation."

Section 3

Section 3. Section 58-1-22 NMSA 1978 (being Laws 1963, Chapter 305, Section 22, as amended) is amended to read:

"58-1-22. INVESTMENTS.--

A. In addition to other investments expressly authorized by the Banking Act, a state bank may:

(1) purchase or discount obligations that satisfy the requirements of the Banking Act for loans;

(2) purchase or discount obligations of the United States or a state of the United States or bonds or debentures issued pursuant to the Federal Farm Loan Act, as amended, and the Farm Credit Act of 1933, as amended;

(3) purchase or discount obligations in amounts not to exceed ten percent of its capital and surplus for each of the following: the inter- American development bank, the African development bank, the Asian development bank and the international bank for reconstruction and redevelopment;

(4) purchase or discount obligations of a territory of the United States, a subdivision or instrumentality of a state or territory of the United States or an authority organized under either state law, an interstate compact or by substantially identical legislation adopted by two or more states;

(5) purchase or discount obligations of a corporation chartered by the United States or a state thereof doing business in the United States that are approved by the director for investment;

(6) invest in industrial revenue bonds issued by the state or any of its political subdivisions up to twenty percent of its capital and surplus for any one issue, with a total in all such issues not to exceed fifty percent of its capital and surplus;

(7) invest an amount not exceeding twenty percent of its capital and surplus in any one issue for revenue obligations issued to provide, enlarge or improve electric power, gas, water, sewer facilities and other public facilities by any city or town located in the state; and

(8) invest in any obligation in which a national bank is authorized to invest at the time of making the investment, notwithstanding any provisions to the contrary in the Banking Act.

B. A state bank authorized to exercise trust powers may invest an amount not exceeding ten percent of its capital in the stock of a corporation owned entirely by banks and exclusively engaged in a trust company business and maintaining its offices on the premises used by the bank or another bank also owning part of its capital stock or adjacent to the premises of any bank owning part of its stock.

C. A state bank may invest an amount not exceeding twenty-five percent of its capital and surplus in the stock and obligations of a corporation owning the premises occupied by the bank for the transaction of its business.

D. A state bank may purchase or sell without recourse against it any security upon the order of a customer and for his account.

E. A state bank may invest an amount approved by the director in the stock of a corporation owned entirely by banks and engaged in providing record-keeping services using electronic or other similar machines.

F. A state bank may make an investment or conduct an activity the director determines is a part of or is incidental to the business of banking notwithstanding any provision to the contrary in the Banking Act."

Section 4

Section 4. Section 58-1-41 NMSA 1978 (being Laws 1985, Chapter 30, Section 1, as amended) is amended to read:

"58-1-41. SUPERVISION FEES.--

A. Each state bank shall annually pay to the director a supervision fee. The amount of the supervision fee paid by each state bank is computed as follows, based upon assets as of December 31:

If the bank's total assets are--		The assessment is--		
Over (Thousand)	But not over-(Thousand)	This amount-	Plus-	Of excess over- (Thousand)
- 0 -	30,000	- 0 -	.000210	- 0 -
30,000	60,000	6,300	.000182	30,000
60,000	100,000	11,745	.000168	60,000
100,000	150,000	18,465	.000158	100,000
150,000	200,000	26,340	.000147	150,000
200,000		33,690	.000143	200,000.

B. The fee shall be paid on or before the March 1 following the asset computation. For failure to pay the supervision fee when due, unless excused for cause by the director, the bank shall pay to the division one hundred dollars ($100) for every day of its delinquency.

C. The director may proscribe lower supervision fees by regulation. In determining the amounts of the lower fees, the director may use criteria other than total assets of banks."

Section 5

Section 5. Section 58-1-52 NMSA 1978 (being Laws 1963, Chapter 305, Section 41) is amended to read:

"58-1-52. INCORPORATORS.--A state bank may be organized by five or more individual incorporators or a bank holding company subject to the requirements of the Banking Act. A majority of the incorporators shall be residents of the state. Each incorporator shall subscribe and pay in full in cash for stock having a value of not less than one percent of the authorized capital structure."

Section 6

Section 6. Section 58-1-54 NMSA 1978 (being Laws 1973, Chapter 130, Section 1) is amended to read:

"58-1-54. POWERS OF DIRECTOR AND OF STATE BANKS.--In addition to other powers provided for the director and for state banks in the Banking Act and notwithstanding anything to the contrary in that act, the director may grant to state banks any of the powers and authority that national banks are or may be authorized, empowered, permitted or otherwise allowed to exercise."

"Section 7. Section 58-1-65 NMSA 1978 (being Laws 1963, Chapter 305, Section 53, as amended) is amended to read:

"58-1-65. DIRECTORS AND OFFICERS.--

A. The affairs of a state bank shall be managed by a board of directors, which shall exercise its powers and be responsible for the discharge of its duties. The number of directors, not less than three and not more than twenty-five, shall be fixed by the bylaws and the number so fixed shall be the board, regardless of vacancies. At least three-fourths of the directors shall be citizens of the United States and two-thirds shall be residents of the state. Any director who becomes disqualified shall forthwith resign his office, but, upon removal of the disqualification, he shall be eligible for election. A director who is disqualified may be removed by the board or by the director of the division. No action taken by a director prior to the resignation or removal shall be subject to attack on the ground of his disqualification.

B. Directors shall receive such reasonable compensation as the bylaws may prescribe and shall serve until their successors are elected and qualify.

C. Directors shall be elected by the stockholders at the first meeting and thereafter at the annual meeting or at a special meeting called for that purpose. If the articles of incorporation provide for cumulative voting, the votes of each share may be cast for one person or divided among two or more as the stockholder may choose. The person or persons, according to the number of directors to be elected, having the largest number of votes shall be elected.

D. The term of office of directors shall be one year or, if the bylaws so provide, three years, in which case one-third of the directors, or as near to one-third as possible, shall be elected for each year following the first election of directors. Vacancies at any one time, to the number of one-third of the board, may be filled by vote of the board until the next meeting of the stockholders. The director of the division may designate a director to fill a vacancy that has continued for longer than three months, and a director so designated shall serve until a successor is elected and has qualified.

E. A director may be removed by the stockholders at a meeting. Where cumulative voting for directors is provided in the articles of incorporation, no director shall be removed unless the votes cast against a motion for his removal are less than the total number of shares outstanding divided by the number of authorized directors,

but all of the directors shall be removed if a majority of the outstanding shares approves a motion for the removal of all.

F. The officers designated by the bylaws shall be elected by the board . A member of the board shall be elected president. Officers shall be elected or a contract executed for their employment in accordance with the bylaws of the bank. An officer may be removed by the board at any time, but removal shall not prejudice any rights that he may have to damages for breach of contract of employment.

G. A bank shall report promptly to the director of the division any changes among executive officers and directors, including in its report a statement of the business and professional affiliations of new executive officers and directors.'"'.

Section 8

Section 8. Section 58-1-76 NMSA 1978 (being Laws 1963, Chapter 305, Section 64) is amended to read:

"58-1-76. UNAUTHORIZED CONDUCT OF BANKING BUSINESS.--It is unlawful for any unauthorized person to engage in the business of holding deposits or to represent that he is or is acting for a bank or to use an artificial or corporate name that purports to be or suggests that it is the name of a bank."

Section 9

Section 9. Section 58-1A-3 NMSA 1978 (being Laws 1993, Chapter 11, Section 3, as amended) 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 two million dollars ($2,000,000);

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 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

J. the affairs of a consumer credit bank shall be managed by a board of directors that shall exercise the consumer credit bank's powers and be responsible for the discharge of the consumer credit bank's duties. The number of directors, which shall not be fewer than three or more than twenty-five, shall be fixed by the bylaws. At least three-fourths of the directors shall be United States citizens."

Section 10

Section 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 529, AS AMENDED

WITH CERTIFICATE OF CORRECTION

CHAPTER 24

RELATING TO ALTERNATIVE FUELS; DESIGNATING A WATER-PHASED HYDROCARBON FUEL EMULSION AS AN ALTERNATIVE FUEL; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 7-16B-3 NMSA 1978 (being Laws 1995, Chapter 16, Section 3) is amended to read:

"7-16B-3. DEFINITIONS.--As used in the Alternative Fuel Tax Act:

A. "alternative fuel" means liquefied petroleum gas, compressed natural gas, liquefied natural gas or a water-phased hydrocarbon fuel emulsion consisting of a hydrocarbon base and water in an amount not less than twenty percent by volume of the total water-phased fuel emulsion, all of which may be 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 supply 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; provided, however, that in the case of a water-phased hydrocarbon fuel emulsion a gallon shall be measured only with respect to the hydrocarbon base portion of the emulsion and not to the water base portion, 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 2

Section 2. 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, a fuel mixture containing not less than eighty-five percent ethanol or methanol or a water-phased hydrocarbon fuel emulsion consisting of a hydrocarbon base and water in an amount not less than twenty percent by volume of the total water-phased fuel emulsion;

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."

HOUSE BILL 694

CHAPTER 25

RELATING TO PROPERTY; ENACTING THE UNIFORM UNCLAIMED PROPERTY ACT (1995); ESTABLISHING PROCEDURES FOR THE DISPOSITION OF UNCLAIMED PROPERTY; PROVIDING PENALTIES; 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. DEFINITIONS.--As used in the Uniform Unclaimed Property Act (1995):

(1) "administrator" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department who exercises authority lawfully delegated to him by the secretary;

(2) "apparent owner" means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder;

(3) "business association" means a corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, safekeeping depository, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit;

(4) "domicile" means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation;

(5) "financial organization" means a savings and loan association, building and loan association, savings bank, industrial bank, bank, banking organization or credit union;

(6) "holder" means a person obligated to hold for the account of, or deliver or pay to, the owner property that is subject to the Uniform Unclaimed Property Act (1995);

(7) "insurance company" means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers' compensation insurance;

(8) "mineral" means gas; oil; coal; other gaseous, liquid, and solid hydrocarbons; oil shale; cement material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and nonfissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance defined as a mineral by the law of New Mexico;

(9) "mineral proceeds" means amounts payable for the extraction, production, or sale of minerals, or, upon the abandonment of those payments, all payments that become payable thereafter. The term includes amounts payable:

(i) for the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties and delay rentals;

(ii) for the extraction, production or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments and production payments; and

(iii) under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement and farm-out agreement;

(10) "money order" includes an express money order and a personal money order, on which the remitter is the purchaser. The term does not include a bank money order or any other instrument sold by a financial organization if the seller has obtained the name and address of the payee;

(11) "owner" means a person who has a legal or equitable interest in property subject to the Uniform Unclaimed Property Act (1995) or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant or payee in the case of other property;

(12) "person" means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

(13) "property" means tangible property described in Section 3 of the Uniform Unclaimed Property Act (1995) or a fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder's business, or by a government, governmental subdivision, agency, or instrumentality, and all income or increments therefrom. The term includes property that is referred to as or evidenced by:

(i) money, a check, draft, deposit, interest or dividend;

(ii) credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds or unidentified remittance;

(iii) stock or other evidence of ownership of an interest in a business association or financial organization;

(iv) a bond, debenture, note or other evidence of indebtedness;

(v) money deposited to redeem stocks, bonds, coupons, or other securities or to make distributions;

(vi) an amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance; and

(vii) an amount 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;

(14) "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(15) "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; and

(16) "utility" means a person who owns or operates for public use any plant, equipment, real 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. PRESUMPTIONS OF ABANDONMENT.--

(a) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(1) traveler's check, fifteen years after issuance;

(2) money order, seven years after issuance;

(3) stock or other equity interest in a business association or financial organization, including a security entitlement under Article 8 of the Uniform Commercial Code, five years after the earlier of (i) the date of the most recent dividend, stock split, or other distribution unclaimed by the apparent owner, or (ii) the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or after the holder discontinued mailings, notifications, or communications to the apparent owner;

(4) debt of a business association or financial organization, other than a bearer bond or an original issue discount bond, five years after the date of the most recent interest payment unclaimed by the apparent owner;

(5) a demand, savings, or time deposit, including a deposit that is automatically renewable, five years after the earlier of maturity or the date of the last indication by the owner of interest in the property; but a deposit that is automatically renewable is deemed matured for purposes of this section upon its initial date of maturity, unless the owner has consented to a renewal at or about the time of the renewal and the consent is in writing or is evidenced by a memorandum or other record on file with the holder;

(6) money or credits owed to a customer as a result of a retail business transaction, three years after the obligation accrued;

(7) gift certificate, three years after December 31 of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is deemed to be sixty percent of the certificate's face value;

(8) amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

(9) property distributable by a business association or financial organization in a course of dissolution, one year after the property becomes distributable;

(10) property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, one year after the distribution date;

(11) property held by a court, government, governmental subdivision, agency, or instrumentality, one year after the property becomes distributable;

(12) wages or other compensation for personal services, one year after the compensation becomes payable;

(13) deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes payable;

(14) property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty; and

(15) all other property, five years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(b) At the time that an interest is presumed abandoned under Subsection (a) of this section, any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(c) Property is unclaimed if, for the applicable period set forth in Subsection (a), the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the

holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property. A communication with an owner by a person other than the holder or its representative who has not in writing identified the property to the owner is not an indication of interest in the property by the owner.

(d) An indication of an owner's interest in property includes:

(i) the presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or financial organization or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(ii) owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease, or change the amount or type of property held in the account;

(iii) the making of a deposit to or withdrawal from a bank account; and

(iv) the payment of a premium with respect to a property interest in an insurance policy; but the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(e) Property is payable or distributable for purposes of the Uniform Unclaimed Property Act (1995) notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment.

Section 3

Section 3. CONTENTS OF SAFE DEPOSIT BOX OR OTHER SAFEKEEPING DEPOSITORY.--Tangible property held in a safe deposit box or other safekeeping depository in this state in the ordinary course of the holder's business and proceeds resulting from the sale of the property permitted by other law, are presumed abandoned if the property remains unclaimed by the owner for more than five years after expiration of the lease or rental period on the box or other depository.

Section 4

Section 4. RULES FOR TAKING CUSTODY.--Except as otherwise provided in the Uniform Unclaimed Property Act (1995) or by other statute of this state, property that is presumed abandoned, whether located in this or another state, is subject to the custody of this state if:

(1) the last known address of the apparent owner, as shown on the records of the holder, is in this state;

(2) the records of the holder do not reflect the identity of the person entitled to the property and it is established that the last known address of the person entitled to the property is in this state;

(3) the records of the holder do not reflect the last known address of the apparent owner and it is established that:

(i) the last known address of the person entitled to the property is in this state; or

(ii) the holder is domiciled in this state or is a government or governmental subdivision, agency, or instrumentality of this state and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;

(4) the last known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide for the escheat or custodial taking of the property and the holder is domiciled in this state or is a government or governmental subdivision, agency, or instrumentality of this state;

(5) the last known address of the apparent owner, as shown on the records of the holder, is in a foreign country and the holder is domiciled in this state or is a government or governmental subdivision, agency, or instrumentality of this state;

(6) the transaction out of which the property arose occurred in this state, the holder is domiciled in a state that does not provide for the escheat or custodial taking of the property, and the last known address of the apparent owner or other person entitled to the property is unknown or is in a state that does not provide for the escheat or custodial taking of the property; or

(7) the property is a traveler's check or money order purchased in this state, or the issuer of the traveler's check or money order has its principal place of business in this state and the issuer's records show that the instrument was purchased in a state that does not provide for the escheat or custodial taking of the property, or does not show the state in which the instrument was purchased.

Section 5

Section 5. DORMANCY CHARGE.--A holder may deduct from property presumed abandoned a charge imposed by reason of the owner's failure to claim the property within a specified time only if there is a valid and enforceable written contract between the holder and the owner under which the holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed or otherwise

canceled. The amount of the deduction is limited to an amount that is not unconscionable.

Section 6

Section 6. BURDEN OF PROOF AS TO PROPERTY EVIDENCED BY RECORD OF CHECK OR DRAFT.--A record of the issuance of a check, draft or similar instrument is prima facie evidence of an obligation. In claiming property from a holder who is also the issuer, the administrator's burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the requisite period of abandonment. Defenses of payment, satisfaction, discharge and want of consideration are affirmative defenses that must be established by the holder.

Section 7

Section 7. REPORT OF ABANDONED PROPERTY.--

(a) A holder of property presumed abandoned shall make a report to the administrator concerning the property.

(b) The report must be verified and must contain:

(1) a description of the property;

(2) except with respect to a traveler's check or money order, the name, if known, and last known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of fifty dollars ($50.00) or more;

(3) an aggregated amount of items valued under fifty dollars ($50.00) each;

(4) in the case of an amount of fifty dollars ($50.00) or more held or owing under an annuity or a life or endowment insurance policy, the full name and last known address of the annuitant or insured and of the beneficiary;

(5) in the case of property held in a safe deposit box or other safekeeping depository, an indication of the place where it is held and where it may be inspected by the administrator, and any amounts owing to the holder;

(6) the date, if any, on which the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property; and

(7) other information that the administrator by rule prescribes as necessary for the administration of the Uniform Unclaimed Property Act (1995).

(c) If a holder of property presumed abandoned is a successor to another person who previously held the property for the apparent owner or the holder has changed its name while holding the property, the holder shall file with the report its former names, if any, and the known names and addresses of all previous holders of the property.

(d) The report must be filed before November 1 of each year and cover the twelve months next preceding July 1 of that year, but a report with respect to a life insurance company must be filed before May 1 of each year for the calendar year next preceding.

(e) The holder of property presumed abandoned shall send written notice to the apparent owner, not more than one hundred twenty days or less than sixty days before filing the report, stating that the holder is in possession of property subject to the Uniform Unclaimed Property Act (1995), if:

(1) the holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate;

(2) the claim of the apparent owner is not barred by a statute of limitations; and

(3) the value of the property is fifty dollars ($50.00) or more.

(f) Before the date for filing the report, the holder of property presumed abandoned may request the administrator to extend the time for filing the report. The administrator may grant the extension for good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due, which terminates the accrual of additional interest on the amount paid.

(g) The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with Subsection (e) of this section.

Section 8

SECTION 8. PAYMENT OR DELIVERY OF ABANDONED PROPERTY.--

(a) Except for property held in a safe deposit box or other safekeeping depository, upon filing the report required by Section 7 of the Uniform Unclaimed Property Act (1995), the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the administrator the property described in the report as unclaimed, but if the property is an automatically renewable deposit, and a penalty or

forfeiture in the payment of interest would result, the time for compliance is extended until a penalty or forfeiture would no longer result. Tangible property held in a safe deposit box or other safekeeping depository may not be delivered to the administrator until one hundred twenty days after filing the report required by Section 7 of the Uniform Unclaimed Property Act (1995).

(b) If the property reported to the administrator is a security or security entitlement under Article 8 of the Uniform Commercial Code, the administrator is an appropriate person to make an indorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with Article 8 of the Uniform Commercial Code.

(c) If the holder of property reported to the administrator is the issuer of a certificated security, the administrator has the right to obtain a replacement certificate pursuant to Section 55-8-405 NMSA 1978, but an indemnity bond is not required.

(d) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner and must be indemnified against claims of any person in accordance with Section 10 of the Uniform Unclaimed Property Act (1995).

Section 9

Section 9. NOTICE AND PUBLICATION OF LISTS OF ABANDONED PROPERTY.--

(a) The administrator shall publish a notice not later than November 30 of the year next following the year in which abandoned property has been paid or delivered to the administrator. The notice must be published in a newspaper of general circulation in the county of this state in which is located the last known address of any person named in the notice. If a holder does not report an address for the apparent owner, or the address is outside this state, the notice must be published in the county in which the holder has its principal place of business within this state or another county that the administrator reasonably selects. The advertisement must be in a form that, in the judgment of the administrator, is likely to attract the attention of the apparent owner of the unclaimed property. The form must contain:

(1) the name of each person appearing to be the owner of the property, as set forth in the report filed by the holder;

(2) the last known address or location of each person appearing to be the owner of the property, if an address or location is set forth in the report filed by the holder;

(3) a statement explaining that property of the owner is presumed to be abandoned and has been taken into the protective custody of the administrator; and

(4) a statement that information about the property and its return to the owner is available to a person having a legal or beneficial interest in the property, upon request to the administrator.

(b) The administrator is not required to advertise the name and address or location of an owner of property having a total value less than fifty dollars ($50.00), or information concerning a traveler's check, money order or similar instrument.

Section 10

Section 10. CUSTODY BY STATE--RECOVERY BY HOLDER-- DEFENSE OF HOLDER.--

(a) In this section, payment or delivery is made in "good faith" if:

(1) payment or delivery was made in a reasonable attempt to comply with the Uniform Unclaimed Property Act (1995);

(2) the holder was not then in breach of a fiduciary obligation with respect to the property and had a reasonable basis for believing, based on the facts then known, that the property was presumed abandoned; and

(3) there is no showing that the records under which the payment or delivery was made did not meet reasonable commercial standards of practice.

(b) Upon payment or delivery of property to the administrator, the state assumes custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the administrator in good faith is relieved of all liability arising thereafter with respect to the property.

(c) A holder who has paid money to the administrator pursuant to the Uniform Unclaimed Property Act (1995) may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the administrator shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and that payment was made to a person who reasonably appeared to be entitled to payment. The holder must be reimbursed for payment made even if the payment was made to a person whose claim was barred under Section 19(a) of the Uniform Unclaimed Property Act (1995).

(d) A holder who has delivered property other than money to the administrator pursuant to the Uniform Unclaimed Property Act (1995) may reclaim the property if it is still in the possession of the administrator, without paying any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder.

(e) The administrator may accept a holder's affidavit as sufficient proof of the holder's right to recover money and property under this section.

(f) If a holder pays or delivers property to the administrator in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the administrator, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim resulting from payment or delivery of the property to the administrator.

(g) Property removed from a safe deposit box or other safekeeping depository is received by the administrator subject to the holder's right to be reimbursed for the cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The administrator shall reimburse the holder out of the proceeds remaining after deducting the expense incurred by the administrator in selling the property.

Section 11

Section 11. CREDITING OF DIVIDENDS, INTEREST AND INCREMENTS TO OWNER'S ACCOUNT.--If property other than money is delivered to the administrator under the Uniform Unclaimed Property Act (1995), the owner is entitled to receive from the administrator any income or gain realized or accruing on the property at or before liquidation or conversion of the property into money. If the property was an interest-bearing demand, savings, or time deposit, including a deposit that is automatically renewable, the administrator shall pay interest at a rate of five percent a year or any lesser rate the property earned while in the possession of the holder. Interest begins to accrue when the property is delivered to the administrator and ceases on the earlier of the expiration of ten years after delivery or the date on which payment is made to the owner. Interest on interest-bearing property is not payable for any period before the effective date of the Uniform Unclaimed Property Act (1995), unless authorized by law superseded by that act.

Section 12

Section 12. PUBLIC SALE OF ABANDONED PROPERTY.--

(a) Except as otherwise provided in this section, the administrator, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in the state which in the judgment of the administrator affords

the most favorable market for the property. The administrator may decline the highest bid and re-offer the property for sale if the administrator considers the bid to be insufficient. The administrator need not offer the property for sale if the administrator considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this section must be preceded by a single publication of notice, at least three weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold.

(b) Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the administrator. If securities are sold by the administrator before the expiration of three years after their delivery to the administrator, a person making a claim under the Uniform Unclaimed Property Act (1995) before the end of the three-year period is entitled to the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever is greater, plus dividends, interest and other increments thereon up to the time the claim is made, less any deduction for expenses of sale. A person making a claim under the Uniform Unclaimed Property Act (1995) after the expiration of the three-year period is entitled to receive the securities delivered to the administrator by the holder, if they still remain in the custody of the administrator, or the net proceeds received from sale, and is not entitled to receive any appreciation in the value of the property occurring after delivery to the administrator, except in a case of intentional misconduct or malfeasance by the administrator.

(c) A purchaser of property at a sale conducted by the administrator pursuant to the Uniform Unclaimed Property Act (1995) takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The administrator shall execute all documents necessary to complete the transfer of ownership.

Section 13

Section 13. DEPOSIT OF FUNDS.--

(a) Except as otherwise provided by this section, the administrator shall promptly deposit in the tax administration suspense fund for distribution to the general fund of this state all funds received under the Uniform Unclaimed Property Act (1995), including the proceeds from the sale of abandoned property under Section 12 of that act. The administrator shall retain in the unclaimed property fund at least one hundred thousand dollars ($100,000) from which the administrator shall pay claims duly allowed. The administrator shall record the name and last known address of each person appearing from the holders' reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or annuity listed in the report of an insurance company, its number, the name of the company, and the amount due.

(b) Before making a deposit to the tax administration suspense fund, the administrator may deduct:

(1) expenses of sale of abandoned property;

(2) costs of mailing and publication in connection with abandoned property;

(3) reasonable service charges; and

(4) expenses incurred in examining records of holders of property and in collecting the property from those holders.

Section 14

Section 14. CLAIM OF ANOTHER STATE TO RECOVER PROPERTY.--

(a) After property has been paid or delivered to the administrator under the Uniform Unclaimed Property Act (1995), another state may recover the property if:

(1) the property was paid or delivered to the custody of this state because the records of the holder did not reflect a last known location of the apparent owner within the borders of the other state and the other state establishes that the apparent owner or other person entitled to the property was last known to be located within the borders of that state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(2) the property was paid or delivered to the custody of this state because the laws of the other state did not provide for the escheat or custodial taking of the property, and under the laws of that state subsequently enacted the property has escheated or become subject to a claim of abandonment by that state;

(3) the records of the holder were erroneous in that they did not accurately identify the owner of the property and the last known location of the owner within the borders of another state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(4) the property was subjected to custody by this state under Section 4(6) of the Uniform Unclaimed Property Act (1995), and under the laws of the state of domicile of the holder the property has escheated or become subject to a claim of abandonment by that state; or

(5) the property is a sum payable on a traveler's check, money order or similar instrument that was purchased in the other state and delivered into the custody of this state under Section 4(7) of the Uniform Unclaimed Property Act (1995),

and under the laws of the other state the property has escheated or become subject to a claim of abandonment by that state.

(b) A claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the administrator, who shall decide the claim within ninety days after it is presented. The administrator shall allow the claim upon determining that the other state is entitled to the abandoned property under Subsection (a) of this section.

(c) The administrator shall require another state, before recovering property under this section, to agree to indemnify this state and its officers and employees against any liability on a claim to the property.

Section 15

Section 15. FILING CLAIM WITH ADMINISTRATOR--HANDLING OF CLAIMS BY ADMINISTRATOR.--

(a) A person, excluding another state, claiming property paid or delivered to the administrator may file a claim on a form prescribed by the administrator and verified by the claimant.

(b) Within ninety days after a claim is filed, the administrator shall allow or deny the claim and give written notice of the decision to the claimant. If the claim is denied, the administrator shall inform the claimant of the reasons for the denial and specify what additional evidence is required before the claim will be allowed. The claimant may then file a new claim with the administrator or maintain an action under Section 16 of the Uniform Unclaimed Property Act (1995).

(c) Within thirty days after a claim is allowed, the property or the net proceeds of a sale of the property must be delivered or paid by the administrator to the claimant, together with any dividend, interest or other increment to which the claimant is entitled under Sections 11 and 12 of the Uniform Unclaimed Property Act (1995).

(d) A holder who pays the owner for property that has been delivered to the state and which, if claimed from the administrator by the owner would be subject to an increment under Sections 11 and 12 of the Uniform Unclaimed Property Act (1995), may recover from the administrator the amount of the increment.

Section 16

Section 16. ACTION TO ESTABLISH CLAIM.--A person aggrieved by a decision of the administrator or whose claim has not been acted upon within ninety days after its filing may maintain an original action to establish the claim in the district court for the first judicial district, naming the administrator as a defendant. If the aggrieved person

establishes the claim in an action against the administrator, the court may award the claimant reasonable attorney's fees.

Section 17

Section 17. ELECTION TO TAKE PAYMENT OR DELIVERY.--

(a) The administrator may decline to receive property reported under the Uniform Unclaimed Property Act (1995) which the administrator considers to have a value less than the expenses of notice and sale.

(b) A holder, with the written consent of the administrator and upon conditions and terms prescribed by the administrator, may report and deliver property before the property is presumed abandoned. Property so delivered must be held by the administrator and is not presumed abandoned until it otherwise would be presumed abandoned under the Uniform Unclaimed Property Act (1995).

Section 18

Section 18. DESTRUCTION OR DISPOSITION OF PROPERTY HAVING NO SUBSTANTIAL COMMERCIAL VALUE--IMMUNITY FROM LIABILITY.--If the administrator determines after investigation that property delivered under the Uniform Unclaimed Property Act (1995) has no substantial commercial value, the administrator may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against the state or any officer or against the holder for or on account of an act of the administrator under this section, except for intentional misconduct or malfeasance.

Section 19

Section 19. PERIODS OF LIMITATION.--

(a) The expiration, before or after the effective date of the Uniform Unclaimed Property Act (1995), of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute or court order, does not preclude the property from being presumed abandoned or affect a duty to file a report or to pay or deliver or transfer property to the administrator as required by the Uniform Unclaimed Property Act (1995).

(b) An action or proceeding may not be maintained by the administrator to enforce the Uniform Unclaimed Property Act (1995) in regard to the reporting, delivery, or payment of property more than ten years after the holder specifically identified the property in a report filed with the administrator or gave express notice to the administrator of a dispute regarding the property. In the absence of such a report or other express notice, the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent.

Section 20

Section 20. REQUESTS FOR REPORTS AND EXAMINATION OF RECORDS.--

(a) The administrator may require a person who has not filed a report, or a person whom the administrator believes has filed an inaccurate, incomplete or false report, to file a verified report in a form specified by the administrator. The report must state whether the person is holding property reportable under the Uniform Unclaimed Property Act (1995), describe property not previously reported or as to which the administrator has made inquiry, and specifically identify and state the amounts of property that may be in issue.

(b) The administrator, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with the Uniform Unclaimed Property Act (1995). The administrator may conduct the examination even if the person believes it is not in possession of any property that must be reported, paid or delivered under the Uniform Unclaimed Property Act (1995). The administrator may contract with any other person to conduct the examination on behalf of the administrator.

(c) The administrator at reasonable times may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association or financial association that is the holder of property presumed abandoned if the administrator has given the notice required by Subsection (b) of this section to both the association or organization and the agent at least ninety days before the examination.

(d) Documents and working papers obtained or compiled by the administrator, or the administrator's agents, employees or designated representatives, in the course of conducting an examination are confidential and are not public records, but the documents and papers may be:

(1) used by the administrator in the course of an action to collect unclaimed property or otherwise enforce the Uniform Unclaimed Property Act (1995);

(2) used in joint examinations conducted with or pursuant to an agreement with another state, the federal government, or any other governmental subdivision, agency or instrumentality;

(3) produced pursuant to subpoena or court order; or

(4) disclosed to the abandoned property office of another state for that state's use in circumstances equivalent to those described in this subsection, if the other state is bound to keep the documents and papers confidential.

(e) If an examination of the records of a person results in the disclosure of property reportable under the Uniform Unclaimed Property Act (1995), the administrator

may assess the cost of the examination against the holder at the rate of two hundred dollars ($200) a day for each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable. The cost of an examination made pursuant to Subsection (c) of this section may be assessed only against the business association or financial organization.

(f) If, after the effective date of the Uniform Unclaimed Property Act (1995), a holder does not maintain the records required by Section 21 of that act and the records of the holder available for the periods subject to that act are insufficient to permit the preparation of a report, the administrator may require the holder to report and pay to the administrator the amount the administrator reasonably estimates, on the basis of any available records of the holder or by any other reasonable method of estimation, should have been but was not reported.

Section 21

Section 21. RETENTION OF RECORDS.--

(a) Except as otherwise provided in Subsection (b) of this section, a holder required to file a report under Section 7 of the Uniform Unclaimed Property Act (1995) shall maintain the records containing the information required to be included in the report for ten years after the holder files the report, unless a shorter period is provided by rule of the administrator.

(b) A business association or financial organization that sells, issues, or provides to others for sale or issue in this state, traveler's checks, money orders, or similar instruments other than third-party bank checks, on which the business association or financial organization is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the state and date of issue, for three years after the holder files the report.

Section 22

Section 22. ENFORCEMENT.--The administrator may maintain an action in this or another state to enforce the Uniform Unclaimed Property Act (1995). The court may award reasonable attorney's fees to the prevailing party.

Section 23

Section 23. INTERSTATE AGREEMENTS AND COOPERATION-- JOINT AND RECIPROCAL ACTIONS WITH OTHER STATES.--

(a) The administrator may enter into an agreement with another state to exchange information relating to abandoned property or its possible existence. The agreement may permit the other state, or another person acting on behalf of a state, to examine records as authorized in Section 20 of the Uniform Unclaimed Property Act

(1995). The administrator by rule may require the reporting of information needed to enable compliance with an agreement made under this section and prescribe the form.

(b) The administrator may join with another state to seek enforcement of the Uniform Unclaimed Property Act (1995) against any person who is or may be holding property reportable under that act.

(c) At the request of another state, the attorney general of this state may maintain an action on behalf of the other state to enforce, in this state, the unclaimed property laws of the other state against a holder of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the attorney general in maintaining the action.

(d) The administrator may request that the attorney general of another state or another attorney commence an action in the other state on behalf of the administrator. With the approval of the attorney general of this state, the administrator may retain any other attorney to commence an action in this state on behalf of the administrator. This state shall pay all expenses, including attorney's fees, in maintaining an action under this subsection. With the administrator's approval, the expenses and attorney's fees may be paid from money received under the Uniform Unclaimed Property Act (1995). The administrator may agree to pay expenses and attorney's fees based in whole or in part on a percentage of the value of any property recovered in the action. Any expenses or attorney's fees paid under this subsection may not be deducted from the amount that is subject to the claim by the owner under the Uniform Unclaimed Property Act (1995).

Section 24

Section 24. INTEREST AND PENALTIES.--

(a) A holder who fails to report, pay or deliver property within the time prescribed by the Uniform Unclaimed Property Act (1995) shall pay to the administrator interest at the annual rate set forth in Section 7-1-67 NMSA 1978 on the property or value thereof from the date the property should have been reported, paid or delivered.

(b) Except as otherwise provided in Subsection (c) of this section, a holder who fails to report, pay or deliver property within the time prescribed by the Uniform Unclaimed Property Act (1995), or fails to perform other duties imposed by that act, shall pay to the administrator, in addition to interest as provided in Subsection (a) of this section, a civil penalty of one hundred dollars ($100) for each day the report, payment or delivery is withheld, or the duty is not performed, up to a maximum of five thousand dollars ($5,000).

(c) A holder who willfully fails to report, pay or deliver property within the time prescribed by the Uniform Unclaimed Property Act (1995), or willfully fails to perform other duties imposed by that act, shall pay to the administrator, in addition to

interest as provided in Subsection (a) of this section, a civil penalty of two hundred fifty dollars ($250) for each day the report, payment or delivery is withheld, or the duty is not performed, up to a maximum of seven thousand five hundred dollars ($7,500), plus twenty-five percent of the value of any property that should have been but was not reported.

(d) A holder who makes a fraudulent report shall pay to the administrator, in addition to interest as provided in Subsection (a) of this section, a civil penalty of five hundred dollars ($500) for each day from the date a report under the Uniform Unclaimed Property Act (1995) was due, up to a maximum of twelve thousand five hundred dollars ($12,500), plus twenty-five percent of the value of any property that should have been but was not reported.

(e) The administrator for good cause may waive, in whole or in part, penalties under Subsections (b) and (c) of this section, and shall waive penalties if the holder acted in good faith and without negligence.

Section 25

Section 25. AGREEMENT TO LOCATE PROPERTY.--

(a) An agreement by an owner, the primary purpose of which is to locate, deliver, recover or assist in the recovery of property that is presumed abandoned is void and unenforceable if it was entered into during the period commencing on the date the property was presumed abandoned and extending to a time that is twenty-four months after the date the property is paid or delivered to the administrator. This subsection does not apply to an owner's agreement with an attorney to file a claim as to identified property or contest the administrator's denial of a claim.

(b) An agreement by an owner, the primary purpose of which is to locate, deliver, recover or assist in the recovery of property is enforceable only if the agreement is in writing, clearly sets forth the nature of the property and the services to be rendered, is signed by the apparent owner, and states the value of the property before and after the fee or other compensation has been deducted.

(c) If an agreement covered by this section applies to mineral proceeds and the agreement contains a provision to pay compensation that includes a portion of the underlying minerals or any mineral proceeds not then presumed abandoned, the provision is void and unenforceable.

(d) An agreement covered by this section which provides for compensation that is unconscionable is unenforceable except by the owner. An owner who has agreed to pay compensation that is unconscionable, or the administrator on behalf of the owner, may maintain an action to reduce the compensation to a conscionable amount. The court may award reasonable attorney's fees to an owner who prevails in the action.

(e) This section does not preclude an owner from asserting that an agreement covered by this section is invalid on grounds other than unconscionable compensation.

Section 26

Section 26. FOREIGN TRANSACTIONS.--The Uniform Unclaimed Property Act (1995) does not apply to:

(1) property held, due and owing in a foreign country and arising out of a foreign transaction;

(2) funds in a member's share account in a credit union if the bylaws of the credit union provide for unclaimed funds to be used for educational or charitable uses; and

(3) 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.

Section 27

Section 27. TRANSITIONAL PROVISIONS.--

(a) An initial report filed under the Uniform Unclaimed Property Act (1995) for property that was not required to be reported before the effective date of that act, but which is subject to that act, must include all items of property that would have been presumed abandoned during the ten-year period next preceding the effective date of the Uniform Unclaimed Property Act (1995) as if that act had been in effect during that period.

(b) The Uniform Unclaimed Property Act (1995) does not relieve a holder of a duty that arose before the effective date of that act to report, pay or deliver property. Except as otherwise provided in Section 19(b) of the Uniform Unclaimed Property Act (1995), a holder who did not comply with the law in effect before the effective date of that act is subject to the applicable provisions for enforcement and penalties which then existed, which are continued in effect for the purpose of this section.

Section 28

Section 28. RULES.--The administrator may adopt pursuant to the State Rules Act rules necessary to carry out the Uniform Unclaimed Property Act (1995).

Section 29

Section 29. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--The Uniform Unclaimed Property Act (1995) 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 30

Section 30. SHORT TITLE.--This act may be cited as the "Uniform Unclaimed Property Act (1995)".

Section 31

Section 31. SEVERABILITY CLAUSE.--If any provision of the Uniform Unclaimed Property Act (1995) or the 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 the act are severable.

Section 32

Section 32. Section 7-8-20.1 NMSA 1978 (being Laws 1990, Chapter 98, Section 1) is amended to read:

"7-8-20.1. EXERCISE OF DUE DILIGENCE--LIABILITY--NOTICE.--

A. Notwithstanding any other provisions of the Uniform Un claimed Property Act (1995), the holder of unclaimed intangible property in the form of checks in payment of royalty interests, working interests or other interests payable out of oil and gas production with a value of fifty dollars ($50.00) or more who fails to exercise due diligence in attempting to locate the apparent owner of such property during the running of the period specified under Section 2 of the Uniform Unclaimed Property Act (1995) constituting a presumption of abandonment of such intangible property is subject to payment to the owner if such property is successfully claimed within the time specified by the Uniform Unclaimed Property Act (1995) or to the state of New Mexico upon payment or delivery of the property to the administrator, interest at the annual rate of interest computed as provided in Subsection B of Section 7-1-67 NMSA 1978 on the value of the intangible property, such interest running from the date commencing after the first year in which the property remained unclaimed to the date of payment or delivery.

B. Proof of the exercise of due diligence to locate the apparent owner shall be:

(1) evidence of written notice mailed to the last known address of the apparent owner; and

(2) proof of publication of notice to the apparent owner made between the end of the first year in which the property remained unclaimed and the end of the third year in which the property remained unclaimed. The publication of the notice required by this subsection for property presumed to be abandoned under the provisions of Section 7 of the Uniform Unclaimed Property Act (1995) shall be made at least thirty days, but not more than ninety days, prior to the due date on which the report of abandoned property is required to be filed.

C. Publication as required in Subsection B of this section consists of publication in a newspaper of general circulation in the county of this state in which is located the last known address of the apparent owner, or if no address is listed or the address is outside the state, in a newspaper published in the county in which the holder of the property has his principal place of business within the state. The notice shall be published at least once a week for two consecutive weeks and shall be entitled:

"NOTICE OF THE NAME OF A PERSON APPEARING TO

BE THE OWNER OF ABANDONED PROPERTY".

D. The published notice shall contain:

(1) the name and last known address, if any, of the person entitled to notice as specified in this section;

(2) a statement that information concerning the unclaimed property may be obtained from the holder of the property;

(3) the name and address of the holder of the property; and

(4) a statement that if proof of claim is not presented by the owner to the holder and the owner's right to receive the property is not established to the holder's satisfaction before the expiration of the period specified by the Uniform Unclaimed Property Act (1995) for the presumption of abandonment, the intangible property will be placed in the custody of the state of New Mexico and subject to escheat to the general fund of the state.

E. The provisions of this section shall not apply to the United States or any agency or instrumentality of the United States or to the state of New Mexico or any agency or political subdivision of the state.

F. Any holder of property that has been presumed to be abandoned for more than three years as of January 1, 1990 shall not be presumed to be negligent by

the failure to publish a notice in a newspaper of general circulation as required by this section."

Section 33

Section 33. REPEAL.--Sections 7-8-1 through 7-8-20 and 7-8-21 through 7-8-40 NMSA 1978 (being Laws 1959, Chapter 132, Section 1 and Laws 1989, Chapter 293, Sections 2 through 41, as amended) are repealed.

Section 34

Section 34. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 103

CHAPTER 26

RELATING TO MOTOR VEHICLES; AMENDING SECTION 66-5-21 NMSA 1978 (BEING LAWS 1978, CHAPTER 35, SECTION 243, AS AMENDED) TO REQUIRE THE MOTOR VEHICLE DIVISION TO ALLOW FOR ALL DRIVERS A GRACE PERIOD OF THIRTY DAYS AFTER THE DRIVER'S BIRTH DATE BEFORE EXPIRATION OF DRIVERS LICENSES.

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. A license issued pursuant to Section 66-5-19 NMSA 1978 shall expire thirty days after the applicant's birthday in the year in which the license expires. Each 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."

HB 828

CHAPTER 27

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; EXTENDING THE DELAYED REPEAL OF THE HEALTH INSURANCE ALLIANCE ACT.

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

Section 1

Section 1. Laws 1994, Chapter 75, Section 35 is amended to read:

"Section 35. DELAYED REPEAL.--The Health Insurance Alliance Act is repealed June 30, 2002."

HOUSE BANKING AND INDUSTRY

COMMITTEE SUBSTITUTE FOR

HOUSE BILL 1370

CHAPTER 28

RELATING TO GASOLINE SALES INFORMATION; REPEALING SECTION 62-6-27 NMSA 1978 (BEING LAWS 1994, CHAPTER 141, SECTION 1).

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

Section 1

Section 1. REPEAL.--Section 62-6-27 NMSA 1978 (being Laws 1994, Chapter 141, Section 1) is repealed.

SENATE BILL 328

CHAPTER 29

RELATING TO CAPITAL EXPENDITURES; EXTENDING THE EXPENDITURE PERIOD FOR A GENERAL FUND APPROPRIATION FOR THE HISPANIC CULTURAL CENTER IN ALBUQUERQUE; DECLARING AN EMERGENCY.

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

Section 1

Section 1. GENERAL FUND--EXTENDING EXPENDITURE PERIOD--APPROPRIATION.--

A. The period of time in which the appropriation made pursuant to Subsection K of Section 3 of Chapter 147 of Laws 1994 to the Hispanic cultural division of the office of cultural affairs for planning, designing and constructing a Hispanic cultural center in the southwest portion of Albuquerque in Bernalillo county shall be extended through fiscal year 1999.

B. Any unexpended or unencumbered balance remaining at the end of fiscal year 1999 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 409

WITH EMERGENCY CLAUSE

SIGNED MARCH 19, 1997

CHAPTER 30

RELATING TO PIPELINES; ESTABLISHING A ONE-CALL NOTIFICATION SYSTEM FOR UNDERGROUND EXCAVATIONS; 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 Chapter 62, Article 14 NMSA 1978 is enacted to read:

"PIPELINE ONE-CALL NOTIFICATION SYSTEM.--

A. Every owner or operator of a pipeline facility shall be a member of a one-call notification system. A one-call notification system may be for a region of the state or statewide in scope, unless federal law provides otherwise.

B. Each one-call notification system shall be operated by:

(1) an owner or operator of pipeline facilities;

(2) a private contractor;

(3) a state or local government agency; or

(4) a person who is otherwise eligible under state law to operate a one-call notification system.

C. If the one-call notification system is operated by owners or operators of pipeline facilities, it shall be established as a nonprofit entity governed by a board of directors that shall establish the operating processes, procedures and technology needed for a one-call notification system. The board shall further establish a procedure or formula to determine the equitable share of each member for the costs of the one-call notification system. The board may include representatives of excavators or other persons deemed eligible to participate in the system who are not owners or operators.

D. Excavators shall give advance notice to the one-call notification system operating in the intended excavation area and provide information established by rule and regulation of the commission, except when excavations are by or for a person that:

(1) owns or leases or owns a mineral leasehold interest in the real property on which the excavation occurs; and

(2) operates all underground facilities located in the intended excavation area.

E. The one-call notification system shall promptly transmit excavation notice information to owners or operators of pipeline facilities in the intended excavation area.

F. After receiving advance notice, owners and operators of pipeline facilities shall locate and mark their pipeline facilities in the intended excavation area.

G. The one-call notification system shall provide a toll-free telephone number or another comparable and reliable means of communication to receive advance notice of excavation. Means of communication to distribute excavation notice to owners or operators of pipeline facilities shall be reliable and capable of coordination with one-call notification systems operating in other regions of the state.

H. Operators of one-call notification systems shall notify the commission of its members and the name and telephone number of the contact person for each member.

I. One-call notification systems and owners and operators of pipeline facilities shall promote public awareness of the availability and operation of one-call notification systems and work with state and local governmental agencies charged with

issuing excavation permits to provide information concerning and promote awareness by excavators of one-call notification systems."

Section 2

Section 2. A new section of Chapter 62, Article 14 NMSA 1978 is enacted to read:

"ENFORCEMENT.--If any person excavates or intends to excavate in violation of Chapter 62, Article 14 NMSA 1978, the commission or any interested or affected owner or operator of an underground facility may file, in the district court of the county in which the excavation is occurring or intended, an action seeking to enjoin the excavation."

Section 3

Section 3. A new section of Chapter 62, Article 14 NMSA 1978 is enacted to read:

"RULE-MAKING.--The commission shall promulgate rules and regulations to implement the provisions of Chapter 62, Article 14 NMSA 1978."

Section 4

Section 4. Section 62-14-2 NMSA 1978 (being Laws 1973, Chapter 252, Section 2, as amended) is amended to read:

"62-14-2. DEFINITIONS.--For purposes of Chapter 62, Article 14 NMSA 1978:

A. "blasting" means the use of an explosive to excavate;

B. "excavate" means the movement or removal of earth using mechanical excavating equipment or blasting and includes augering, backfilling, digging, ditching, drilling, grading, plowing in, pulling in, ripping, scraping, trenching and tunneling;

C. "mechanical excavating equipment" means all equipment powered by any motor, engine or hydraulic or pneumatic device used for excavating and includes trenchers, bulldozers, backhoes, power shovels, scrapers, draglines, clam shells, augers, drills, cable and pipe plows or other plowing-in or pulling-in equipment;

D. "one-call notification system" means a communication system in which an operation center provides telephone services or other reliable means of communication for the purpose of receiving excavation notice information and distributing that information to owners and operators of pipeline facilities;

E. "pipeline" means a pipeline or system of pipelines and appurtenances for the transportation or movement of any oil or gas, oil or gas products and byproducts,

but does not include gathering lines or systems operated exclusively for the gathering of oil or gas, oil and gas products and their byproducts in any field or area, lines or systems constituting a part of any tank farm, plant facilities of any processing plant or underground storage projects, unless it is located within a municipality or in the boundaries of an established easement or right of way or within the limits of any unincorporated city, town or village or within any designated residential or commercial area such as a subdivision, business or shopping center or community development;

F. "underground utility line" means an underground conduit or cable, including fiber optics, and related facilities for transportation and delivery of electricity, telephonic or telegraphic communications or water;

G. "cable television lines and related facilities" means the facilities of any cable television system or closed-circuit coaxial cable communications system or other similar transmission service used in connection with any cable television system or other similar closed-circuit coaxial cable communications system;

H. "underground facilities" means any tangible property described in Subsections E through G of this section that is underground and does not include residential sprinklers or low-voltage lighting;

I. "person" means the legal representative of or any individual, partnership, corporation, joint venture, state, subdivision or instrumentality of the state or an association;

J. "means of location" means a mark such as a stake in earthen areas or a paint mark in paved areas that is conspicuous in nature and that is designed to last at least five days if not disturbed;

K. "advance notice" means two working days; and

L. "commission" means the state corporation commission or its successor agency."

Section 5

Section 5. Section 62-14-8 NMSA 1978 (being Laws 1973, Chapter 252, Section 8, as amended) is amended to read:

"62-14-8. PENALTIES.--In addition to any other liability imposed by law, any person who willfully fails to comply with Chapter 62, Article 14 NMSA 1978 and whose failure proximately contributes to the damage of any pipeline or underground utility line shall be subject to a civil penalty not to exceed five hundred dollars ($500) for each offense. All actions to recover the penalties provided for in this section shall be brought by either the attorney general or the appropriate district attorney upon complaint of the commission, the New Mexico public utility commission or the construction industries

division of the regulation and licensing department. All such actions shall be brought in the district court in and for the county in which the cause, or some part of the cause, arose or in which the person complained of has his principal place of business or residence. All penalties recovered in any such action shall be paid into the state general fund."

Section 6

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is October 1, 1997.

SENATE BILL 810, AS AMENDED

CHAPTER 31

RELATING TO MOTOR VEHICLE DEALER FRANCHISES; ALLOWING AND PROHIBITING CERTAIN ACTS.

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. prospective purchaser means a person who has a bona fide written agreement to purchase a franchise;

E. "manufacturer" means any person who manufactures or assembles new motor vehicles either within or outside of this state;

F. "distributor" means any person who distributes or sells new or used motor vehicles to dealers and who is not a manufacturer;

G. "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;

H. "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, service or repair of motor vehicles at wholesale, retail, leasing or otherwise;

I. "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;

J. "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;

K. "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;

L. "recreational vehicle" means any motor vehicle with a camping body that either has its own motive power or is drawn by another vehicle;

M. "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;

N. "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;

O. "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;

P. "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; and

Q. "relevant market area" means an area of a size specified in this subsection around an existing motor vehicle dealer's place of business. The size of the area shall be the greater of the area of responsibility specified in the dealer's franchise or a circle with a center at the dealer's place of business and a radius of:

(1) seven miles, if the population of the county in which the dealership is located is two hundred fifty thousand or more;

(2) fifteen miles, if the population of the county in which the dealership is located is less than two hundred fifty thousand but is thirty-five thousand or more; or

(3) twenty miles in all other cases.

If the existing and proposed dealerships are in different counties, the lesser of the applicable mileage limitations shall be used. For purposes of this subsection, the population of any area shall be determined in accordance with the most recent decennial census or the most recent population update from the national planning data corporation or other similar recognized source, whichever is later."

Section 2

Section 2. Section 57-16-5 NMSA 1978 (being Laws 1973, Chapter 6, Section 5, as amended) is amended to read:

"57-16-5. UNLAWFUL ACTS--MANUFACTURERS--DISTRIBUTORS--REPRESENTATIVES.--It is unlawful for any manufacturer, distributor or representative to:

A. coerce or attempt to coerce a dealer to order or accept delivery of any motor vehicle, appliances, equipment, parts or accessories therefor or any other commodity that the motor vehicle dealer has not voluntarily ordered;

B. coerce or attempt to coerce a dealer to order or accept delivery of any motor vehicle with special features, appliances, accessories or equipment not included in the list price of the motor vehicles as publicly advertised by the manufacturer;

C. coerce or attempt to coerce a dealer to order for any person any parts, accessories, equipment, machinery, tools, appliances or any commodity whatsoever;

D. refuse to deliver, in reasonable quantities and within a reasonable time after receipt of dealer's order, to any motor vehicle dealer having a franchise or contractual arrangement for the retail sale of any motor vehicles sold or distributed by the manufacturer, distributor or representative, any such motor vehicles, parts or accessories as are covered by the franchise or contract specifically publicly advertised by the manufacturer, distributor or representative to be available for immediate delivery; provided, however, the failure to deliver any motor vehicle, parts or accessories shall not be considered a violation of Chapter 57, Article 16 NMSA 1978 if such failure is due to an act of God, work stoppage or delay due to a strike or labor difficulty, shortage of materials, freight embargo or other cause over which the manufacturer, distributor or representative or any agent thereof has no control;

E. coerce or attempt to coerce any motor vehicle dealer to enter into any agreement with the manufacturer, distributor or representative or to do any other act prejudicial to the dealer by threatening to cancel any franchise or any contractual agreement existing between the manufacturer, distributor or representative and the dealer; provided, however, that notice in good faith to any motor vehicle dealer of the dealer's violation of any terms or provisions of the franchise or contractual agreement shall not constitute a violation of Chapter 57, Article 16 NMSA 1978;

F. terminate or cancel the franchise or selling agreement of any dealer without due cause. Due cause shall require a material breach by a dealer, due to matters within the dealer's control, of a lawful provision of a franchise or selling agreement. As used in this subsection, "material breach" means a contract violation that is substantial and significant. In determining whether due cause exists under this subsection, the court shall take into consideration only the dealer's sales in relation to the business available to the dealer; the dealer's investment and obligations; injury to the public welfare; the adequacy of the dealer's sales and service facilities, equipment and parts; the qualifications of the management, sales and service personnel to provide the consumer with reasonably good service and care of new motor vehicles; the dealer's failure to comply with the requirements of the franchise; and the harm to the manufacturer or distributor. The nonrenewal of a franchise or selling agreement, without due cause, shall constitute an unfair termination or cancellation regardless of the terms or provisions of the franchise or selling agreement. The manufacturer, distributor or representative shall notify a motor vehicle dealer in writing by registered mail of the termination or cancellation of the franchise or selling agreement of the dealer at least sixty days before the effective date thereof, stating the specific grounds for termination or cancellation; and the manufacturer, distributor or representative shall notify a motor vehicle dealer in writing by registered mail at least sixty days before the contractual term of his franchise or selling agreement expires that the same will not be renewed, stating the specific grounds for nonrenewal in those cases where there is no intention to renew, and in no event shall the contractual term of any franchise or selling agreement expire without the written consent of the motor vehicle dealer involved prior to the expiration of at least sixty days following the written notice. During the sixty-day period, either party may in appropriate circumstances petition a court to modify the sixty-day stay or to extend it pending a final determination of proceedings on the merits. The court shall have authority to grant preliminary and final injunctive relief;

G. use false, deceptive or misleading advertising in connection with his business;

H. offer to sell or to sell any motor vehicle to any motor vehicle dealer in this or any other state of the United States at a lower actual price than the actual price offered to any other motor vehicle dealer in this state for the same model vehicle similarly equipped or to utilize any device, including, but not limited to, sales promotion plans or programs that result in such lesser actual price; provided, however, the provisions of this subsection shall not apply to sales to a motor vehicle dealer for resale to any unit of the United States government, the state or any of its political subdivisions; and provided, further, the provisions of this subsection shall not apply to sales to a motor vehicle dealer of any motor vehicle ultimately sold, donated or used by the dealer in a driver education program; and provided, further, that the provisions of this subsection shall not apply so long as a manufacturer, distributor or representative offers to sell or sells new motor vehicles to all motor vehicle dealers at an equal price. For the purposes of this subsection, "actual price" means the price to be paid by the dealer less any incentive paid by the manufacturer, distributor or representative, whether paid to the dealer or the ultimate purchaser of the vehicle. This provision shall not apply to sales by

the manufacturer, distributor or representatives to the United States government or any agency thereof. The provisions of this subsection dealing with vehicle prices in any other state and defining actual price shall not apply to any manufacturer or distributor if all of the manufacturer's or distributor's dealers within fifty miles are given all cash or credit incentives, whether the incentives are offered by the manufacturer or distributor or a finance subsidiary of either, affecting the price or financing terms of a vehicle, which incentives are available in the neighboring state;

I. willfully discriminate, either directly or indirectly, in price between different purchasers of a commodity of like grade or quality where the effect of the discrimination may be to lessen substantially competition or tend to create a monopoly or to injure or destroy the business of a competitor;

J. offer to sell or to sell parts or accessories to any motor vehicle dealer for use in his own business for the purpose of repairing or replacing the same or a comparable part or accessory at a lower actual price than the actual price charged to any other motor vehicle dealer for similar parts or accessories for use in his own business; provided, however, in those cases where motor vehicle dealers have a franchise to operate and serve as wholesalers of parts and accessories to retail outlets or other dealers, whether or not the dealer is regularly designated as a wholesaler, nothing herein contained shall be construed to prevent a manufacturer, distributor or representative from selling to the motor vehicle dealer who operates and services as a wholesaler of parts and accessories such parts and accessories as may be ordered by the motor vehicle dealer for resale to retail outlets at a lower actual price than the actual price charged a motor vehicle dealer who does not operate or serve as a wholesaler of parts and accessories;

K. prevent or attempt to prevent by contract or otherwise any motor vehicle dealer from changing the capital structure of his dealership or the means by or through which he finances the operation of his dealership, provided the dealer at all times meets any reasonable capital standards agreed to between the dealership and the manufacturer, distributor or representative, and provided such change by the dealer does not result in a change in the executive management control of the dealership;

L. prevent or attempt to prevent by contract or otherwise any motor vehicle dealer or any officer, partner or stockholder of any motor vehicle dealer from selling or transferring any part of the interest of any of them to any other person or party; provided, however, that no dealer, officer, partner or stockholder shall have the right to sell, transfer or assign the franchise or power of management or control thereunder without the consent of the manufacturer, distributor or representative except that the manufacturer, distributor or representative shall not withhold consent to the sale, transfer or assignment of the franchise to a qualified buyer capable of being licensed in New Mexico and who meets the manufacturer's or distributor's uniformly applied requirement for appointment as a dealer. Uniform application shall not prevent the application of a separate standard of consent for sale, transfer or assignment to minority or women dealer candidates, nor require the application of an identical standard to all

persons in all situations. The requirement of uniform application shall be met if the manufacturer applies the same set of standards, which takes into account business performance and experience, financial qualifications, facility requirements and other relevant characteristics; provided that, if two dealers, persons or situations are identical, given the characteristics considered in the standards, the two dealers, persons or situations shall be treated identically, except as provided in this subsection. Upon request, a manufacturer or distributor shall provide its dealer with a copy of the standards that are normally relied upon by the manufacturer or distributor to evaluate a proposed sale, transfer or assignment;

M. obtain money, goods, services, anything of value or any other benefit from any other person with whom the motor vehicle dealer does business on account of or in relation to the transactions between the dealer and the other person, unless such benefit is promptly accounted for and transmitted to the motor vehicle dealer;

N. require a motor vehicle dealer to assent to a release, assignment, novation, waiver or estoppel that would relieve any person from liability imposed by Chapter 57, Article 16 NMSA 1978;

O. require any motor vehicle dealer to provide installment financing with a specified financial institution;

P. establish an additional franchise, including any franchise for a warranty or service facility outside of the relevant market area of the dealer establishing the facility, but excluding the relocation of existing franchises, for the same line-make in a relevant market area where the same line-make is presently being served by an existing motor vehicle dealer if such addition would be inequitable to the existing dealer; provided, however, that the sales and service needs of the public shall be given due consideration in determining the equities of the existing dealer. The sole fact that the manufacturer, distributor or representative desires further penetration of the market shall not be grounds for establishing an additional franchise; provided, further, that the manufacturer, distributor or representative shall give a ninety-day written notice by registered mail to all same line-make dealers in a relevant market area of its intention to establish an additional franchise;

Q. offer to sell, lease or to sell or lease any new motor vehicle to any person, except a distributor at a lower actual price therefor than the actual price offered and charged to a motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device that results in such lesser actual price;

R. sell, lease or provide motorcycles, parts or accessories to any person not a dealer or distributor for the line-make sold, leased or provided. The provisions of this subsection shall not apply to sales, leases or provisions of motor vehicles, parts or accessories by manufacturer, distributor or representative to the United States government or any agency thereof or the state or any of its political subdivisions;

S. offer any finance program, either directly or through any affiliate, based on the physical location of the selling dealer or the residence of the buyer. The provisions of this subsection shall not apply to any manufacturer or distributor that has no dealer within fifty miles of a state line or if all of the manufacturer's or distributor's dealers within fifty miles are given all cash or credit incentives, whether the incentives are offered by the manufacturer or the distributor or a finance subsidiary of either, affecting the price or financing terms of a vehicle, which incentives are available in the neighboring state;

T. force a dealer to sell or relocate a franchise with another manufacturer located at the same physical location or consider the existence of another line-make at a dealership for product allocation, successorship, location approval and capitalization; provided that a manufacturer or distributor may require:

(1) that the dealership meet the manufacturer's capitalization requirements;

(2) that the dealership meet the manufacturer's facilities requirements; and

(3) that the dealer not have committed fraudulent acts;

U. enforce any right of first refusal or option to purchase the dealership by a manufacturer or distributor or to require any dealer to grant such right to a manufacturer or distributor;

V. be licensed as a dealer or perform warranty or other service or own any interest, directly or indirectly, in a person licensed as a dealer or performing warranty or other service; provided that a manufacturer or distributor may own a person licensed as a dealer for a reasonable time in order to dispose of any interest acquired as a secured party or as part of a dealer development program;

W. fail to recognize and approve the transfer of a dealership to any person named as a successor, donee, beneficiary or devisee in any valid testamentary or trust instrument; provided that a manufacturer or distributor may impose standards or criteria used in any transfer;

X. impose capitalization requirements not necessary to assure that the dealership can meet its financial obligations; or

Y. compel a dealer through a finance subsidiary of the manufacturer or distributor to agree to unreasonable operating requirements or directly or indirectly to terminate a dealer, except as allowed by Subsection F of Section 57-16-5 NMSA 1978, through the actions of a finance subsidiary of the manufacturer or distributor. This subsection shall not limit the right of a financing entity to engage in business practices in accordance with the usage of the trade in which it is engaged."

Section 3

Section 3. Section 57-16-9 NMSA 1978 (being Laws 1973, Chapter 6, Section 9) is amended to read:

"57-16-9. FRANCHISE RENEWAL--TERMINATION.--Anything to the contrary notwithstanding, it is unlawful for the manufacturer, distributor or representative without due cause to fail to renew on terms then equally available to all its motor vehicle dealers or their prospective purchasers, to terminate a franchise or to restrict the transfer of a franchise unless the dealer receives fair and reasonable compensation for the value of the business. A prospective purchaser may enforce the provisions of this section whether or not the person is a dealer."

Section 4

Section 4. 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 47, AS AMENDED

CHAPTER 32

RELATING TO EDUCATION; MAKING APPROPRIATIONS; 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 "Education Appropriation Act".

Section 2

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

A. "federal funds" means any 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 USCA 181, et seq.) and the State and Local Fiscal Assistance Act of 1972 (31 USCA 1221-1264), as amended;

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

C. "other state funds" means:

(1) unencumbered nonreverting balances in state agency accounts, other than in internal service funds accounts, appropriated by the Education Appropriation Act;

(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 agreement.

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 1996.

Section 4

Section 4. APPROPRIATIONS.--The appropriation for public school support in fiscal year 1998 shall be:

PUBLIC SCHOOL SUPPORT:

Item	General Fund	Other State Funds	Intrnl Svc/Inter - Agency Trnsf	Federal Funds	Total
(1) State equalization guarantee distribution:	1,260,256.1	1,000.0			1,261,256.1
(2) Transportation distributions:					
(a) Operations	70,084.9				70,084.9
(b) School-owned bus replacements	2,457.0				2,457.0
(c) Contractor-owned bus					

rent fees	11,073.2		11,073.2
Subtotal	83,615.1	83,615.1	

(3) Supplemental distributions:

(a) Out-of-state tuition	390.0		390.0
(b) Emergency	1,436.0		1,436.0
(c) Emergency capital outlay		300.0	300.0
Subtotal	2,126.0		2,126.0

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. The superintendent of public instruction shall establish a preliminary unit value that shall be used to establish tentative budgets for the 1997-98 school year. Upon completion of final budgets or verification of the number of units statewide for fiscal year 1998, the superintendent of public instruction may adjust the program unit value. Included in the state equalization guarantee are sufficient funds to implement any funding formula changes.

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 may fund additional increases from the supplemental emergency fund to prevent any school district from receiving less than its previous year's total program cost as a result of any funding formula changes. 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.

Included in the state equalization guarantee is twenty million eight hundred sixty-five thousand eight hundred dollars ($20,865,800) to provide an additional statewide average two percent salary increase for all public school employees, and included in the transportation distributions for operations is five hundred seventy-six thousand six hundred dollars ($576,600) to provide for an additional statewide average two percent salary increase for all public school transportation employees.

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 USCA 181, et seq.) receipts otherwise unappropriated.

Unexpended or unencumbered balances in the distributions authorized remaining at the end of fiscal year 1998 from appropriations made from the general fund shall revert to the general fund.

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
INSTRUCTIONAL MATERIAL						
	FUND:	28,620.7	2,053.4			30,674.1

The appropriation to the instructional material fund is made from federal Mineral Lands Leasing Act (30 USCA 181, et seq.) receipts.

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
EDUCATIONAL TECHNOLOGY						
	FUND:	4,400.0				4,400.0
INCENTIVES FOR SCHOOL						
	IMPROVEMENT FUND:	500.0				500.0

Prior to distribution of the funds included in the general fund appropriation to the incentives for school improvement fund, the state department of education shall develop a formula by which to measure school achievement in the areas of academic performance with consideration for socioeconomic variables. The funds shall be used to provide financial incentives to individual schools that exceed expected academic performance. The department shall submit its formula to the legislative education study committee for review.

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter -Agency Trnsf	Federal Funds	Total
TOTAL PUBLIC SCHOOL						
	SUPPORT:	1,379,517.9	3,053.4			1,382,571.3
ADULT BASIC						
	EDUCATION FUND:		4,700.0		2,159.8	6,859.8
FEDERAL FLOW						
	THROUGH GRANTS:				200,426.7	200,426.7

STATE DEPARTMENT OF PUBLIC EDUCATION:

Item	Fund	General Funds	Other Intrnl Svc State Funds/Inter - Agency Trnsf	Federal Funds	Total
1) Administration:					
(a) Personal services		5,167.0	3.7	2,692.3	7,863.0
(b) Employee benefits		1,467.6	1.3	767.7	2,236.6
(c) In-state travel		280.4	4.9	159.2	444.5
(d) Maintenance and repairs		75.8	74.5	5.2	155.5
(e) Supplies and materials		141.7	21.4	7.9	80.3 251.3
(f) Contractual services		343.0	14.6	728.9	1,086.5
(g) Operating costs		455.6	535.8		991.4
(h) Other costs		.5	365.2		365.7
(i) Capital outlay		2.7	54.5	23.0	69.2 49.4
(j) Out-of-state travel		20.3	59.0		79.3
(k) Other financing uses		3.2	150.2		153.4
Authorized FTE: 166.0 Permanent; 65.0 Term; .2 Temporary					
Subtotal		7,957.8	165.0	40.8	5,613.0 13,776.6

The general fund appropriation to the state department of public education includes two hundred thousand dollars ($200,000) from federal Mineral Lands Leasing Act (30 USCA 181, et seq.) receipts.

Unexpended or unencumbered balances in the state department of public education remaining at the end of fiscal year 1998 from appropriations made from the general fund shall not revert.

Item	Fund	General Funds	Other Intrnl Svc State Funds/Inter- Agency Trnsf	Federal Funds	Total

(2) Special projects: 3,914.0 3,914.0

The state department of public education shall conduct an application and review process of special projects to determine the specific dollar amounts to be distributed to local school districts or individual projects.

Item	General Fund	State Funds	Other Agency Trnsf	Intrnl Svc Funds/Inter-Agency	Federal Fund	Total
(3) Apprenticeship assistance:						
600.0	600.0					
(4) Regional education cooperatives:						
(a) Region 9	128.1			1,856.7		1,984.8
Authorized FTE: 27.0 Term						
(b) High Plains		1,970.7			1,184.0	3,154.7
Authorized FTE: 44.63 Term						
(c) Central	1,324.7				1,278.9	2,603.6
Authorized FTE: 34.30 Term						
(d) Northeast	24.9			790.1		815.0
Authorized FTE: 2.00 Term						
(e) Northwest					816.5	816.5
Authorized FTE: 2.00 Term						

SPECIAL APPROPRIATIONS:

The following special appropriations are made from the general fund to the following agencies for expenditure in fiscal year 1998:

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

(1) Accountability data system 375.0 375.0

~~(2) Statewide capital outlay needs and equity analysis 400.0 400.0~~

~~(3) Strategic planning for public schools 70.0 70.0~~

(4) Educator background check 60.0 60.0

(5) School-to-work 100.0 100.0

~~The general fund appropriation of seventy thousand dollars ($70,000) for strategic planning includes one term full-time-equivalent position and operating expenses for the state department of public education to continue strategic planning for public schools.~~

The general fund appropriation of three hundred seventy-five thousand dollars ($375,000) for the accountability data system is contingent upon the educational technology bureau submitting the information systems framework to the legislative finance committee.

The general fund appropriation of four hundred thousand dollars ($400,000) for the statewide capital outlay needs and equity analysis is to enable the public school capital outlay council to contract for a comprehensive analysis of statewide public school capital outlay and infrastructure needs and make recommendations to the legislature for an equitable and efficient method by which to meet those needs.

The general fund appropriation of sixty thousand dollars ($60,000) for educator background checks is contingent upon passage of legislation requiring applicants for initial certification to submit to a background check.

~~LEGISLATIVE EDUCATION STUDY COMMITTEE STRATEGIC PLANNING: 70.0 70.0~~

COMMISSION ON HIGHER EDUCATION:

(1) Advanced placement 150.0 150.0

~~(2) Student teacher scholarships 100.0 100.0~~

Section 5

Section 5. 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.

Section 6

Section 6. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE BILL 100, AS AMENDED

WITH EMERGENCY CLAUSE AND PARTIAL VETOES

SIGNED MARCH 19, 1997

CHAPTER 33

MAKING GENERAL APPROPRIATIONS AND AUTHORIZING EXPENDITURES BY STATE AGENCIES 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 1997".

Section 2

Section 2. DEFINITIONS.--As used in the General Appropriation Act of 1997:

A. "agency" means an office, department, agency, institution, board, bureau, commission, court, district attorney, council or committee of state government;

B. "expenditures" means costs, expenses, encumbrances and 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;

C. "federal funds" means any payments by the United States government to state government or agencies except those payments made in accordance with the federal Mineral Lands Leasing Act;

~~D. "full-time equivalent" or "FTE" means one or more authorized positions that together receive compensation for not more than two thousand eighty-eight hours worked in fiscal year 1998. 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;~~

E. "general fund" means that fund created by Section 6-4-2 NMSA 1978 and includes federal Mineral Lands Leasing Act receipts, but excludes the general fund operating reserve, the appropriation contingency fund and the risk reserve;

F. "interagency transfers" means revenue, other than internal service funds, legally transferred from one agency to another;

G. "internal service funds" means:

(1) revenue transferred to an agency for the financing of goods or services to another agency on a cost-reimbursement basis; and

(2) unencumbered balances in agency internal service fund accounts appropriated by the General Appropriation Act of 1997;

H. "other state funds" means:

(1) unencumbered, nonreverting balances in agency accounts, other than in internal service funds accounts, appropriated by the General Appropriation Act of 1997;

(2) all revenue available to 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 agreement;

I. "revenue" means all money received by an 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; and

J. "unforeseen federal funds" means a source of federal funds or an increased amount of federal funds that shall be appropriated by the legislature as a condition for expenditure, as mandated under federal law ~~and could not have been reasonably anticipated or known during the first session of the forty-third legislature and, therefore, could not have been requested by an agency or appropriated by the legislature~~.

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 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. All information designated as "Totals" or "Subtotals" are provided for information and are not appropriations.

C. Amounts set out in Section 4 of the General Appropriation Act of 1997, or so much as may be necessary, are appropriated from the indicated source for expenditure in fiscal year 1998 for the objects expressed.

D. Unencumbered balances in agency accounts remaining at the end of fiscal year 1997 shall revert to the general fund by October 1, 1997, unless otherwise indicated in the General Appropriation Act of 1997 or otherwise provided by law.

E. Unencumbered balances in agency accounts remaining at the end of fiscal year 1998 shall revert to the general fund by October 1, 1998, unless otherwise indicated in the General Appropriation Act of 1997 or otherwise provided by law.

F. The state budget division shall monitor revenue received by agencies from sources other than the general fund and shall reduce the operating budget of any agency whose revenue from such sources is not meeting projections. The state budget division shall notify the legislative finance committee of any operating budget reduced pursuant to this subsection.

G. Except as otherwise specifically stated in the General Appropriation Act of 1997, appropriations are made in that act for the expenditures of agencies and for other purposes as required by existing law for fiscal year 1998. If any other act of the forty-third legislature, first session, changes existing law with regard to the name or responsibilities of an agency or the name or purpose of a fund or distribution, the appropriation made in the General Appropriation Act of 1997 shall be transferred from the agency, fund or distribution to which an appropriation has been made as required by existing law to the appropriate agency, fund or distribution provided by the new law.

H. ~~In August, October, December and May of fiscal year 1998, the department of finance and administration, in consultation with the staff of the legislative finance committee and other agencies, shall prepare and present revenue estimates to the legislative finance committee.~~ If ~~these~~ revenue estimates indicate that revenues and transfers to the general fund, excluding transfers to the general fund operating reserve, the risk reserve, the appropriation contingency fund or the state support reserve fund, as of the end of fiscal year 1998, are not expected to meet appropriations from the general fund, then the department shall present a plan to the legislative finance

committee ~~that outlines the methods by which the administration proposes to address the deficit~~.

I. Pursuant to Sections 6-3-23 through 6-3-25 NMSA 1978, agencies whose revenue from unforeseen 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 may request budget increases from the state budget division. If approved by the state budget division such money is appropriated. In approving a budget increase from unforeseen 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.

J. For fiscal year 1998, the number of permanent and term full-time equivalent positions specified for each agency shows the ~~maximum~~ number of employees ~~intended by the legislature~~ for that agency~~, unless another provision of the General Appropriation Act of 1997 or another act of the first session of the forty-third legislature provides for additional employees~~.

K. 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 1997 may be expended for payment of credit card invoices.

L. To prevent unnecessary spending, expenditures from the General Appropriation Act of 1997 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.

M. When approving operating budgets based on appropriations in the General Appropriation Act of 1997, the state budget division is specifically authorized to approve only those budgets that are in accordance with generally accepted accounting principles for the purpose of properly classifying other financing sources and uses, including interfund, intrafund and interagency transfers.

N. Laws 1996, Chapter 12, Section 4 is repealed effective July 1, 1997.

Section 4

Section 4. FISCAL YEAR 1998 APPROPRIATIONS.--

A. LEGISLATIVE

LEGISLATIVE COUNCIL SERVICE:

Item	General Fund	State Fund Agency	Other Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(1) Legislative maintenance department:					
(a) Personal services	1,069.1				1,069.1
(b) Employee benefits	361.9				361.9
(c) Travel	3.0				3.0
(d) Maintenance and repairs		170.3			170.3
(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					
(2) Energy council dues:	35.0				35.0
Subtotal			2,333.1		
TOTAL LEGISLATIVE	2,333.1				2,333.1

B. JUDICIAL

SUPREME COURT LAW LIBRARY:

Item	General Fund	State Funds	Other Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(a) Personal services		281.3			281.3
(b) Employee benefits		90.1			90.1

(c) Travel	1.7		1.7		
(d) Maintenance and repairs		11.6		11.6	
(e) Supplies and materials	4.9		4.9		
(f) Contractual services	102.3		102.3		
(g) Operating costs	255.9		255.9		
(h) Capital outlay	175.0		175.0		
(i) Out-of-state travel	1.6		1.6		

Authorized FTE: 8.00 Permanent

Subtotal	924.4

Item	General Fund	State Funds/Inter Agency/Trnsf	Federal Funds	Other Intrnl Svc Funds	Total
NEW MEXICO COMPILATION COMMISSION:					
(a)Personal services			101.6	101.6	
(b)Employee benefits			35.9	35.9	
(c)Travel	9.9		9.9		
(d)Maintenance and repairs				13.5	13.5
(e)Supplies and materials			12.7	12.7	
(f)Contractual services			754.0	754.0	
(g)Operating costs		83.1		83.1	
(h)Capital outlay		10.0		10.0	

Authorized FTE: 3.00 Permanent

Subtotal	1,020.7

Item	General Fund	State Funds/Inter- Agency/Trnsf	Federal Funds	Other Intrnl Svc Funds	Total

Item	Fund	Funds	Agency Trnsf	Funds	Total

JUDICIAL STANDARDS COMMISSION:

(a)	Personal services	110.8			110.8
(b)	Employee benefits	45.3			45.3
(c)	Travel	4.7		4.7	
(d)	Maintenance and repairs	6.5			6.5
(e)	Supplies and materials	2.5			2.5
(f)	Contractual services	8.3			8.3
(g)	Operating costs	31.4		31.4	
(h)	Capital outlay	3.0		3.0	
(I)	Out-of-state travel	1.0		1.0	

Authorized FTE: 3.00 Permanent

	Subtotal			213.5	

Item	Fund	General Funds	State Agency Trnsf	Other Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total

JUDGES PRO TEMPORE:

		47.7		47.7	

The judges pro tempore appropriation is nonreverting and shall not be expended for any other purpose.

Item	Fund	General Funds	State Agency Trnsf	Other Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total

COURT OF APPEALS:

(a)	Personal services	2,276.3			2,276.3
(b)	Employee benefits	642.0			642.0

(c)Travel	10.0			10.0		
(d) Maintenance and repairs	30.5					30.5
(e)Supplies and materials	30.1				30.1	
(f)Contractual services	23.3			23.3		
(g)Operating costs	213.2			213.2		
(h)Capital outlay	42.4			42.4		
(i)Out-of-state travel	6.6			6.6		

Authorized FTE: 52.00 Permanent

Subtotal 3,274.4

Item	Fund	General Funds	State Agency Trnsf	Other Funds/Inter-	Intrnl Svc Funds	Federal Total

SUPREME COURT:

(a)Personal services	1,152.4					1,152.4
(b)Employee benefits	356.7			356.7		
(c)Travel	4.0			4.0		
(d)Maintenance and repairs	9.6					9.6
(e)Supplies and materials	19.9			19.9		
(f)Contractual services	63.4			63.4		
(g)Operating costs	60.9			60.9		
(h)Capital outlay	25.5			25.5		
(i)Out-of-state travel	6.0			6.0		

Authorized FTE: 27.00 Permanent

Subtotal 1,698.4

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total

ADMINISTRATIVE OFFICE OF THE COURTS:

(1) Administration:

(a)Personal services	886.0				886.0
(b)Employee benefits	302.3				302.3
(c)Travel	27.5		27.5		
(d)Maintenance and repairs	12.8			12.8	
(e)Supplies and materials	27.2				27.2
(f)Contractual services	221.0				221.0
(g)Operating costs	90.1			90.1	
(h)Out-of-state Travel	3.5				3.5

Authorized FTE: 25.00 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total

(2) Magistrate courts:

(a)Personal services	6,736.3				6,736.3
(b)Employee benefits	2,069.7				2,069.7
(c)Travel	51.5		51.5		
(d)Maintenance and repairs	13.9				13.9
(e)Supplies and materials	238.6				238.6
(f)Contractual services	19.5				19.5
(g)Operating costs	2,064.9				2,064.9

(h)Capital outlay	5.2				5.2	

Authorized FTE: 229.00 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(3)Court improvement program:		41.6			124.7	166.3
(4) Information system division:						
(a)Personal services		781.8				781.8
(b)Employee benefits		228.5				228.5

Authorized FTE: 21.00 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Total
(5)Supreme court automation fund:					
(a)Travel		109.4		109.4	
(b)Maintenance and repairs			456.1		456.1
(c)Supplies and materials		261.3		261.3	
(d)Contractual services		526.2		526.2	
(e)Operating costs		604.3		604.3	
(f)Capital outlay		284.6		284.6	
(g)Out-of-state Travel			13.9		13.9

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(6) Magistrate court warrant enforcement fund:						
(a)Personal services			33.0			33.0

(b)Employee benefits		9.7				9.7
(c)Other financing uses		500.0				500.0

Authorized FTE: 1.00 Term

Item	Fund	General Funds	State Agency Trnsf	Other Funds/Inter-Agency Trnsf	Intrnl Svc Funds Total	Federal
(7) Municipal court automation fund:				250.0		250.0

Item	Fund	General Funds	State Agency Trnsf	Other Funds/Inter-Agency Trnsf	Intrnl Svc Funds Total	Federal
SUPREME COURT BUILDING COMMISSION:						
(a)Personal services		213.6				213.6
(b)Employee benefits		92.9				92.9
(c)Travel		1.5		1.5		
(d)Maintenance and repairs		27.1				27.1
(e)Supplies and materials		1.6				1.6
(f)Contractual services		60.7				60.7
(g)Operating costs		91.8				91.8
(h)Capital outlay		24.0				24.0

Authorized FTE: 12.00 Permanent

Subtotal				513.2		

Item	Fund	General Funds	State Agency Trnsf	Other Funds/Inter-Agency Trnsf	Intrnl Svc Funds Total	Federal
JURY AND WITNESS FEE FUND:						
(a)Operating costs		116.8	500.0			616.8

(b)Other costs	1,987.6					1,987.6

The appropriation to the jury and witness fee fund shall be spent to pay only: the costs of jurors; prospective jurors; witnesses; court interpreters; defending persons whom the court has ordered the public defender to represent when those persons do not meet the public defender's indigency standards; and expert witnesses for grand juries and magistrate courts. Juror costs shall include suitable refreshments.

Subtotal						2,604.4

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total

COURT-APPOINTED ATTORNEY FEES FUND:

	1,900.0					1,900.0

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.

Subtotal						1,900.0

DISTRICT COURTS:

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(1) First judicial district:						
(a)Personal services		1,528.9		52.0	87.5	1,668.4
(b)Employee benefits		482.8	18.3	26.8	527.9	
(c)Travel		16.5	.2	.5	17.2	
(d)Maintenance and repairs			16.7	.3	.5	17.5
(e)Supplies and materials		37.7	3.1	1.6	42.4	

(f)Contractual services	165.0	50.3	5.5		220.8	
(g)Operating costs	152.0	11.8	7.6		171.4	
(h)Capital outlay	13.7				13.7	

Authorized FTE: 49.50 Permanent; 2.00 Term

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(2) Second judicial district:						
(a)Personal services		7,054.4		287.3	188.8	7,530.5
(b Employee benefits		2,201.4		96.5	60.7	2,358.6
(c)Travel	18.9	.4	1.2		20.5	
(d)Maintenance and repairs		130.2		14.7	.6	145.5
(e)Supplies and materials		242.9	27.0	8.2		278.1
(f)Contractual services		224.6	43.0	1.7		269.3
(g)Operating costs	354.1	62.8	14.2		431.1	
(h)Other costs	95.2				95.2	
(i)Capital outlay	67.0	26.3	2.0		95.3	
(j)Out-of-state Travel		12.9	9.7	1.5		24.1

Authorized FTE: 229.50 Permanent; 12.00 Term

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(3)Third judicial district:						
(a)Personal services		1,310.5			83.0	1,393.5
(b)Employee benefits		392.5		24.5		417.0

(c)Travel	12.8	2.8	1.5		17.1		
(d)Maintenance and repairs			11.4	.8	1.3		13.5
(e)Supplies and materials		25.6	5.5	2.5		33.6	
(f)Contractual services		215.1	77.0	5.0		297.1	
(g)Operating costs	65.1	9.6	11.0		85.7		
(h)Capital outlay	19.0	4.3	1.2		24.5		

Authorized FTE: 39.00 Permanent; 2.00 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Funds	Total
(4)Fourth judicial district:						
(a)Personal services			530.5			530.5
(b)Employee benefits			184.0			184.0
(c)Travel		3.2		3.2		
(d)Maintenance and repairs		10.7				10.7
(e)Supplies and materials		8.6				8.6
(f)Contractual services			3.1			3.1
(g)Operating costs		23.5			23.5	
(h)Capital outlay		17.5			17.5	
(i)Other financing uses			20.0	3.8		23.8

Authorized FTE: 17.50 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Funds	Total
(5) Fifth judicial district:						

(a)Personal services	1,886.9					1,886.9
(b)Employee benefits	591.0				591.0	
(c)Travel	34.0			34.0		
(d)Maintenance and repairs		19.2				19.2
(e)Supplies and materials	33.1				33.1	
(f)Contractual services	388.9	60.0			448.9	
(g)Operating costs	214.1			214.1		
(h)Capital outlay	92.3			92.3		

Authorized FTE: 59.00 Permanent

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(6) Sixth judicial district:						
(a)Personal services		502.0				502.0
(b)Employee benefits		163.0				163.0
(c)Travel		13.8		13.8		
(d)Maintenance and repairs		4.8				4.8
(e)Supplies and materials		10.5				10.5
(f)Contractual services		150.4				150.4
(g)Operating costs		82.3		82.3		
(h)Capital outlay		70.0		70.0		

Authorized FTE: 16.00 Permanent

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total

(7)	Seventh judicial district:					
	(a)Personal services	653.9				653.9
	(b)Employee benefits	208.6				208.6
	(c)Travel	10.6		10.6		
	(d)Maintenance and repairs		6.4			6.4
	(e)Supplies and materials	17.0				17.0
	(f)Contractual services	21.3				21.3
	(g)Operating costs	65.4			65.4	
	(h)Capital outlay	24.6			24.6	

Authorized FTE: 20.50 Permanent

Item	Fund	General Funds	State Agency Trnsf	Other Intrnl Svc Funds/Inter-	Federal Funds	Total
(8)	Eighth judicial district:					
	(a)Personal services	545.6				545.6
	(b)Employee benefits	192.7				192.7
	(c)Travel	11.2		11.2		
	(d)Maintenance and repairs	5.5				5.5
	(e)Supplies and materials	10.9				10.9
	(f)Contractual services	99.8	20.0			119.8
	(g)Operating costs	52.1			52.1	
	(h)Capital outlay	16.3			16.3	

Authorized FTE: 17.00 Permanent

		General	State	Other Intrnl Svc Funds/Inter-	Federal

Item	Fund	Funds	Agency Trnsf		Funds	Total
(9)	Ninth judicial district:					
	(a)Personal services		752.8		82.0	834.8
	(b)Employee benefits		261.1		29.4	290.5
	(c)Travel	6.5	3.4		9.9	
	(d)Maintenance and repairs			11.8		11.8
	(e)Supplies and materials		19.3	7.5	.4	27.2
	(f)Contractual services		89.7	41.0	35.5	166.2
	(g)Operating costs	38.0	1.0	2.0	41.0	
	(h)Capital outlay	64.6			64.6	

Authorized FTE: 23.00 Permanent; 2.00 Term

Item	Fund	Other General Funds	State Agency Trnsf	Intrnl Svc Funds/Inter-Funds	Federal	Total
(10)	Tenth judicial district:					
	(a)Personal services		289.7			289.7
	(b)Employee benefits		96.2			96.2
	(c)Travel	4.2		4.2		
	(d)Maintenance and repairs	7.0				7.0
	(e)Supplies and materials	10.2				10.2
	(f)Contractual services	5.5			5.5	
	(g)Operating costs	25.4			25.4	
	(h)Capital outlay	7.5			7.5	
	(i)Other financing uses	13.5				13.5

Authorized FTE: 8.64 Permanent

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(11) Eleventh judicial district:					
(a) Personal services	1,224.5	8.2			1,232.7
(b) Employee benefits	370.7	.6			371.3
(c) Travel	12.0			12.0	
(d) Maintenance and repairs	12.6				12.6
(e) Supplies and materials	44.1	.5			44.6
(f) Contractual services	113.7	34.0			147.7
(g) Operating costs	122.9	1.4			124.3
(h) Other costs		.5			.5
(i) Capital outlay	30.0				30.0

Authorized FTE: 37.00 Permanent; .50 Term

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(12) Twelfth judicial district:					
(a) Personal services	767.2				767.2
(b) Employee benefits	242.8				242.8
(c) Travel	8.1		.2	8.3	
(d) Maintenance and repairs	8.8				8.8
(e) Supplies and materials	15.3	2.0			17.3
(f) Contractual services	60.7	25.5		13.4	99.6

(g)Operating costs	76.9			76.9		
(h)Capital outlay	67.0			67.0		

Authorized FTE: 22.00 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Total	
(13) Thirteenth judicial district:						
(a)Personal services		1,219.6				1,219.6
(b)Employee benefits		408.0			408.0	
(c)Travel		12.6		12.6		
(d)Maintenance and repairs		13.5			13.5	
(e)Supplies and materials		34.8	2.0		36.8	
(f)Contractual services		12.0	18.0		30.0	
(g)Operating costs		80.3		80.3		
(h)Capital outlay		80.0		80.0		

Authorized FTE: 39.00 Permanent

Subtotal				30,342.2		

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Total	
BERNALILLO COUNTY METROPOLITAN COURT:						
(a)Personal services		5,408.9		493.1		5,902.0
(b)Employee benefits		1,832.7		168.3		2,001.0
(c)Travel		9.9	.3	10.2		

(d)Maintenance and repairs		319.6				319.6
(e)Supplies and materials	271.8	28.9			300.7	
(f)Contractual services	504.5	210.0			714.5	
(g)Operating costs	714.7	49.4		764.1		
(h)Capital outlay	213.6	31.0		244.6		
(i)Out-of-state Travel		10.5			10.5	

Authorized FTE: 187.00 Permanent; 20.00 Term; .50 Temporary

Subtotal 10,267.2

DISTRICT ATTORNEYS:

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(1) First judicial district:						
(a)Personal services		1,560.5		67.6		1,628.1
(b)Employee benefits		551.0	22.4		573.4	
(c)Travel	17.8	.5	18.3			
(d)Maintenance and repairs		15.3			15.3	
(e)Supplies and materials		31.5	2.5		34.0	
(f)Contractual services		26.6	6.1		32.7	
(g)Operating costs	103.0	.5		103.5		
(h)Out-of-state Travel		1.4			1.4	

Authorized FTE: 47.50 Permanent; 2.50 Term

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total

(2) Second judicial district:

(a)Personal services	6,186.6		191.1	129.6	145.5	6,652.8
(b)Employee benefits	2,115.0		71.4	44.8	51.8	2,283.0
(c)Travel	72.1			72.1		
(d)Maintenance and repairs	81.4				81.4	
(e)Supplies and materials	86.0				86.0	
(f)Contractual services	44.4				44.4	
(g)Operating costs	594.8			594.8		
(h)Capital outlay	11.5			11.5		
(i)Out-of-state Travel	1.4				1.4	

Authorized FTE: 182.50 Permanent; 16.50 Term

Item	Fund	General Funds	Other State Funds	Intrnl Svc Agency Trnsf	Funds/Inter-Agency Trnsf	Federal Funds	Total
(3) Third judicial district:							
(a)Personal services		1,263.9			133.1		1,397.0
(b)Employee benefits		446.6		40.7		487.3	
(c)Travel		12.2	1.1		13.3		
(d)Maintenance and repairs			8.1		.2		8.3
(e)Supplies and materials		13.2		2.7		15.9	
(f)Contractual services		4.3				4.3	
(g)Operating costs		43.2		4.3		47.5	
(h)Out-of-state Travel		1.1		1.4		2.5	

Authorized FTE: 39.00 Permanent; 5.50 Term

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(4)	Fourth judicial district:					
	(a)Personal services	789.8	10.0			799.8
	(b)Employee benefits	337.6	4.1			341.7
	(c)Travel	11.4		11.4		
	(d)Maintenance and repairs	3.8				3.8
	(e)Supplies and materials	11.0				11.0
	(f)Contractual services	51.2				51.2
	(g)Operating costs	42.3			42.3	
	(h)Out-of-state Travel	1.5				1.5
Authorized FTE: 24.50 Permanent; 1.00 Term						
(5)	Fifth judicial district:					
	(a)Personal services	1,437.2				1,437.2
	(b)Employee benefits	494.1				494.1
	(c)Travel	32.0		32.0		
	(d)Maintenance and repairs		5.2			5.2
	(e)Supplies and materials	16.0				16.0
	(f)Contractual services	73.8				73.8
	(g)Operating costs	86.6			86.6	
	(h)Capital outlay	1.8			1.8	
	(i)Out-of-state Travel	2.8				2.8
Authorized FTE: 43.50 Permanent						

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Funds	Total
(6)	Sixth judicial district:					
	(a)Personal services	548.1	79.0	122.1		749.2
	(b)Employee benefits	226.5		33.8		260.3
	(c)Travel	9.7	4.0	13.7		
	(d)Maintenance and repairs		6.3		1.0	7.3
	(e)Supplies and materials	10.0		4.5		14.5
	(f)Contractual services	4.8		.2		5.0
	(g)Operating costs	50.0	3.6		53.6	
	(h)Other costs		1.2		1.2	
	(i)Capital outlay	11.4	1.5		12.9	

Authorized FTE: 15.00 Permanent; 8.50 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Funds	Total
(7)	Seventh judicial district:					
	(a)Personal services	802.6				802.6
	(b)Employee benefits	275.1				275.1
	(c)Travel	17.6		17.6		
	(d)Maintenance and repairs		4.1			4.1
	(e)Supplies and materials	14.2				14.2
	(f)Contractual services	34.1				34.1
	(g)Operating costs	58.6			58.6	

(h)Capital outlay	2.0				2.0	
(i)Out-of-state Travel		1.8				1.8

Authorized FTE: 26.00 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(8) Eighth judicial district:						
(a)Personal services			916.0			916.0
(b)Employee benefits			370.2			370.2
(c)Travel		19.6		19.6		
(d)Maintenance and repairs		3.4				3.4
(e)Supplies and materials		14.7				14.7
(f)Contractual services		4.3				4.3
(g)Operating costs		62.3			62.3	
(h)Out-of-state Travel			1.0			1.0

Authorized FTE: 25.00 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(9) Ninth judicial district:						
(a)Personal services			791.6			791.6
(b)Employee benefits			280.4			280.4
(c)Travel		11.0	3.0	14.0		
(d)Maintenance and repairs		2.7				2.7
(e)Supplies and materials		11.5		2.2		13.7

(f)Contractual services	2.9		2.0		4.9
(g)Operating costs	45.5		2.5		48.0
(h)Capital outlay			1.6		1.6
(i)Out-of-state Travel	1.2				1.2

Authorized FTE: 23.00 Permanent; 1.00 Term

Item	Fund	General Funds	State Agency Trnsf	Other Intrnl Svc Funds/Inter-	Federal Funds	Total
(10) Tenth judicial district:						
(a)Personal services		211.9			211.9	
(b)Employee benefits		68.9			68.9	
(c)Travel		5.9		5.9		
(d)Maintenance and repairs		.3				.3
(e)Supplies and materials		5.1			5.1	
(f)Contractual services		3.1			3.1	
(g)Operating costs		15.0			15.0	
(h)Capital outlay		18.2			18.2	

Authorized FTE: 5.50 Permanent

Item	General Funds	State Funds	Agency Trnsf	Other Intrnl Svc Funds/Inter-	Federal Funds	Total
(11) Eleventh judicial district--						
Farmington office:						
(a)Personal services		1,055.6				1,055.6
(b)Employee benefits		349.4			349.4	

(c)Travel	13.8			13.8		
(d)Maintenance and repairs	8.5					8.5
(e)Supplies and materials	15.4					15.4
(f)Contractual services	5.2			13.1		18.3
(g)Operating costs	61.3				61.3	
(h)Capital outlay	2.7				2.7	
(i)Out-of-state Travel	1.5					1.5

Authorized FTE: 32.50 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(12) Eleventh judicial district--						
Gallup office:						
(a)	Personal services	610.6				610.6
(b)	Employee benefits	199.5				199.5
(c)	Travel	8.8		8.8		
(d)	Maintenance and repairs		1.9			1.9
(e)	Supplies and materials		12.8			12.8
(f)	Contractual services		5.8			5.8
(g)	Operating costs	43.6				43.6
(h)	Capital outlay	26.2				26.2
(i)	Out-of-state Travel	.2				.2

Authorized FTE: 19.00 Permanent

	General	Other State	Intrnl Svc Funds/Inter-	Federal

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(13)	Twelfth judicial district:					
	(a)Personal services	957.1	127.0			1,084.1
	(b)Employee benefits	327.6	39.1			366.7
	(c)Travel	15.2	1.5	16.7		
	(d)Maintenance and repairs	3.8	.5			4.3
	(e)Supplies and materials	12.8	3.8			16.6
	(f)Contractual services	4.3	.5			4.8
	(g)Operating costs	59.8	16.9	76.7		
	(h)Capital outlay	2.0		2.0		
	(i)Out-of-state Travel	2.0	1.5			3.5

Authorized FTE: 29.50 Permanent; 4.00 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(14)	Thirteenth judicial district:					
	(a)Personal services	1,196.4				1,196.4
	(b)Employee benefits	408.7			408.7	
	(c)Travel	17.3		17.3		
	(d)Maintenance and repairs	4.0			4.0	
	(e)Supplies and materials	11.0			11.0	
	(f)Contractual services	53.8			53.8	
	(g)Operating costs	69.4		69.4		
	(h)Capital outlay	12.9		12.9		

(i)Out-of-state Travel		2.0				2.0

Authorized FTE: 37.00 Permanent

Subtotal					28,615.0	

ADMINISTRATIVE OFFICE OF THE DISTRICT ATTORNEYS:

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(a)Personal services			92.7	160.0		252.7
(b)Employee benefits			82.5			82.5
(c)Travel		14.0	10.6		24.6	
(d)Maintenance and repairs			2.7			2.7
(e)Supplies and materials			5.0			5.0
(f)Contractual services			1.9			1.9
(g)Operating costs		129.2	21.5		150.7	
(h)Other costs		175.0			175.0	
(i)Capital outlay		1.0			1.0	
(j)Out-of-state Travel			7.0	18.5		25.5

Authorized FTE: 5.00 Permanent; 2.00 Term

Subtotal					721.6	

TOTAL JUDICIAL		**90,072.2**	**6,159.0**	**2,571.0**	**335.6**	**99,137.8**

C. GENERAL CONTROL

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total

ATTORNEY GENERAL:

(1) Regular operations:

(a)Personal services	5,560.0	100.0	50.0	5,710.0
(b)Employee benefits	1,787.2	50.0		1,837.2
(c)Travel	128.2		128.2	
(d)Maintenance and repairs	65.1			65.1
(e)Supplies and materials	70.6			70.6
(f)Contractual services	267.1			267.1
(g)Operating costs	821.5		821.5	
(h)Capital outlay	3.5		3.5	
(i)Out-of-state Travel	22.4			22.4
(j)Other financing uses	22.0			22.0

Authorized FTE: 138.00 Permanent; 1.00 Term

The internal service funds/interagency transfers appropriation to the attorney general for regular operations includes fifty thousand dollars ($50,000) from the risk management division of the general services department.

All revenue generated from antitrust cases through the attorney general on behalf of the state, political subdivisions or private citizens shall revert to the general fund.

(2) Guardianship services program:

(a)Personal services	66.4			66.4
(b)Employee benefits	19.8			19.8
(c)Travel	.6		.6	
(d)Supplies and materials	.3			.3

(e)Contractual services	966.7				966.7	
(f)Operating costs	1.4			1.4		

Authorized FTE: 1.50 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Funds	Total
(3) Medicaid fraud division:						
(a)Personal services		124.4			373.0	497.4
(b)Employee benefits		38.8			116.5	155.3
(c)Travel 4.5		13.4	17.9			
(d)Maintenance and repairs			1.8		5.6	7.4
(e)Supplies and materials		.7			1.9	2.6
(f)Contractual services		3.7			11.1	14.8
(g)Operating costs	16.5			49.6	66.1	
(h)Out-of-state Travel		.8			2.6	3.4
(i)Other financing uses		.1			.1	.2

Authorized FTE: 13.00 Term

Subtotal				10,767.9		

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Funds	Total
STATE AUDITOR:						
(a)Personal services		963.5		133.5		1,097.0
(b)Employee benefits		291.1	26.7	40.6		358.4

(c)Travel	22.2	2.8	25.0		
(d)Maintenance and repairs	6.0			6.0	
(e)Supplies and materials	11.5		1.5	13.0	
(f)Contractual services	84.5		13.6	98.1	
(g)Operating costs	132.1	29.1		161.2	
(h)Out-of-state Travel			8.0	8.0	
(i)Other financing uses		.4		.4	

Authorized FTE: 27.00 Permanent; 1.00 Term

Subtotal		1,767.1

Item	Fund	General Funds	Other State Funds	Intrnl Svc/Inter-Agency Trnsf	Federal Funds	Total
TAXATION AND REVENUE DEPARTMENT:						
(1) Office of the secretary:						
(a)	Personal services	2,099.0		415.6		2,514.6
(b)	Employee benefits	690.1		129.6	819.7	
(c)	Travel	54.4	6.6	61.0		
(d)	Maintenance and repairs		2.5	.5		3.0
(e)	Supplies and materials		10.1	1.9		12.0
(f)	Contractual services		331.3			331.3
(g)	Operating costs	136.9		26.5	163.4	
(h)	Capital outlay	10.0			10.0	
(i)	Out-of-state Travel	17.7		3.4	21.1	

Authorized FTE: 67.00 Permanent; 1.00 Term

The general fund appropriation to the office of the secretary of the taxation and revenue department in the contractual services category includes thirty thousand dollars ($30,000) to pay for the costs related to litigation regarding proper valuation for severance tax purposes of oil severed in New Mexico. The department is authorized to enter into a contingency fee contract with private counsel to represent the department in this litigation, with the fee to be set by the court from any resulting judgement.

Item	General Fund	State Funds	Other Funds/Inter-Agency Trnsf	Intrnl Svc Funds	Federal Funds	Total
(2) Administrative services division:						
(a)Personal services	3,977.5	72.2	416.2			4,465.9
(b)Employee benefits	1,298.7	19.8	116.1			1,434.6
(c)Travel	20.0		20.0			
(d)Maintenance and repairs	180.9					180.9
(e)Supplies and materials	1,430.5	.5				1,431.0
(f)Contractual services	59.4				59.4	
(g)Operating costs	4,012.4	77.3			4,089.7	
(h)Other costs	.2		.2			
(i)Capital outlay	19.2		19.2			
(j)Out-of-state Travel	5.0				5.0	
(k)Other financing uses	16.3				16.3	

Authorized FTE: 134.00 Permanent; 1.00 Term

Item	General Fund	State Funds	Other Funds/Inter-Agency Trnsf	Intrnl Svc Funds	Federal Funds	Total
(3) Audit and compliance division:						

(a)Personal services	6,288.7	22.4	296.1	6,607.2	
(b)Employee benefits	2,087.2	4.9	96.4	2,188.5	
(c)Travel	142.6	9.4	152.0		
(d)Maintenance and repairs	29.7		29.7		
(e)Supplies and materials	106.6	6.3	112.9		
(f)Contractual services	190.0		190.0		
(g)Operating costs	1,228.8	7.5	1,236.3		
(h)Other costs	2.0	2.0			
(i)Capital outlay	24.0	21.4	45.4		
(j)Out-of-state Travel	263.2	46.9	310.1		

Authorized FTE: 220.00 Permanent; 10.00 Term; 9.00 Temporary

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal	Total
(4) Revenue processing division:						
(a)Personal services		3,926.8	298.3	45.5		4,270.6
(b)Employee benefits		1,307.2	99.4	12.7		1,419.3
(c)Travel		4.7	.4	5.1		
(d)Maintenance and repairs		396.1				396.1
(e)Supplies and materials		182.9	13.8		196.7	
(f)Contractual services		15.6			15.6	
(g)Operating costs		2,251.4	164.6		2,416.0	
(h)Capital outlay		60.0		60.0		
(i) Out-of-state Travel		4.0	.3		4.3	

Authorized FTE: 173.00 Permanent; 43.00 Temporary

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Funds	Total
(5)	Property tax division:					
	(a)Personal services		789.0	660.0		1,449.0
	(b)Employee benefits		260.8	218.0		478.8
	(c)Travel	179.1	120.8		299.9	
	(d)Maintenance and repairs		.7	.5		1.2
	(e) Supplies and materials		6.8	5.6		12.4
	(f)Contractual services		35.4	29.6		65.0
	(g)Operating costs	68.9	57.6		126.5	
	(h)Capital outlay	4.3	5.2		9.5	
	(i)Out-of-state Travel		2.3	2.7		5.0

Authorized FTE: 48.00 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Funds	Total
(6)	Motor vehicle division:					
	(a)Personal services		3,178.8		3,178.8	6,357.6
	(b)Employee benefits		1,203.6		1,203.6	2,407.2
	(c)Travel	20.7	20.7	41.4		
	(d)Maintenance and repairs	37.1		37.1	74.2	
	(e)Supplies and materials	16.4	391.4	16.4	424.2	

(f)Contractual services	414.7	675.6	279.6		1,369.9	
(g)Operating costs	762.6		762.6		1,525.2	
(h)Capital outlay	1.5		1.5		3.0	
(i)Out-of-state Travel	22.8		22.9		45.7	

Authorized FTE: 262.00 Permanent; 8.00 Temporary

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Funds	Total
(7) Motor transportation division:						
(a)Personal services				5,001.4	330.0	5,331.4
(b)Employee benefits				1,923.7	109.1	2,032.8
(c)Travel		286.1	92.4	378.5		
(d)Maintenance and repairs				209.1	1.5	210.6
(e)Supplies and materials				177.5	27.5	205.0
(f)Contractual services				24.5		24.5
(g)Operating costs			441.4	.5	441.9	
(h)Other costs			2.0		2.0	
(i)Capital outlay			275.3	56.0	331.3	
(j)Out-of-state Travel				2.0	25.6	27.6

Authorized FTE: 183.00 Permanent; 13.00 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Funds	Total
(8) ONGARD service center:						

(a)Personal services	388.9	195.6	584.5
(b)Employee benefits	128.2	63.4	191.6
(c)Travel 1.4	.6	2.0	
(d)Maintenance and repairs 5.0		2.4	7.4
(e)Supplies and materials 2.0		1.0	3.0
(f)Contractual services	225.7	75.9	301.6
(g)Operating costs 259.8	129.8	389.6	
(h)Out-of-state Travel	1.0	.4	1.4

Authorized FTE: 14.00 Permanent

The internal service funds/interagency transfers appropriations to the taxation and revenue department include fourteen million nine hundred twelve thousand three hundred dollars ($14,912,300) from the state road fund. Unexpended or unencumbered balances in the taxation and revenue department remaining at the end of fiscal year 1998 from appropriations made from the state road fund shall revert to the state road fund.

Subtotal	60,478.5

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total

STATE INVESTMENT COUNCIL:

(a)Personal services		323.8	657.5		981.3
(b)Employee benefits		103.2	209.5		312.7
(c)Travel	6.7	13.5		20.2	
(d)Maintenance and repairs		3.0	6.1		9.1
(e)Supplies and materials		5.7	11.5		17.2
(f)Contractual services		165.5	664.7	80.0	910.2

(g)Operating costs	85.0	172.7		257.7	
(h)Capital outlay	7.4	15.1		22.5	
(i)Out-of-state Travel		4.3	8.7		13.0
(j)Other financing uses		47.5	96.5		144.0

Authorized FTE: 23.00 Permanent

The other state funds appropriations to the state investment council are from earnings on investments of the land grant permanent fund; provided, that if House Bill 146 of the first session of the forty-third legislature is enacted into law and the United States congress consents to the provisions of Constitutional Amendment 1 approved at the 1996 general election, then the other state funds appropriations to the state investment council are from the land grant permanent funds.

If House Bill 146 of the first session of the forty-third legislature is enacted into law, the appropriations to the state investment council in the general fund column shall not be made from the general fund but shall be made from the severance tax permanent fund.

Subtotal 2,687.9

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total

DEPARTMENT OF FINANCE AND ADMINISTRATION:

(1) Office of the secretary:

(a)Personal services		376.4			376.4
(b)Employee benefits		125.5			125.5
(c)Travel	4.7			4.7	
(d)Maintenance and repairs		2.0			2.0
(e)Supplies and materials		5.8			5.8
(f)Contractual services		72.8			72.8

(g)Operating costs	43.6			43.6		
(h)Capital outlay	3.2			3.2		
(i)Out-of-state Travel		3.0			3.0	
(j)Other financing uses		2.1			2.1	

Authorized FTE: 6.80 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(2) Administrative services division:						
(a)Personal services			644.5		644.5	
(b)Employee benefits			206.4		206.4	
(c)Travel		1.0		1.0		
(d)Maintenance and repairs			15.6			15.6
(e)Supplies and materials			15.6		15.6	
(f)Contractual services			59.7		59.7	
(g)Operating costs		74.2			74.2	
(h)Capital outlay		5.0			5.0	
(i)Out-of-state Travel			1.3		1.3	

Authorized FTE: 18.00 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(3) State board of finance:						
(a)Personal services			254.6		254.6	

(b)Employee benefits	78.8				78.8
(c)Travel	10.0			10.0	
(d)Maintenance and repairs	.7				.7
(e)Supplies and materials	3.4				3.4
(f)Contractual services	27.6				27.6
(g)Operating costs	16.7			16.7	
(h)Capital outlay	3.5			3.5	
(i)Out-of-state Travel	3.5				3.5

Authorized FTE: 6.00 Permanent

Upon a determination by the state board of finance pursuant to Section 6-1-2 NMSA 1978 that an 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 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 1998. Funds transferred pursuant to this paragraph are appropriated to the state board of finance emergency fund.

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(4) State budget division:						
(a)Personal services		916.1				916.1
(b)Employee benefits		277.7				277.7
(c)Travel		9.8		9.8		
(d)Maintenance and repairs		3.2				3.2
(e)Supplies and materials		12.0				12.0

(f)Contractual services	28.0				28.0	
(g)Operating costs	71.2				71.2	
(h)Capital outlay	11.7				11.7	
(i)Out-of-state Travel	4.6				4.6	

Authorized FTE: 21.00 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Funds	Total
(5) Local government division:						
(a)Personal services		957.5	264.4		294.7	1,516.6
(b)Employee benefits		298.4	80.9		119.9	499.2
(c)Travel	19.7	15.3	39.0	74.0		
(d)Maintenance and repairs		2.9	2.0		3.4	8.3
(e)Supplies and materials		14.5	6.2		14.3	35.0
(f)Contractual services		19.5	6.1		24.2	49.8
(g)Operating costs	62.2	29.2		56.6	148.0	
(h)Capital outlay	17.2	16.9			34.1	
(i)Out-of-state Travel		2.9	3.7		4.4	11.0

Authorized FTE: 27.00 Permanent; 15.00 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Funds	Total
(6) Financial control division:						
(a)Personal services		1,917.6				1,917.6

(b)Employee benefits	620.0				620.0
(c)Travel	4.2			4.2	
(d)Maintenance and repairs	31.9				31.9
(e)Supplies and materials	78.7				78.7
(f)Contractual services	214.1				214.1
(g)Operating costs	1,590.7				1,590.7
(h)Capital outlay	8.2			8.2	
(i)Out-of-state Travel	5.3				5.3

Authorized FTE: 56.20 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(7) Special appropriations/dues and membership fees:						
(a)National association of state budget officers		7.7			7.7	
(b)Council of governors' policy advisors		5.5		5.5		
(c)Council of state governments		66.9				66.9
(d)Western interstate commission for higher education		81.0			81.0	
(e) Education commission of the states		38.4		38.4		

(f)Rocky Mountain corporation for public broadcasting	13.1		13.1	
(g)Western governors university	100.0			100.0
(h)National conference of state legislatures	82.2		82.2	
(i)Western governor's association	36.0			36.0
(j)Cumbres and Toltec scenic railroad commission	10.0		10.0	
(k)Commission on intergovernmental relations	5.9		5.9	
(l)Governmental accounting standards board	15.4		15.4	
(m) National center for state courts	58.9		58.9	
(n) National governor's association		48.0		48.0
(o) Citizens review board	229.5	70.5	300.0	
(p) Emergency fund	250.0		250.0	
(q) Emergency water fund	75.0		75.0	
(r) Fiscal agent contract	900.0	725.0	1,625.0	
(s) Big brothers and big sisters programs	500.0		500.0	
(t) DWI grants	4,500.0	500.0	5,000.0	
(u) Council of governments	275.0		275.0	
(v) Leasehold community assistance	133.0			133.0

Subtotal		18,969.2

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Funds	Total
PUBLIC SCHOOL INSURANCE AUTHORITY:						
(1) Operations division:						
(a)Personal services				381.1		381.1
(b)Employee benefits				125.5		125.5
(c)Travel		30.6		30.6		
(d)Maintenance and repairs					24.8	24.8
(e)Supplies and materials				13.3		13.3
(f)Contractual services				140.5		140.5
(g)Operating costs			58.3		58.3	
(h)Out-of-state Travel				4.5		4.5
(i)Other financing uses				.2		.2

Authorized FTE: 9.00 Permanent

One-half of the unexpended or unencumbered balances in the operations division of the public school insurance authority remaining at the end of fiscal year 1998 shall revert to the benefits division of the authority and one-half of the unexpended or unencumbered balances in the operations division of the public school insurance authority remaining at the end of fiscal year 1998 shall revert to the risk division of the authority.

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Funds	Total
(2) Benefits division:						

(a)Contractual services		94,244.9			94,244.9
(b)Other costs		25.0		25.0	
(c)Other financing uses		389.4		389.4	

Item	Fund	General Funds	State Agency Trnsf	Other Funds/Inter-	Intrnl Svc Funds	Federal Total
(3) Risk division:						
(a)Contractual services				20,139.6		20,139.6
(b)Other financing uses				389.4	389.4	
Subtotal				115,967.1		

Item	Fund	General Funds	State Agency Trnsf	Other Funds/Inter-	Intrnl Svc Funds	Federal Total
RETIREE HEALTH CARE AUTHORITY:						
(1) Administration division:						
(a)Personal services				420.7	420.7	
(b)Employee benefits				208.8	208.8	
(c)Travel		24.9		24.9		
(d)Maintenance and repairs				11.2		11.2
(e)Supplies and materials				30.3	30.3	
(f)Contractual services				95.4	95.4	
(g)Operating costs		263.6		263.6		
(h)Out-of-state Travel				10.0	10.0	
(i)Other financing uses				.2	.2	

Authorized FTE: 10.00 Permanent

Unexpended or unencumbered balances in the administration division of the retiree health care authority remaining at the end of fiscal year 1998 shall revert to the benefits division.

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(2)	Benefits division:					
	(a)Contractual services		46,046.6			46,046.6
	(b)Other financing uses		1,065.1			1,065.1
	Subtotal			48,176.8		

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
GENERAL SERVICES DEPARTMENT:						
(1)	Office of the secretary:					
	(a)Personal services		39.2	305.0		344.2
	(b)Employee benefits		12.8	99.7		112.5
	(c)Travel	.4	2.9	3.3		
	(d)Maintenance and repairs		.1		.5	.6
	(e)Supplies and materials		.2	.9		1.1
	(f)Operating costs	1.9	15.2		17.1	
	(g)Out-of-state Travel		.1	.9		1.0
	(h)Other financing uses			.1		.1

Authorized FTE: 7.00 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(2)	Administrative services division:					
	(a)Personal services		231.7	1,164.3		1,396.0
	(b)Employee benefits		71.3	358.4	429.7	
	(c)Travel	.8	4.1	4.9		
	(d)Maintenance and repairs		2.6	12.9	15.5	
	(e)Supplies and materials		8.1	40.5	48.6	
	(f)Contractual services		15.8	79.5	95.3	
	(g)Operating costs	77.8	391.0	468.8		
	(h)Out-of-state Travel		.2	.8	1.0	
	(i)Other financing uses			.5	.5	

Authorized FTE: 39.00 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(3)	Telecommunications access fund:					
	(a)Contractual services		1,400.0			1,400.0
	(b)Other financing uses		140.0		140.0	
(4)Purchasing division:						
	(a)Personal services	639.5	330.6	864.6	136.6	1,971.3
	(b)Employee benefits	222.4	112.7	304.1	52.5	691.7

(c)Travel	7.6	35.5	12.1	22.5	77.7	
(d)Maintenance and repairs	4.5	20.4	169.4	2.1	196.4	
(e)Supplies and materials	9.1	16.2	700.3	13.0	738.6	
(f)Contractual services		60.0	21.6		81.6	
(g)Operating costs	128.4	89.6	31.0	38.4	287.4	
(h)Capital outlay		1.2		25.0	26.2	
(i)Out-of-state Travel		2.2	16.3		9.8	28.3
(j)Other financing uses		.3	66.7	95.8	.1	162.9

Authorized FTE: 65.00 Permanent; 6.00 Term

Item	Fund	General Funds	Other State Funds	Intrnl Svc Trnsf	Funds/Inter-Agency	Federal Funds	Total
(5) Information systems division--regular:							
(a)Personal services					7,955.2		7,955.2
(b)Employee benefits					2,376.5		2,376.5
(c)Travel			185.0		185.0		
(d)Maintenance and repairs						3,365.9	3,365.9
(e)Supplies and materials					861.3	861.3	
(f)Contractual services					5,202.0		5,202.0
(g)Operating costs				11,416.3		11,416.3	
(h)Capital outlay				225.3		225.3	
(i)Out-of-state Travel					27.1	27.1	
(j)Other financing uses					7,621.2		7,621.2

Authorized FTE: 205.00 Permanent; 6.00 Term

Item	Fund	General Funds	State Agency Funds	Other Intrnl Svc Trnsf/Inter-Agency Funds	Federal Funds	Total
(6)	Information systems division--funds:					
	(a)Data processing equipment replacement	3,300.0		4,347.0		7,647.0
	(b)Radio equipment replacement			1,331.1		1,331.1
	(c)Communications equipment replacement			1,970.0		1,970.0

Item	Fund	General Funds	State Agency Funds	Other Intrnl Svc Trnsf/Inter-Agency Funds	Federal Funds	Total
(7)	Risk management division--regular:					
	(a)Personal services			1,698.5		1,698.5
	(b)Employee benefits			569.2	569.2	
	(c)Travel		33.1	33.1		
	(d)Maintenance and repairs				20.6	20.6
	(e)Supplies and materials			38.6	38.6	
	(f)Contractual services			504.5	504.5	
	(g)Operating costs		501.6		501.6	
	(h)Capital outlay		53.4		53.4	
	(i)Out-of-state Travel			6.0	6.0	
	(j)Other financing uses			156.8	156.8	

Authorized FTE: 46.00 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Funds	Total
(8)	Risk management division--funds:					
	(a)Public liability	32,187.0				32,187.0
	(b)Surety bond	113.4				113.4
	(c)Public property reserve			4,086.2		4,086.2
	(d)Local public bodies unemployment compensation	696.1				696.1
	(e)Workers' compensation retention			11,532.9		11,532.9
	(f)State unemployment compensation			3,612.1		3,612.1
	(g)Health benefits stabilization			77,627.5		77,627.5

The internal service funds/interagency transfers appropriation to the public liability fund includes three million two hundred thirty-nine thousand dollars ($3,239,000) in operating transfers in from the public liability account in the risk reserve. The internal service funds/interagency transfers appropriation to the surety bond fund includes forty-one thousand three hundred dollars ($41,300) in operating transfers in from the surety bond account in the risk reserve. The internal service funds/interagency transfers appropriation to the workers' compensation retention fund includes eleven million five hundred thirty-two thousand nine hundred dollars ($11,532,900) in operating transfers in from the workers' compensation retention account in the risk reserve.

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Funds	Total
(9)	Property control division:					
	(a)Personal services	1,009.9				1,009.9

(b)Employee benefits	331.4				331.4	
(c)Travel	8.7			8.7		
(d)Maintenance and repairs	149.0					149.0
(e)Supplies and materials	4.9				4.9	
(f)Operating costs	61.4			61.4		
(g)Other financing uses	.4				.4	

Authorized FTE: 28.00 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(10) Building services division:						
(a)Personal services		2,363.3				2,363.3
(b)Employee benefits		891.2			891.2	
(c)Travel		29.0		29.0		
(d)Maintenance and repairs		460.2				460.2
(e)Supplies and materials		27.5			27.5	
(f)Contractual services		188.8			188.8	
(g)Operating costs		2,102.1			2,102.1	
(h)Capital outlay		50.5		50.5		
(i)Other financing uses		1.6			1.6	

Authorized FTE: 119.00 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total

(11) Transportation services division:

(a)Personal services		85.9	575.9	661.8
(b)Employee benefits		26.9	187.9	214.8
(c)Travel	107.6	891.5	999.1	
(d)Maintenance and repairs	6.6	24.0		30.6
(e)Supplies and materials		.4	3.0	3.4
(f)Contractual services		.8	26.5	27.3
(g)Operating costs	27.4	88.5	115.9	
(h)Capital outlay	2,000.0		705.8	2,705.8
(i)Out-of-state Travel		2.3	11.4	13.7
(j)Other financing uses		22.3	854.8	877.1

Authorized FTE: 20.00 Permanent

Subtotal	205,693.1

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
EDUCATIONAL RETIREMENT BOARD:						
(a)Personal services			1,204.2			1,204.2
(b)Employee benefits			388.5		388.5	
(c)Travel		32.4		32.4		
(d)Maintenance and repairs				68.6		68.6
(e)Supplies and materials			32.0		32.0	
(f)Contractual services			414.1		414.1	
(g)Operating costs		258.6		258.6		

(h)Other costs	100.5		100.5	
(i)Capital outlay	215.1		215.1	
(j)Out-of-state Travel		12.3		12.3
(k)Other financing uses		.6		.6

Authorized FTE: 40.00 Permanent

The other state funds appropriation to the educational retirement board in the other costs category includes one hundred thousand five hundred dollars ($100,500) for payment of custody services associated with the fiscal agent contract to the state board of finance upon receipt of monthly assessments. Any unexpended or unencumbered balance in the state board of finance remaining at the end of fiscal year 1998 from this appropriation shall revert to the educational retirement fund.

Subtotal 2,726.9

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total

CRIMINAL AND JUVENILE JUSTICE COORDINATING COUNCIL:

(a)Travel	12.0		12.0	
(b)Contractual services		235.0		235.0
(c)Out-of-state Travel		2.0		2.0

The criminal and juvenile justice coordinating council may request budget increases from other state funds and from internal service funds/interagency transfers and may request category transfers.

Subtotal 249.0

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total

PUBLIC DEFENDER DEPARTMENT:

(a)Personal services	7,922.8				7,922.8
(b)Employee benefits	2,688.4				2,688.4
(c)Travel	146.8		146.8		
(d)Maintenance and repairs		74.2			74.2
(e)Supplies and materials	94.6			94.6	
(f)Contractual services	7,292.4		100.0		7,392.4
(g)Operating costs	2,043.5			2,043.5	
(h)Capital outlay	57.4	70.0		127.4	
(i)Out-of-state Travel	6.0			6.0	

Authorized FTE: 248.00 Permanent

Unexpended or unencumbered balances in the public defender department remaining at the end of fiscal year 1998 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~~.

Subtotal	20,496.1

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
GOVERNOR:						
(a)Personal services		1,107.4				1,107.4
(b)Employee benefits		373.7			373.7	
(c)Travel		45.6		45.6		
(d)Maintenance and repairs		22.8			22.8	
(e)Supplies and materials		51.0			51.0	
(f)Contractual services		122.8			122.8	

(g)Operating costs	177.5			177.5	
(h)Other costs	60.0			60.0	
(i)Capital outlay	21.7			21.7	
(j)Out-of-state Travel		33.6			33.6
(k)Other financing uses		.5			.5

Authorized FTE: 27.00 Permanent

Subtotal 2,016.6

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total

OFFICE ON INFORMATION AND COMMUNICATION MANAGEMENT:

(a)Personal services		151.8			151.8
(b)Employee benefits		38.8			38.8
(c)Travel	6.2			6.2	
(d)Maintenance and repairs	1.0				1.0
(e)Supplies and materials	1.0				1.0
(f)Operating costs	15.6			15.6	
(g)Capital outlay	3.0			3.0	
(h)Out-of-state Travel		2.0			2.0

Authorized FTE: 3.00 Permanent

Public members of the technical advisory committee to the office on information and communication management shall be reimbursed per diem and mileage by the office on information and communication management at the rates specified for nonsalaried public officers in the Per Diem and Mileage Act.

Subtotal 219.4

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
LIEUTENANT GOVERNOR:						
(a) Personal services		257.6				257.6
(b) Employee benefits		85.9				85.9
(c) Travel		19.2		19.2		
(d) Maintenance and repairs		.8				.8
(e) Supplies and materials		4.5				4.5
(f) Contractual services		4.7				4.7
(g) Operating costs		24.4		24.4		
(h) Capital outlay		1.0		1.0		
(i) Out-of-state Travel		4.9				4.9
(j) Other financing uses		.1				.1
Authorized FTE: 6.00 Permanent						
Subtotal				403.1		

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
PUBLIC EMPLOYEES RETIREMENT ASSOCIATION:						
(1) Administrative division:						
(a) Personal services			1,880.8			1,880.8
(b) Employee benefits			626.0		626.0	
(c) Travel		20.9		20.9		

(d)Maintenance and repairs			61.8		61.8
(e)Supplies and materials		42.5		42.5	
(f)Contractual services		4,800.2			4,800.2
(g)Operating costs	571.8		571.8		
(h)Other costs	430.0		430.0		
(i)Capital outlay	86.6		86.6		
(j)Out-of-state Travel		12.0		12.0	
(k)Other financing uses		.8		.8	

Authorized FTE: 50.00 Permanent; 4.00 Term

The other state funds appropriation to the administrative division of the public employees retirement association in the contractual services category includes four million two hundred fourteen thousand six hundred dollars ($4,214,600) to be used only for investment manager fees.

The other state funds appropriation to the administrative division of the public employees retirement association in the other costs category includes four hundred thirty thousand dollars ($430,000) for payment of custody services associated with the fiscal agent contract to the state board of finance upon receipt of monthly assessments. Any unexpended or unencumbered balance in the state board of finance remaining at the end of fiscal year 1998 from this appropriation shall revert to the public employees retirement association income fund.

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(2) Maintenance division:						
(a)Personal services			433.1		433.1	
(b)Employee benefits			184.4		184.4	
(c)Travel		4.7		4.7		
(d)Maintenance and repairs				462.3		462.3

(e)Supplies and materials		6.3		6.3	
(f)Contractual services		27.7		27.7	
(g)Operating costs	316.9		316.9		
(h)Capital outlay	8.5		8.5		
(i)Out-of-state Travel		1.1		1.1	
(j)Other financing uses		.3		.3	

Authorized FTE: 22.00 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(3) Deferred compensation:						
(a)Personal services			34.1		34.1	
(b)Employee benefits			12.3		12.3	
(c)Travel		1.8		1.8		
(d)Maintenance and repairs				.6		.6
(e)Supplies and materials			2.6		2.6	
(f)Contractual services			27.3		27.3	
(g)Operating costs		8.4		8.4		
(h)Capital outlay		17.3		17.3		
(i)Out-of-state Travel			1.0		1.0	

Authorized FTE: 1.00 Permanent

Subtotal				10,084.1	

			Other	Intrnl Svc	

Item	General Fund	State Funds	Other Agency Trnsf	Intrnl Svc Funds/Inter-Agency	Federal Funds	Total
STATE COMMISSION OF PUBLIC RECORDS:						
(a)Personal services		889.3				889.3
(b)Employee benefits		323.5				323.5
(c)Travel	8.1			8.1		
(d)Maintenance and repairs		88.7		11.7		100.4
(e)Supplies and materials		7.9		16.0		23.9
(f)Contractual services		5.0				5.0
(g)Operating costs	132.4		22.3		154.7	
(h)Other costs			34.5		34.5	
(i)Capital outlay	11.5	12.3	8.1		31.9	
(j)Out-of-state Travel		2.5				2.5
(k)Other financing uses		.4				.4
Authorized FTE: 31.50 Permanent						
Subtotal				1,574.2		

Item	General Fund	State Funds	Other Agency Trnsf	Intrnl Svc Funds/Inter-Agency	Federal Funds	Total
SECRETARY OF STATE:						
(a)Personal services		998.8				998.8
(b)Employee benefits		341.5				341.5
(c)Travel	15.3			15.3		
(d)Maintenance and repairs			25.4			25.4

(e)Supplies and materials	44.4			44.4	
(f)Contractual services	37.0			37.0	
(g)Operating costs	504.2		504.2		
(h)Other costs	79.5		79.5		
(i)Capital outlay	39.0		39.0		
(j)Out-of-state Travel	11.0			11.0	
(k)Other financing uses	.5			.5	

Authorized FTE: 36.00 Permanent; 1.00 Term; 1.33 Temporary

Subtotal				2,096.6		

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
PERSONNEL BOARD:						
(a)Personal services		2,286.2				2,286.2
(b)Employee benefits		784.3			784.3	
(c)Travel	22.4			22.4		
(d)Maintenance and repairs		87.0			87.0	
(e)Supplies and materials		60.2			60.2	
(f)Contractual services		63.8			63.8	
(g)Operating costs		155.3		155.3		
(h)Capital outlay		40.0		40.0		
(i)Out-of-state Travel		7.8			7.8	
(j)Other financing uses		1.0			1.0	

Authorized FTE: 69.00 Permanent

Subtotal 3,508.0

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
PUBLIC EMPLOYEE LABOR RELATIONS BOARD:						
(a)Personal services		77.7				77.7
(b)Employee benefits		38.7				38.7
(c)Travel		6.9		6.9		
(d)Maintenance and repairs		.5				.5
(e)Supplies and materials		4.3				4.3
(f)Contractual services		46.4				46.4
(g)Operating costs		43.4		43.4		
(h)Capital outlay		4.1		4.1		
(i)Out-of-state Travel		2.0				2.0

Authorized FTE: 2.00 Permanent

Subtotal 224.0

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
STATE TREASURER:						
(a)Personal services		1,721.0			26.0	1,747.0
(b)Employee benefits		633.6		15.3	648.9	
(c)Travel		10.5		10.5		

(d)Maintenance and repairs		11.1				11.1
(e)Supplies and materials		23.8			23.8	
(f)Contractual services		36.0			36.0	
(g)Operating costs	572.3			572.3		
(h)Out-of-state Travel		2.0			2.0	
(i)Other financing uses		.7			.7	
Authorized FTE: 46.00 Permanent; 1.00 Term						
Subtotal			3,052.3			
TOTAL GENERAL CONTROL	**118,110.9**	**68,321.8**		**322,127.0**	**2,598.2**	**511,157.9**

D. COMMERCE AND INDUSTRY

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
BOARD OF EXAMINERS FOR ARCHITECTS:						
(a)Personal services			101.2		101.2	
(b)Employee benefits			34.8		34.8	
(c)Travel		21.2		21.2		
(d)Maintenance and repairs				3.8		3.8
(e)Supplies and materials			7.5		7.5	
(f)Contractual services			23.2		23.2	
(g)Operating costs		40.5		40.5		
(h)Capital outlay		13.8		13.8		
(i)Out-of-state Travel			9.0		9.0	

(j)Other financing uses		.1				.1

Authorized FTE: 4.00 Permanent

Subtotal					255.1	

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
BORDER AUTHORITY:						
(a)Personal services			120.5			120.5
(b)Employee benefits			33.3			33.3
(c)Travel		5.0	10.2		15.2	
(d)Maintenance and repairs				2.0		2.0
(e)Supplies and materials			4.1			4.1
(f)Contractual services				10.8		10.8
(g)Operating costs		14.1	19.2		33.3	
(h)Out-of-state Travel			1.0			1.0
(i)Other financing uses			.1			.1

Authorized FTE: 3.00 Permanent

Subtotal					220.3	

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
TOURISM DEPARTMENT:						
(1) Travel and marketing:						
(a)Personal services			109.7	255.9		365.6

(b)Employee benefits		36.4		85.0	121.4
(c)Travel	9.0	21.0		30.0	
(d)Maintenance and repairs		1.7		3.8	5.5
(e)Supplies and materials		10.5		24.5	35.0
(f)Contractual services		53.4		124.6	178.0
(g)Operating costs	733.8		1,712.2		2,446.0
(h)Other costs	112.5		262.5	375.0	
(i)Out-of-state Travel		7.5		17.5	25.0
(j)Other financing uses	.1		.2	.3	

Authorized FTE: 11.00 Permanent

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(2)	Welcome centers:					
	(a)Personal services		168.9		394.2	563.1
	(b)Employee benefits		66.8		155.8	222.6
	(c)Travel	4.5	10.6		15.1	
	(d)Maintenance and repairs		3.2		7.3	10.5
	(e)Supplies and materials		3.2		7.4	10.6
	(f)Contractual services		3.0		7.0	10.0
	(g)Operating costs	13.0		30.5	43.5	
	(h)Capital outlay	5.3		12.2	17.5	
	(i)Out-of-state Travel		.3		.7	1.0

(j)Other financing uses	.3		.6		.9

Authorized FTE: 30.50 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-Funds	Federal Total
(3) New Mexico magazine:					
(a)Personal services			747.5		747.5
(b)Employee benefits			258.0		258.0
(c)Travel		8.5		8.5	
(d)Maintenance and repairs			5.2		5.2
(e)Supplies and materials		21.5		21.5	
(f)Contractual services		882.0		882.0	
(g)Operating costs		2,598.2		2,598.2	
(h)Other costs		200.0		200.0	
(i)Capital outlay		11.0		11.0	
(j)Out-of-state Travel			5.0		5.0
(k)Other financing uses		.8		.8	

Authorized FTE: 23.00 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-Funds	Federal Total
(4) Administrative services:					
(a)Personal services		336.2		84.1	420.3
(b)Employee benefits		106.1		25.7	131.8

(c)Travel	8.5	2.1	10.6	
(d)Maintenance and repairs	4.4	1.1	5.5	
(e)Supplies and materials	4.4	1.1	5.5	
(f)Contractual services	8.0	2.0	10.0	
(g)Operating costs	14.1	3.5	17.6	
(h)Out-of-state Travel	12.2	3.8	16.0	
(i)Other financing uses	.2	.1	.3	

Authorized FTE: 11.00 Permanent

The internal service funds/interagency transfers appropriations to the tourism department include three million two hundred fifty-seven thousand dollars ($3,257,000) from the state road fund.

Unexpended or unencumbered balances in the tourism department remaining at the end of fiscal year 1998 from appropriations made from the state road fund shall revert to the state road fund.

Subtotal							9,831.9

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total

ECONOMIC DEVELOPMENT DEPARTMENT:

(1) Office of the secretary:

(a)Personal services		426.8			426.8	
(b)Employee benefits		134.2			134.2	
(c)Travel	29.9			29.9		
(d)Maintenance and repairs		.6				.6
(e)Supplies and materials		12.0			12.0	

(f)Contractual services	175.0			175.0
(g)Operating costs	505.1		505.1	
(h)Capital outlay	2.5		2.5	
(i)Out-of-state Travel	17.0			17.0
(j)Other financing uses	.3			.3

Authorized FTE: 9.00 Permanent; 1.00 Temporary

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(2) Administrative services:						
(a)Personal services		519.8		24.7		544.5
(b)Employee benefits		179.2		13.1		192.3
(c)Travel		5.2		5.2		
(d)Maintenance and repairs		30.0				30.0
(e)Supplies and materials		19.0				19.0
(f)Contractual services		70.0		32.5		102.5
(g)Operating costs		55.5			55.5	
(h)Capital outlay		2.5			2.5	
(i)Out-of-state Travel		2.1				2.1
(j)Other financing uses		.6				.6

Authorized FTE: 14.00 Permanent; 1.00 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total

(3) Economic development division:

(a)Personal services	798.7				798.7
(b)Employee benefits	261.3				261.3
(c)Travel	68.5			68.5	
(d)Maintenance and repairs		4.3			4.3
(e)Supplies and materials	26.3				26.3
(f)Contractual services	415.5				415.5
(g)Operating costs	200.3			200.3	
(h)Other costs	150.0			150.0	
(i)Capital outlay	2.0			2.0	
(j)Out-of-state Travel	44.0				44.0
(k)Other financing uses	.8				.8

Authorized FTE: 22.00 Permanent

Item	Fund	General Funds	Other State Funds	Intrnl Svc Trnsf/Inter-Agency Funds	Federal Funds	Total
(4) Science and technology:						
(a)Personal services		156.4				156.4
(b)Employee benefits		46.1				46.1
(c)Travel		5.5			5.5	
(d)Maintenance and repairs		.2				.2
(e)Supplies and materials		4.0				4.0
(f)Contractual services		40.0				40.0

(g)Operating costs	19.6				19.6	
(h)Out-of-state Travel		10.0				10.0
(i)Other financing uses	.1				.1	

Authorized FTE: 3.00 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-Funds	Federal Funds	Total
(5) Office of space:						
(a)Personal services			128.1			128.1
(b)Employee benefits			43.2			43.2
(c)Travel		11.6		11.6		
(d)Maintenance and repairs		2.1				2.1
(e)Supplies and materials		5.3				5.3
(f)Contractual services		142.5				142.5
(g)Operating costs		27.2			27.2	
(h)Capital outlay		2.0			2.0	
(i)Out-of-state Travel			22.9			22.9
(j)Other financing uses			.1			.1

Authorized FTE: 3.00 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-Funds	Federal Funds	Total
(6) Trade division:						
(a)Personal services			218.7			218.7

(b)Employee benefits	69.4				69.4
(c)Travel	12.6		12.6		
(d)Maintenance and repairs	.4				.4
(e)Supplies and materials	12.9				12.9
(f)Contractual services	205.1				205.1
(g)Operating costs	197.2			197.2	
(h)Out-of-state Travel	45.5				45.5
(i)Other financing uses	.2				.2

Authorized FTE: 6.00 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(7) Film division:						
(a)Personal services		225.9				225.9
(b)Employee benefits		73.8				73.8
(c)Travel		6.9		6.9		
(d)Maintenance and repairs		3.1				3.1
(e)Supplies and materials		10.1				10.1
(f)Contractual services		10.0				10.0
(g)Operating costs		136.4			136.4	
(h)Out-of-state Travel		15.9				15.9
(i)Other financing uses		.2				.2

Authorized FTE: 7.00 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(8)	Housing division:					
	(a)Personal services	20.1	144.0		406.4	570.5
	(b)Employee benefits	5.5	53.0		127.0	185.5
	(c)Travel	3.3	13.3	16.6		
	(d)Maintenance and repairs			2.2	2.9	5.1
	(e)Supplies and materials		3.7		5.5	9.2
	(f)Contractual services		8.9		31.1	40.0
	(g)Operating costs	15.3		137.7	153.0	
	(h)Other costs	210.0		7,589.6		7,799.6
	(i)Capital outlay	2.0		4.0	6.0	
	(j)Out-of-state Travel		7.0		1.0	8.0
	(k)Other financing uses				70.8	70.8

Authorized FTE: 10.00 Permanent; 6.00 Term

	Subtotal	15,004.8

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total

REGULATION AND LICENSING DEPARTMENT:

(1)	Administrative services division:				
	(a)Personal services	961.3		298.9	1,260.2
	(b)Employee benefits	317.5		110.7	428.2

(c)Travel	6.2	1.7	7.9		
(d)Maintenance and repairs	50.9		4.5		55.4
(e)Supplies and materials	14.5		3.1		17.6
(f)Contractual services	24.0				24.0
(g)Operating costs	639.3	48.1		687.4	
(h)Other financing uses	.4		.2		.6

Authorized FTE: 33.80 Permanent; 1.00 Temporary

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(2) Construction industries division:						
(a)Personal services		3,086.2				3,086.2
(b)Employee benefits		1,141.8				1,141.8
(c)Travel		369.1		369.1		
(d)Maintenance and repairs			6.7			6.7
(e)Supplies and materials		47.8			47.8	
(f)Contractual services		50.0			50.0	
(g)Operating costs		393.9			393.9	
(h)Capital outlay		860.0			860.0	
(i)Out-of-state Travel		2.0			2.0	
(j)Other financing uses		1.4			1.4	

Authorized FTE: 99.00 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(3)	Manufactured housing division:					
	(a)Personal services		372.1			372.1
	(b)Employee benefits		132.9			132.9
	(c)Travel	52.5		52.5		
	(d)Maintenance and repairs		1.4			1.4
	(e)Supplies and materials		7.1			7.1
	(f)Operating costs	6.1			6.1	
	(g)Out-of-state Travel		1.0			1.0
	(h)Other financing uses		.2			.2

Authorized FTE: 12.00 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(4)	Financial institutions division:					
	(a)Personal services		756.6			756.6
	(b)Employee benefits		249.7			249.7
	(c)Travel	91.1		91.1		
	(d)Maintenance and repairs		1.0			1.0
	(e)Supplies and materials		7.0			7.0
	(f)Contractual services		.5			.5
	(g)Operating costs	22.1			22.1	
	(h)Out-of-state Travel		11.5			11.5

(i)Other financing uses .4 .4

Authorized FTE: 22.75 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Total
(5)	New Mexico state board of public accountancy:	305.1			305.1
Authorized FTE: 4.00 Permanent					
(6)	Board of acupuncture and oriental medicine:	71.6			71.6
Authorized FTE: .95 Permanent					
(7)	New Mexico athletic commission:	63.2		63.2	
Authorized FTE: .65 Permanent					
(8)	Athletic trainer practice board:	18.8		18.8	
Authorized FTE: .20 Permanent					
(9)	Board of barbers and cosmetologists:	557.8			557.8
Authorized FTE: 8.00 Permanent					
(10)	Chiropractic board:	101.1		101.1	
Authorized FTE: 1.50 Permanent					
(11)	New Mexico board of dental health care:	235.5			235.5
Authorized FTE: 2.70 Permanent					
(12)	Board of landscape architects:	29.2		29.2	
Authorized FTE: .30 Permanent					
(13)	Board of nursing home administrators:	47.0			47.0
Authorized FTE: .60 Permanent					

(14) Board of examiners for occupational therapy: 43.3 43.3

Authorized FTE: .60 Permanent

(15) Board of optometry: 48.2 48.2

Authorized FTE: .70 Permanent

(16) Board of osteopathic medical examiners: 41.5 41.5

Authorized FTE: .50 Permanent

(17) Board of pharmacy: 983.9 983.9

Authorized FTE: 12.00 Permanent

(18) Physical therapists' licensing board: 88.2 88.2

Authorized FTE: 1.40 Permanent

(19) Board of podiatry: 18.9 18.9

Authorized FTE: .20 Permanent

(20) Advisory board of private investigators and polygraphers:

148.2 148.2

Authorized FTE: 2.35 Permanent

(21) New Mexico state board of psychologist examiners:

142.2 142.2

Authorized FTE: 2.25 Permanent

(22) New Mexico real estate commission: 748.0 748.0

Authorized FTE: 10.60 Permanent

(23) Advisory board of respiratory care practitioners:

39.3 39.3

Authorized FTE: .70 Permanent

(24) Speech language pathology, audiology and hearing aid dispensing practices board: 92.2 92.2

Authorized FTE: 1.80 Permanent

(25) Board of thanatopractice: 79.3 79.3

Authorized FTE: .60 Permanent

(26) Nutrition and dietetics practice board: 25.6 25.6

Authorized FTE: .30 Permanent

(27) Board of social work examiners: 255.0 255.0

Authorized FTE: 2.00 Permanent

(28) Interior design board: 34.0 34.0

Authorized FTE: .45 Permanent

(29) Real estate recovery fund: 200.0 200.0

(30) Real estate appraisers board: 99.3 99.3

Authorized FTE: 1.45 Permanent

(31) Board of massage therapy: 135.0 135.0

Authorized FTE: 2.40 Permanent

(32) Counseling and therapy practice board: 298.6 298.6

Authorized FTE: 5.00 Permanent

(33) Barbers and cosmetologists tuition recovery fund: 2.1 2.1

(34) Journeymen testing revolving fund:

(a)Maintenance and repairs 5.9 5.9

(b)Supplies and materials 4.6 4.6

(c)Operating costs 24.2 24.2

(d)Capital outlay		6.0				6.0

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(35)	Alcohol and gaming division:					
	(a)Personal services		482.2			482.2
	(b)Employee benefits		190.4			190.4
	(c)Travel	9.2		9.2		
	(d)Maintenance and repairs		.5			.5
	(e)Supplies and materials		16.2			16.2
	(f)Contractual services		15.0			15.0
	(g)Operating costs	14.0			14.0	
	(h)Out-of-state Travel		1.0			1.0
	(i)Other financing uses		.3			.3

Authorized FTE: 16.00 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(36)	Securities division:					
	(a)Personal services		629.3			629.3
	(b)Employee benefits		214.7			214.7
	(c)Travel	3.2		3.2		
	(d)Maintenance and repairs		2.0			2.0
	(e)Supplies and materials		8.0			8.0

(f)Contractual services		1.0				1.0
(g)Operating costs	9.4				9.4	
(h)Out-of-state Travel		2.0				2.0
(i)Other financing uses		.3				.3

Authorized FTE: 19.25 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(37) Securities division education and training fund:						
(a)Travel		1.0		1.0		
(b)Supplies and materials			10.0			10.0
(c)Contractual services			45.0			45.0
(d)Operating costs			22.0		22.0	
Subtotal				16,822.9		

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
STATE CORPORATION COMMISSION:						
(1) Administration division:						
(a)Personal services		992.8		189.1		1,181.9
(b)Employee benefits		382.5				382.5
(c)Travel	4.9			4.9		
(d)Maintenance and repairs			13.5			13.5
(e)Supplies and materials		7.0				7.0

(f)Contractual services	38.9				38.9
(g)Operating costs	70.0	380.9		450.9	
(h)Out-of-state Travel	6.0				6.0
(i)Other financing uses	.4				.4

Authorized FTE: 31.00 Permanent

The internal service funds/interagency transfers appropriations to the administration division of the state corporation commission include sixty thousand dollars ($60,000) from the state road fund, one hundred twenty thousand dollars ($120,000) from the patient's compensation fund, three hundred thousand dollars ($300,000) from the subsequent injury fund and ninety thousand dollars ($90,000) from the title insurance maintenance assessment fund.

The other state funds appropriation to the administration division of the state corporation commission includes seventy thousand dollars ($70,000) from the reproduction fund.

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(2)	Corporations division:					
	(a)Personal services	540.7				540.7
	(b)Employee benefits	201.0				201.0
	(c)Maintenance and repairs	5.0				5.0
	(d)Supplies and materials	6.5				6.5
	(e)Contractual services	2.0				2.0
	(f)Operating costs	350.9			350.9	
	(g)Out-of-state Travel	.5				.5
	(h)Other financing uses	.3				.3

Authorized FTE: 22.00 Permanent

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(3) Telecommunications division:					
(a)Personal services		344.2			344.2
(b)Employee benefits		106.9			106.9
(c)Travel	3.1			3.1	
(d)Maintenance and repairs			3.0		3.0
(e)Supplies and materials		3.6			3.6
(f)Contractual services		1.0			1.0
(g)Operating costs	29.4			29.4	
(h)Capital outlay	2.0			2.0	
(i)Out-of-state Travel		5.0			5.0
(j)Other financing uses		.1			.1

Authorized FTE: 10.00 Permanent

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(4) Transportation division:					
(a)Personal services			649.3		649.3
(b)Employee benefits			237.5		237.5
(c)Travel		17.4	17.4		
(d)Maintenance and repairs				4.4	4.4
(e)Supplies and materials			6.0		6.0

(f)Contractual services			2.0		2.0
(g)Operating costs		171.6		171.6	
(h)Capital outlay		27.3		27.3	
(i)Out-of-state Travel			5.0		5.0
(j)Other financing uses			.3		.3

Authorized FTE: 23.00 Permanent

The internal service funds/interagency transfers appropriations to the transportation division of the state corporation commission include one million one hundred twenty thousand eight hundred dollars ($1,120,800) from the state road fund.

Item	Fund	General Funds	Other State Agency	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(5) Pipeline division:						
(a)Personal services		68.3			61.0	129.3
(b)Employee benefits		26.5			23.6	50.1
(c)Travel		5.4		4.8	10.2	
(d)Maintenance and repairs		.4			.3	.7
(e)Supplies and materials		3.5			3.2	6.7
(f)Contractual services		.5			.5	1.0
(g)Operating costs		22.6		20.2	42.8	
(h)Capital outlay		.5		.5	1.0	
(i)Out-of-state Travel		1.1			.9	2.0
(j)Other financing uses		.1				.1

Authorized FTE: 4.00 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(6)	State fire marshal:					
	(a)Personal services		514.6			514.6
	(b)Employee benefits		169.4			169.4
	(c)Travel	46.1		46.1		
	(d)Maintenance and repairs		5.9			5.9
	(e)Supplies and materials		17.5			17.5
	(f)Contractual services		3.0			3.0
	(g)Operating costs	230.9		230.9		
	(h)Capital outlay	29.3		29.3		
	(i)Out-of-state Travel		3.6			3.6
	(j)Other financing uses		.2			.2

Authorized FTE: 18.00 Permanent

The other state funds appropriations to the state fire marshal of the state corporation commission include one million twenty thousand five hundred dollars ($1,020,500) from the fire protection fund.

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(7)	Firefighter training academy:					
	(a)Personal services		332.6			332.6
	(b)Employee benefits		115.4			115.4
	(c)Travel	11.8		11.8		

(d)Maintenance and repairs				81.0		81.0
(e)Supplies and materials			59.9		59.9	
(f)Contractual services			41.0		41.0	
(g)Operating costs		100.5		100.5		
(h)Other costs		19.5		19.5		
(i)Capital outlay		53.9		53.9		
(j)Out-of-state Travel			2.0		2.0	
(k)Other financing uses			.2		.2	

Authorized FTE: 12.00 Permanent

The other state funds appropriations to the firefighter training academy of the state corporation commission include eight hundred seventeen thousand eight hundred dollars ($817,800) from the fire protection fund.

Item	Fund	General Funds	Other State Funds	Intrnl Svc Trnsf/Inter-Agency Trnsf	Federal Funds	Total
(8) Department of insurance:						
(a)Personal services			2,105.7	175.4		2,281.1
(b)Employee benefits			743.7	25.6	769.3	
(c)Travel		5.6	6.5	12.1		
(d)Maintenance and repairs			3.0	5.7	8.7	
(e)Supplies and materials			9.3	18.5	27.8	
(f)Contractual services			96.9	369.7	466.6	
(g)Operating costs		509.0	142.6	651.6		
(h)Other costs			11,300.0		11,300.0	

(i)Capital outlay	17.5	1.0		18.5	
(j)Out-of-state Travel		20.0	3.0		23.0
(k)Other financing uses		.9	510.0		510.9

Authorized FTE: 72.00 Permanent

The other state funds appropriations to the department of insurance of the state corporation commission include twenty thousand dollars ($20,000) from the insurance examination fund, eighty thousand dollars ($80,000) from the insurance licensee continuing education fund, two hundred sixty-two thousand one hundred dollars ($262,100) from the title insurance maintenance assessment fund, nine million six hundred ninety-three thousand six hundred dollars ($9,693,600) from the patient's compensation fund and two million five hundred two thousand three hundred dollars ($2,502,300) from the subsequent injury fund.

Unexpended or unencumbered balances in the state corporation commission remaining at the end of fiscal year 1998 from appropriations made from the state road fund shall revert to the state road fund.

Subtotal	22,963.8

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
NEW MEXICO BOARD OF MEDICAL EXAMINERS:						
(a)Personal services			292.3		292.3	
(b)Employee benefits			114.0		114.0	
(c)Travel		25.7		25.7		
(d)Maintenance and repairs				3.6		3.6
(e)Supplies and materials			10.0		10.0	
(f)Contractual services			204.1		204.1	
(g)Operating costs		54.8		54.8		
(h)Capital outlay		4.5		4.5		

(i)Out-of-state Travel			10.0			10.0
(j)Other financing uses			.1			.1

Authorized FTE: 10.00 Permanent

Subtotal				719.1		

Item	Fund	General Funds	State Agency	Other Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
BOARD OF NURSING:						
(a)Personal services			266.3	5.3		271.6
(b)Employee benefits			86.8	2.1		88.9
(c)Travel		20.7	.3		21.0	
(d)Maintenance and repairs				5.2	.3	5.5
(e)Supplies and materials			10.8	.5		11.3
(f)Contractual services			140.0			140.0
(g)Operating costs		163.7	.8		164.5	
(h)Other costs				.2	.2	
(i)Capital outlay		38.5			38.5	
(j)Out-of-state Travel			6.0			6.0
(k)Other financing uses			.1			.1

Authorized FTE: 9.00 Permanent

Subtotal				747.6		

Item	Fund	General Funds	State Agency	Other Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total

STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND SURVEYORS:

(a)Personal services		145.3		145.3	
(b)Employee benefits		48.3		48.3	
(c)Travel	19.3		19.3		
(d)Maintenance and repairs		6.0			6.0
(e)Supplies and materials		5.3		5.3	
(f)Contractual services		66.7		66.7	
(g)Operating costs	107.2		107.2		
(h)Capital outlay	.5		.5		
(i)Out-of-state Travel		8.3		8.3	
(j)Other financing uses		.1		.1	

Authorized FTE: 6.00 Permanent

Subtotal		407.0

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
STATE RACING COMMISSION:						
(a)Personal services		601.8				601.8
(b)Employee benefits		324.4				324.4
(c)Travel		37.6			37.6	
(d)Maintenance and repairs		2.6				2.6
(e)Supplies and materials		8.0				8.0
(f)Contractual services		446.8				446.8

(g)Operating costs	95.4				95.4	
(h)Capital outlay	.1				.1	
(i)Out-of-state Travel	1.9					1.9
(j)Other financing uses	.2					.2

Authorized FTE: 15.95 Permanent; 1.56 Temporary

Subtotal					1,518.8	

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
NEW MEXICO APPLE COMMISSION:						
(a)Travel		5.3			5.3	
(b)Supplies and materials		.4				.4
(c)Contractual services		31.0	2.2			33.2
(d)Operating costs		2.4			2.4	
(e)Out-of-state Travel		2.8				2.8
Subtotal					44.1	

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
BOARD OF VETERINARY MEDICINE:						
(a)Personal services			43.0			43.0
(b)Employee benefits			14.6			14.6
(c)Travel		13.3			13.3	
(d)Maintenance and repairs					.6	.6

(e)Supplies and materials		1.8		1.8	
(f)Contractual services		38.0		38.0	
(g)Operating costs	24.4		24.4		
(h)Capital outlay	3.0		3.0		
(i)Out-of-state Travel		4.5		4.5	
(j)Other financing uses		.1		.1	

Authorized FTE: 2.00 Permanent

Subtotal	143.3

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
BICYCLE RACING COMMISSION:						
(a)Travel		1.0		1.0		
(b)Supplies and materials		.5			.5	
(c)Contractual services		32.2			32.2	
(d)Operating costs		.5		.5		
Subtotal				34.2		
TOTAL COMMERCE AND INDUSTRY						
		27,894.6	26,819.2	5,494.8	8,504.3	68,712.9

E. AGRICULTURE, ENERGY AND NATURAL RESOURCES

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
OFFICE OF CULTURAL AFFAIRS:						

Item	Fund	General Funds	Other State Agency	Intrnl Svc Funds/Inter-Trnsf	Federal Funds	Total
(1)	Administrative services division:					
	(a)Personal services		799.3			799.3
	(b)Employee benefits		254.3			254.3
	(c)Travel	10.2			10.2	
	(d)Maintenance and repairs		14.5			14.5
	(e)Supplies and materials		15.0			15.0
	(f)Contractual services		26.4	60.0		86.4
	(g)Operating costs	30.1	50.0		80.1	
	(h)Capital outlay	5.0			5.0	
	(i)Out-of-state Travel		1.0			1.0
	(j)Other financing uses		1.0			1.0

Authorized FTE: 22.50 Permanent

Item	Fund	General Funds	Other State Agency	Intrnl Svc Funds/Inter-Trnsf	Federal Funds	Total
(2)	Hispanic cultural division:					
	(a)Personal services		211.5			211.5
	(b)Employee benefits		68.1			68.1
	(c)Travel	23.0			23.0	
	(d)Maintenance and repairs		4.0			4.0
	(e)Supplies and materials		18.0			18.0
	(f)Contractual services		10.0			10.0
	(g)Operating costs	101.0			101.0	

(h)Capital outlay	115.0			115.0		
(i)Out-of-state Travel		1.0			1.0	
(j)Other financing uses		.1			.1	

Authorized FTE: 6.00 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Funds	Total
(3) Museum division:						
(a)Personal services			4,253.2	545.0		4,798.2
(b)Employee benefits			1,461.7	169.5		1,631.2
(c)Travel		21.0		21.0		
(d)Maintenance and repairs				274.1		274.1
(e)Supplies and materials			93.0		93.0	
(f)Contractual services			125.0		125.0	
(g)Operating costs		184.9	401.6		586.5	
(h)Other costs			246.3		246.3	
(i)Capital outlay			100.0		100.0	
(j)Out-of-state Travel			2.0		2.0	
(k)Other financing uses			2.5		2.5	

Authorized FTE: 152.75 Permanent; 25.75 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Funds	Total
(4) Contract archaeology:						

(a)Personal services			1,473.7			1,473.7
(b)Employee benefits			485.4		485.4	
(c)Travel		139.4	139.4			
(d)Maintenance and repairs				16.0		16.0
(e)Supplies and materials			26.5		26.5	
(f)Contractual services			289.8		289.8	
(g)Operating costs		36.1		36.1		
(h)Capital outlay		62.9		62.9		
(i)Out-of-state Travel			2.0		2.0	
(j)Other financing uses			.9		.9	

Authorized FTE: 54.50 Term; 8.00 Temporary

Item	Fund	General Funds	Other State Funds	Intrnl Svc Trnsf	Funds/Inter-Agency	Federal Funds	Total
(5) Natural history museum:							
(a)Personal services		1,330.1		257.5		62.6	1,650.2
(b)Employee benefits		474.8	80.8		19.8	575.4	
(c)Travel		32.5			32.5		
(d)Maintenance and repairs			124.6				124.6
(e)Supplies and materials			86.2			86.2	
(f)Contractual services			100.0			100.0	
(g)Operating costs		249.5	98.0			347.5	
(h)Other costs		33.6				33.6	
(i)Capital outlay			45.0			45.0	

(j)Out-of-state Travel		1.0				1.0
(k)Other financing uses		.9				.9

Authorized FTE: 49.50 Permanent; 16.00 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(6) Arts division:						
(a)Personal services		397.1	47.6		94.3	539.0
(b)Employee benefits		125.3	12.0		32.0	169.3
(c)Travel		32.7		32.7		
(d)Maintenance and repairs		2.9				2.9
(e)Supplies and materials		13.7				13.7
(f)Contractual services		42.9	702.4		138.7	884.0
(g)Operating costs		106.1			106.1	
(h)Other costs		1,093.8				1,093.8
(i)Capital outlay			80.0		80.0	
(j)Out-of-state Travel			1.0			1.0
(k)Other financing uses			.3			.3

Authorized FTE: 12.50 Permanent; 5.50 Term; 2.00 Temporary

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(7) Library division:						
(a)Personal services		1,469.0			371.0	1,840.0

(b)Employee benefits		501.4			113.4	614.8	
(c)Travel	14.0		67.8	81.8			
(d)Maintenance and repairs		40.6				7.6	48.2
(e)Supplies and materials		23.3	1.3		9.0	33.6	
(f)Contractual services		620.0			2.0	622.0	
(g)Operating costs	57.5			100.7	158.2		
(h)Other costs	250.0			111.0	361.0		
(i)Capital outlay	183.0	38.7		92.0	313.7		
(j)Out-of-state Travel					3.0	3.0	
(k)Other financing uses		.9				.9	

Authorized FTE: 44.00 Permanent; 23.50 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(8) Historic preservation division:						
(a)Personal services		408.7	126.2		270.7	805.6
(b)Employee benefits		118.0	36.0		101.6	255.6
(c)Travel			21.1	21.1		
(d)Maintenance and repairs					28.5	28.5
(e)Supplies and materials					17.0	17.0
(f)Contractual services		28.6			16.4	45.0
(g)Operating costs				52.2	52.2	
(h)Other costs				173.0	173.0	

(i)Capital outlay		12.8		7.2	20.0	
(j)Out-of-state Travel					10.0	10.0
(k)Other financing uses		.3				.3

Authorized FTE: 10.00 Permanent; 15.00 Term

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(9) Space center:						
(a)Personal services			630.2	109.9		740.1
(b)Employee benefits			223.7	38.9		262.6
(c)Travel		1.0	18.2		19.2	
(d)Maintenance and repairs			45.8	41.2		87.0
(e)Supplies and materials			20.5	82.0		102.5
(f)Operating costs		110.9	104.8		215.7	
(g)Capital outlay		10.0			10.0	
(h)Out-of-state Travel			1.0			1.0
(i)Other financing uses			.4			.4

Authorized FTE: 24.00 Permanent; 6.00 Term

(10) Farm and ranch heritage museum:						
(a)Personal services			524.7			524.7
(b)Employee benefits			174.1			174.1
(c)Travel		25.0			25.0	
(d)Maintenance and repairs			15.0			15.0
(e)Supplies and materials			18.0			18.0

(f)Contractual services		40.0			40.0	
(g)Operating costs	50.9			50.9		
(h)Out-of-state Travel		1.0			1.0	
(i)Other financing uses		.1			.1	

Authorized FTE: 24.50 Permanent

Unexpended or unencumbered balances in the office of cultural affairs remaining at the end of fiscal year 1998 from appropriations made from the general fund shall not revert.

Subtotal 25,943.5

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
NEW MEXICO LIVESTOCK BOARD:						
(a)Personal services		249.3	1,627.7		270.1	2,147.1
(b)Employee benefits		87.3	602.3		94.5	784.1
(c)Travel	26.5	256.4		28.7	311.6	
(d)Maintenance and repairs			.9	7.5	1.0	9.4
(e)Supplies and materials		5.4	91.6		5.9	102.9
(f)Contractual services		13.0	201.6		14.1	228.7
(g)Operating costs	12.9	150.5		13.6	177.0	
(h)Other costs			50.0		50.0	
(i)Capital outlay	18.8	84.7		20.6	124.1	
(j)Out-of-state Travel		1.5	4.7		1.4	7.6

Authorized FTE: 78.80 Permanent

The general fund appropriations to the New Mexico livestock board for its meat

inspection program, including administrative costs, are contingent upon a dollar-for-dollar match of federal funds for that program.

Subtotal 3,942.5

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
DEPARTMENT OF GAME AND FISH:						
(1) Administration:						
(a)Personal services		138.8	5,174.1		3,000.6	8,313.5
(b)Employee benefits		51.7	2,009.2		1,163.9	3,224.8
(c)Travel	22.4	873.5		506.0	1,401.9	
(d)Maintenance and repairs			5.9	233.0	135.0	373.9
(e)Supplies and materials		17.9	695.7		403.1	1,116.7
(f)Contractual services		34.5	1,341.3		777.0	2,152.8
(g)Operating costs	34.2	1,330.0			770.4	2,134.6
(h)Other costs	16.1	585.4		401.1	1,002.6	
(i)Capital outlay	19.0	737.3		427.2	1,183.5	
(j)Out-of-state Travel			1.1	40.9	23.6	65.6
(k)Other financing uses			265.1		88.4	353.5

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 shall be used for the conservation of nongame wildlife species and for public information and education programs related to wildlife.

Unexpended or unencumbered balances from the general fund appropriations to the administration division of the department of game and fish shall not revert.

~~The department of game and fish shall provide one FTE in staff support for the share with wildlife program.~~

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Total	
(2)	Share with wildlife program:			65.0	.5	65.5
(3)	Endangered species program:					
	(a)Personal services	48.8			126.9	175.7
	(b)Employee benefits	23.4			38.8	62.2
	(c)Travel	12.3		20.3	32.6	
	(d)Maintenance and repairs	2.5			4.1	6.6
	(e)Supplies and materials	3.1			5.1	8.2
	(f)Contractual services	51.9			86.2	138.1
	(g)Operating costs	13.5		22.4	35.9	
	(h)Capital outlay	27.5			27.5	
	(i)Out-of-state Travel	1.5			2.5	4.0
Authorized FTE: 5.00 Permanent						
	Subtotal			21,879.7		

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Total
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT:					
(1)	Office of the secretary:				
	(a)Personal services	285.3			74.2 359.5
	(b)Employee benefits	116.5			23.6 140.1

(c)Travel	14.4		5.3	19.7	
(d)Maintenance and repairs	.7				.7
(e)Supplies and materials	6.1			.5	6.6
(f)Contractual services	250.5			4.0	254.5
(g)Operating costs	111.0			5.6	116.6
(h)Capital outlay	2.0				2.0
(i)Out-of-state Travel	22.7				7.5 30.2
(j)Other financing uses					910.0 910.0

Authorized FTE: 8.00 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(2)	Administrative services division:					
	(a)Personal services	1,252.8			126.8	1,379.6
	(b)Employee benefits	450.0			45.6	495.6
	(c)Travel	4.1	12.5	16.6		
	(d)Maintenance and repairs	8.3			15.0	23.3
	(e)Supplies and materials	4.2			30.1	34.3
	(f)Contractual services	14.8				14.8
	(g)Operating costs	109.1		204.6	313.7	
	(h)Capital outlay	60.0		2.0	62.0	
	(i)Out-of-state Travel				2.0	2.0
	(j)Other financing uses	.5				.5

Authorized FTE: 37.00 Permanent; 3.00 Term

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(3)	Energy conservation and management division:					
	(a)Personal services		431.1			431.1
	(b)Employee benefits		144.7			144.7
	(c)Travel	4.1		16.2	20.3	
	(d)Maintenance and repairs		39.9		158.1	198.0
	(e)Supplies and materials		1.6		5.1	6.7
	(f)Contractual services		11.8	799.0	42.9	853.7
	(g)Operating costs	12.5			46.9	59.4
	(h)Other costs			100.0		100.0
	(i)Capital outlay	3.0			12.0	15.0
	(j)Out-of-state Travel		2.1		8.4	10.5
	(k)Other financing uses			900.0		900.0

Authorized FTE: 10.00 Permanent

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(4)	Forestry division:					
	(a)Personal services		1,452.8	53.9	285.1	1,791.8
	(b)Employee benefits		538.8	5.0	95.3	639.1
	(c)Travel	47.5	13.9	89.9	151.3	

(d)Maintenance and repairs		33.1	3.0		3.7	39.8
(e)Supplies and materials	13.5	18.1		29.2	60.8	
(f)Contractual services	34.2			140.7	174.9	
(g)Operating costs	165.1	11.1		147.6	323.8	
(h)Other costs	300.9	153.0		36.0	489.9	
(i)Capital outlay	91.0	3.2		18.8	113.0	
(j)Out-of-state Travel		1.1	1.5		7.8	10.4
(k)Other financing uses		.7				.7

Authorized FTE: 41.00 Permanent; 11.00 Term; 2.00 Temporary

The general fund appropriations to the forestry division of the energy, minerals and natural resources department include two hundred sixty-five thousand dollars ($265,000) to be used only to conduct soil and water conservation district activities and projects and two hundred ninety-three thousand four hundred dollars ($293,400) to be used for other expenses of the soil and water conservation bureau, commission or districts.

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(5) State park and recreation division:						
(a)Personal services		3,594.0		2,535.2	109.0	6,238.2
(b)Employee benefits		1,409.2		993.9	43.1	2,446.2
(c)Travel	238.4	151.8	21.9	412.1		
(d)Maintenance and repairs		486.1		309.2	12.0	807.3
(e)Supplies and materials		178.0	113.0	48.5	339.5	
(f)Contractual services		151.2	96.1	252.2	499.5	

(g)Operating costs	858.3	545.6		9.9	1,413.8	
(h)Other costs	4.1	1.8			5.9	
(i)Capital outlay	520.1	330.5		79.0	929.6	
(j)Out-of-state Travel		2.2	1.8		2.0	6.0
(k)Other financing uses		3.7				3.7

Authorized FTE: 214.00 Permanent; 3.00 Term; 50.00 Temporary

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(6) Mining and minerals division:						
(a)Personal services			246.2		320.5	709.1 1,275.8
(b)Employee benefits			85.7		106.8	246.5 439.0
(c)Travel		1.1	30.3	50.6	82.0	
(d)Maintenance and repairs		1.3			1.0	5.1 7.4
(e)Supplies and materials		1.0			9.5	24.4 34.9
(f)Contractual services			1.4		7.3	995.5 1,004.2
(g)Operating costs		24.3		39.5	110.7	174.5
(h)Capital outlay			1.0	6.4	18.3	25.7
(i)Out-of-state Travel					.9	6.0 6.9
(j)Other financing uses			.2	522.2		.3 522.7

Authorized FTE: 17.00 Permanent; 16.00 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total

(7) Oil conservation division:

(a)Personal services	1,992.8		12.1	49.3	144.6		2,198.8
(b)Employee benefits	724.8	4.2	17.5	51.2	797.7		
(c)Travel	83.8	.3	4.0	6.7	94.8		
(d)Maintenance and repairs		36.3					36.3
(e)Supplies and materials	29.2	.2		2.4	31.8		
(f)Contractual services	42.3	324.4	24.1		390.8		
(g)Operating costs	846.9	.5		1.1	848.5		
(h)Capital outlay	126.0	6.0			132.0		
(i)Out-of-state Travel	10.7	.3		2.3	13.3		
(j)Other financing uses	.9			104.2	105.1		

Authorized FTE: 62.00 Permanent; 4.00 Term

Item	Fund	General Funds	Other State Funds	Intrnl Svc Trnsf	Funds/Inter-Agency	Federal Funds	Total
(8) Youth conservation corps:							
(a)Personal services			68.3			68.3	
(b)Employee benefits			25.3			25.3	
(c)Travel		5.8			5.8		
(d)Supplies and materials			7.3			7.3	
(e)Contractual services			1,336.0				1,336.0
(f)Operating costs		6.1			6.1		
(g)Out-of-state Travel			1.0			1.0	

Authorized FTE: 2.00 Permanent

Subtotal 33,491.0

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Total

COMMISSIONER OF PUBLIC LANDS:

(a)Personal services		4,753.5		4,753.5
(b)Employee benefits		1,512.7		1,512.7
(c)Travel	91.0		91.0	
(d)Maintenance and repairs			128.2	128.2
(e)Supplies and materials		162.3		162.3
(f)Contractual services		420.3		420.3
(g)Operating costs	1,028.6			1,028.6
(h)Capital outlay	278.2		278.2	
(i)Out-of-state Travel		51.7		51.7
(j)Other financing uses		529.9		529.9

Authorized FTE: 148.00 Permanent; 4.00 Temporary

Subtotal 8,956.4

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Total

NEW MEXICO PEANUT COMMISSION:

(a)Maintenance and repairs			1.0	1.0
(b)Supplies and materials		.5		.5
(c)Contractual services		9.9		9.9

(d)Operating costs	2.6			2.6		
(e)Other costs	1.0			1.0		
Subtotal				15.0		

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
STATE ENGINEER:						
(1) Administration:						
(a)Personal services		4,884.8				4,884.8
(b)Employee benefits		1,614.3				1,614.3
(c)Travel		173.7		173.7		
(d)Maintenance and repairs		38.2				38.2
(e)Supplies and materials		64.0				64.0
(f)Contractual services		503.8	71.5			575.3
(g)Operating costs		600.0			600.0	
(h)Capital outlay		70.2			70.2	
(i)Out-of-state Travel		14.7				14.7
(j)Other financing uses		2.0				2.0

Authorized FTE: 144.00 Permanent; .69 Temporary

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(2) Legal services division:						
(a)Personal services		872.2				872.2

(b)Employee benefits	260.1			260.1
(c)Travel	15.0		15.0	
(d)Maintenance and repairs	.5			.5
(e)Supplies and materials	13.1			13.1
(f)Contractual services	836.4			836.4
(g)Operating costs	131.5		131.5	
(h)Out-of-state Travel	.6			.6
(i)Other financing uses	.2			.2

Authorized FTE: 19.00 Permanent

The general fund appropriation to the legal services division of the state engineer in the contractual services category includes two hundred fifty thousand dollars ($250,000) to be used, in conjunction with the United States geological survey, for a hydrographic survey and related investigations of the lower Rio Grande basin. Expenditure of any of this appropriation is contingent upon the agreement to an alternative dispute resolution process by all parties in the adjudication of the lower Rio Grande basin.

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(3)	Interstate stream commission:					
	(a)Personal services	649.0			649.0	
	(b)Employee benefits	198.9			198.9	
	(c)Travel	45.1		45.1		
	(d)Maintenance and repairs	1.4				1.4
	(e)Supplies and materials	11.9			11.9	
	(f)Contractual services	429.9			429.9	

(g)Operating costs	196.5			196.5		
(h)Out-of-state Travel	8.4				8.4	
(i)Other financing uses	.2				.2	

Authorized FTE: 16.00 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(4) Ute dam operation:						
(a)Personal services				29.9	29.9	
(b)Employee benefits				10.4	10.4	
(c)Travel		2.8		2.8		
(d)Maintenance and repairs					5.9	5.9
(e)Supplies and materials				2.6	2.6	
(f)Contractual services			37.5		37.5	
(g)Operating costs		7.7			7.7	
(h)Capital outlay		2.2	.3		2.5	
(i)Out-of-state Travel				.3	.3	

Authorized FTE: 1.00 Permanent

The internal service funds/interagency transfers appropriations for Ute dam operation include fifty-two thousand two hundred dollars ($52,200) from the game protection fund and forty-seven thousand four hundred dollars ($47,400) in cash balance remaining in the Ute dam operating fund.

Unexpended or unencumbered balances remaining at the end of fiscal year 1998 from appropriations made from the game protection fund shall revert to the game protection fund.

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(5) Irrigation works construction fund programs:						
(a) Contractual services		1,325.0				1,325.0
(b) Other costs		2,650.0				2,650.0

The appropriations to irrigation works construction fund programs include:

(a) three hundred fifty thousand dollars ($350,000) to match seventeen and one-half percent of the cost of work undertaken by the United States army corps of engineers pursuant to the federal Water Resources Development Act of 1986 provided that no amount of this appropriation shall be expended for any project unless the appropriate acequia system or community ditch has agreed to provide seven and one-half percent of the cost;

(b) four hundred fifty thousand dollars ($450,000) for designing and supervision of construction, in cooperation with the United States Department of Agriculture, the construction, improvement, repair and improvement from floods the dams, reservoirs, ditches, flumes and appurtenances of community ditches in the state, provided that not more than eighty percent of the total cost of any one project shall be paid from this appropriation and not more than sixty thousand dollars ($60,000) of this appropriation shall be used for any one community ditch. The state engineer may enter into cooperative agreements with the owners or commissioners of ditch associations to ensure that the work is done in the most efficient and economical manner and may contract with the federal government or any of its agencies or instrumentalities that provide matching funds or assistance; and

(c) seven hundred fifty thousand dollars ($750,000) for a hydrographic survey to investigate permanent sources of water for irrigation purposes in the lower Rio Grande basin, provided that expenditure of any of this appropriation is contingent upon the agreement to an alternative dispute resolution process by all New Mexico parties in the adjudication of the lower Rio Grande basin.

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total

(6) Improvement of Rio Grande income fund

programs: 1,443.0 1,443.0

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.

Subtotal 17,225.7

Item	Fund	General Funds	Other State Funds	Intrnl Svc/Inter-Agency Trnsf	Federal Funds	Total

NEW MEXICO PUBLIC UTILITY COMMISSION:

(a)Personal services		2,137.8				2,137.8
(b)Employee benefits		702.6			702.6	
(c)Travel	10.0			10.0		
(d)Maintenance and repairs		82.3			82.3	
(e)Supplies and materials		21.1			21.1	
(f)Contractual services		130.0			130.0	
(g)Operating costs	146.1			146.1		
(h)Out-of-state Travel		26.0			26.0	
(i)Other financing uses		.7			.7	

Authorized FTE: 51.00 Permanent

Subtotal 3,256.6

Item	Fund	General Funds	Other State Funds	Intrnl Svc/Inter-Agency Trnsf	Federal Funds	Total

ORGANIC COMMODITY COMMISSION:

(a)Personal services		28.2			28.2
(b)Employee benefits		9.6			9.6
(c)Travel	2.7		2.7		
(d)Supplies and materials		1.7			1.7
(e)Contractual services		4.4	10.0		14.4
(f)Operating costs	11.0	3.3		14.3	
(g)Out-of-state Travel			1.0		1.0
Authorized FTE: 1.00 Permanent					
Subtotal			71.9		

TOTAL AGRICULTURE, ENERGY AND NATURAL RESOURCES

	50,911.2	**43,724.9**	**4,101.0**	**16,045.2**	**114,782.3**

F. HEALTH, HOSPITALS AND HUMAN SERVICES

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
COMMISSION ON THE STATUS OF WOMEN:						
(a)Personal services		190.2			190.2	
(b)Employee benefits		89.1			89.1	
(c)Travel	10.5			10.5		
(d)Maintenance and repairs	2.1				2.1	
(e)Supplies and materials	6.0				6.0	
(f)Contractual services	3.8				3.8	

(g)Operating costs	75.9			75.9	
(h)Capital outlay	2.5			2.5	
(i)Out-of-state Travel		2.1			2.1
(j)Other financing uses		.5			.5

Authorized FTE: 7.00 Permanent

Subtotal 382.7

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
COMMISSION FOR DEAF AND HARD-OF-HEARING PERSONS:						
(a)Personal services			159.3		7.2	166.5
(b)Employee benefits			53.7		1.3	55.0
(c)Travel		12.0	3.0		15.0	
(d)Maintenance and repairs			3.4			3.4
(e)Supplies and materials			8.0		1.5	9.5
(f)Contractual services			17.5		12.0	29.5
(g)Operating costs		68.2		6.0	74.2	
(h)Other costs		.5			.5	
(i)Capital outlay		7.6		3.0	10.6	
(j)Out-of-state Travel			3.5		1.5	5.0
(k)Other financing uses			.1			.1

Authorized FTE: 6.00 Permanent

Subtotal 369.3

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
MARTIN LUTHER KING, JR. COMMISSION:						
(a)Personal services		59.1				59.1
(b)Employee benefits		19.7				19.7
(c)Travel		5.4		5.4		
(d)Maintenance and repairs		.5				.5
(e)Supplies and materials		4.0				4.0
(f)Contractual services		42.2				42.2
(g)Operating costs		29.9			29.9	
(h)Capital outlay		.5			.5	
(i)Out-of-state Travel		2.5				2.5
(j)Other financing uses		.1				.1
Authorized FTE: 2.00 Permanent						
Subtotal				163.9		

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
COMMISSION FOR THE BLIND:						
(a)Personal services		713.4	63.1		1,594.5	2,371.0
(b)Employee benefits		225.3	21.0		505.9	752.2
(c)Travel		38.1		78.5	116.6	
(d)Maintenance and repairs		17.6			36.2	53.8

(e)Supplies and materials	33.3			68.5	101.8
(f)Contractual services	44.4			91.4	135.8
(g)Operating costs	152.0		312.2	464.2	
(h)Other costs	191.7	450.0	1,314.5		1,956.2
(i)Capital outlay	46.0		94.7	140.7	
(j)Out-of-state Travel	5.3			11.0	16.3
(k)Other financing uses	.3			.6	.9

Authorized FTE: 102.50 Permanent; 1.00 Term; 1.20 Temporary

Unexpended or unencumbered balances in the commission for the blind remaining at the end of fiscal year 1998 from appropriations made from the general fund shall not revert.

Subtotal	6,109.5

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
NEW MEXICO OFFICE OF INDIAN AFFAIRS:						
(a)Personal services		306.0		97.4		403.4
(b)Employee benefits		101.7		36.1		137.8
(c)Travel	35.9		5.5	41.4		
(d)Maintenance and repairs		2.4				2.4
(e)Supplies and materials		8.5		1.0		9.5
(f)Contractual services		17.9		2.0		19.9
(g)Operating costs	35.6		11.7	47.3		
(h)Other costs	748.0		1,047.8			1,795.8

(i)Capital outlay	8.0		2.0	10.0	
(j)Out-of-state Travel	7.0		2.5	9.5	

Authorized FTE: 10.00 Permanent; 4.00 Term

Subtotal	2,477.0

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Total

STATE AGENCY ON AGING:

(1) Administration:

(a)Personal services	615.3		9.5	336.9	961.7
(b)Employee benefits	198.0		3.2	112.4	313.6
(c)Travel	24.1		18.9	43.0	
(d)Maintenance and repairs	1.3			.9	2.2
(e)Supplies and materials	7.2			5.2	12.4
(f)Contractual services	18.7			9.1	27.8
(g)Operating costs	49.1		31.7	80.8	
(h)Other costs	2.1		3.3	5.4	
(i)Capital outlay	3.4		1.6	5.0	
(j)Out-of-state Travel	2.1			2.9	5.0

Authorized FTE: 26.00 Permanent; 1.00 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Total

(2) Special programs:

(a)Personal services		96.7			161.1	257.8
(b)Employee benefits		32.0			53.5	85.5
(c)Travel	14.4		5.6	20.0		
(d)Supplies and materials		2.2			1.8	4.0
(e)Contractual services		4.9				4.9
(f)Operating costs	14.8			36.4	51.2	
(g)Other costs	23.9			65.9	89.8	
(h)Out-of-state Travel					7.0	7.0

Authorized FTE: 7.00 Permanent; 1.00 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(3)Employment programs:		758.9		389.6	1,148.5	
(4)Community programs:						
(a)Other costs		9,961.6			5,281.0	15,242.6
(b)Other financing uses		1,014.0				1,014.0

The general fund appropriations for community programs to the state agency on aging used to supplement federal Older Americans Act programs shall be contracted to the designated area agencies on aging.

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(5) Volunteer programs:						
(a)Other costs		2,668.5				2,668.5

(b)Other financing uses	163.9			163.9	

Unexpended or unencumbered balances in the state agency on aging remaining at the end of fiscal year 1998 from appropriations made from the general fund shall revert to the general fund sixty days after fiscal year 1998 audit reports have been approved by the state auditor.

Subtotal				22,214.6		

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Total	
HUMAN SERVICES DEPARTMENT:						
(1) Administrative services division:						
(a)Personal services		3,472.1			3,472.1	6,944.2
(b)Employee benefits		1,090.0			1,090.0	2,180.0
(c)Travel	72.0		72.0	144.0		
(d)Maintenance and repairs		103.9			104.0	207.9
(e)Supplies and materials		100.3		100.3	200.6	
(f)Contractual services		273.5		273.5	547.0	
(g)Operating costs	915.0	895.9		1,810.9	3,621.8	
(h)Other costs	1.1			1.0	2.1	
(i)Capital outlay	149.6			149.6	299.2	
(j)Out-of-state Travel		6.0		6.0	12.0	

Authorized FTE: 185.00 Permanent; 19.00 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Total	
(2) Child support enforcement division:						

(a)Personal services		2,203.6		4,066.1	6,269.7
(b)Employee benefits		740.4		1,366.2	2,106.6
(c)Travel	38.2	70.5	108.7		
(d)Maintenance and repairs		39.4		72.7	112.1
(e)Supplies and materials		56.8		104.7	161.5
(f)Contractual services		1,210.1		2,333.6	3,543.7
(g)Operating costs	1,719.1			3,172.1	4,891.2
(h)Capital outlay	23.9		44.2	68.1	
(i)Out-of-state Travel		2.0		3.7	5.7

Authorized FTE: 224.00 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(3)	Medical assistance division:					
	(a)Personal services	1,129.8			1,560.2	2,690.0
	(b)Employee benefits	374.4			516.9	891.3
	(c)Travel	13.4		13.5	26.9	
	(d)Maintenance and repairs		3.9		4.0	7.9
	(e)Supplies and materials	73.5			73.6	147.1
	(f)Contractual services		3,869.5	250.0	486.4	10,643.6 15,249.5
	(g)Operating costs	798.6		798.6	1,597.2	
	(h)Capital outlay	4.0		4.0	8.0	
	(i)Out-of-state Travel		2.5		2.5	5.0

(j)Other financing uses	4.7		8,159.8	8,164.5

Authorized FTE: 78.00 Permanent; 3.00 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(4) Medicaid payments:						
(a)Other costs		244,492.2	4,149.0		49,270.0	800,581.3 1,098,492.5
~~(b) Other financing uses~~		~~14,107.8~~			~~37,912.2~~	~~52,020.0~~

~~The general fund appropriation for medicaid payments of the human services department is contingent upon the enactment into law of House Bill 1269 of the first session of the forty-third legislature.~~

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(5) Income support division:						
(a)Personal services		11,145.9			13,194.7	24,340.6
(b)Employee benefits		3,888.5			4,603.1	8,491.6
(c)Travel		249.1		267.1		516.2
(d)Maintenance and repairs		234.7			251.7	486.4
(e)Supplies and materials		400.0			429.1	829.1
(f)Contractual services		2,678.7			6,029.1	8,707.8
(g)Operating costs		5,987.7	250.0		6,288.8	12,526.5
(h)Other costs		17.1		23.7	40.8	
(i)Capital outlay		150.5		207.9	358.4	

(j)Out-of-state Travel	10.7			14.8	25.5	
(k)Other financing uses				3,230.7		3,230.7

Authorized FTE: 978.50 Permanent; 19.00 Term; 15.00 Temporary

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(6) Income support programs:		31,284.3	920.7		357,596.9	389,801.9

~~Thirty-one million two hundred eighty-four thousand three hundred dollars ($31,284,300) of the general fund appropriation to the income support programs of the human services department is contingent upon the enactment into law of House Bill 1337 of the first session of the forty-third legislature.~~

Subtotal	1,660,081.5

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
LABOR DEPARTMENT:						
(1) Office of the secretary:						
(a)Personal services				449.7		449.7
(b)Employee benefits				141.0		141.0
(c)Travel		25.6	25.6			
(d)Maintenance and repairs					7.1	7.1
(e)Supplies and materials				7.0		7.0
(f)Contractual services				4.2		4.2
(g)Operating costs			76.6	76.6		
(h)Other costs			10.0	10.0		
(i)Out-of-state Travel				6.0		6.0

Authorized FTE: 11.00 Permanent; 1.00 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(2)	Administrative services division:					
	(a)Personal services	120.0			3,089.9	3,209.9
	(b)Employee benefits	9.2			1,050.5	1,059.7
	(c)Travel		16.0	16.0		
	(d)Maintenance and repairs				259.5	259.5
	(e)Supplies and materials	95.5			174.5	270.0
	(f)Contractual services	28.0			509.3	537.3
	(g)Operating costs	16.7		453.7	470.4	
	(h)Other costs	250.7		44.0	294.7	
	(i)Capital outlay	614.2		80.8	695.0	
	(j)Out-of-state Travel	5.7			4.3	10.0

Authorized FTE: 103.00 Permanent; 15.76 Temporary

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(3)	Employment security division:					
	(a)Personal services				10,950.5	10,950.5
	(b)Employee benefits				3,671.1	3,671.1
	(c)Travel		198.0	198.0		
	(d)Maintenance and repairs				276.0	276.0

(e)Supplies and materials					300.0	300.0
(f)Contractual services					265.0	265.0
(g)Operating costs				1,187.0		1,187.0
(h)Other costs				6,721.7		6,721.7
(i)Out-of-state Travel					20.0	20.0

Authorized FTE: 423.00 Permanent; 5.00 Term; 33.50 Temporary

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(4) Job training division:						
(a)Personal services					1,292.6	1,292.6
(b)Employee benefits					392.0	392.0
(c)Travel			26.0	26.0		
(d)Maintenance and repairs					7.9	7.9
(e)Supplies and materials					16.0	16.0
(f)Contractual services		700.0			48.0	748.0
(g)Operating costs				199.7	199.7	
(h)Other costs				6,050.0		6,050.0
(i)Out-of-state Travel					2.0	2.0

Authorized FTE: 35.00 Permanent; 5.50 Temporary

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(5) Labor and industrial division:						

(a)Personal services	197.4	528.9			726.3	
(b)Employee benefits	66.6	178.7			245.3	
(c)Travel	32.3		32.3			
(d)Maintenance and repairs		8.2				8.2
(e)Supplies and materials	12.0				12.0	
(f)Contractual services	5.5				5.5	
(g)Operating costs	139.7			139.7		
(h)Other costs		163.2		163.2		
(i)Out-of-state Travel	1.0				1.0	

Authorized FTE: 23.00 Permanent; 4.00 Temporary

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(6) Human rights division:						
(a)Personal services		395.0			84.5	479.5
(b)Employee benefits		246.1			51.2	297.3
(c)Travel		28.0		28.0		
(d)Maintenance and repairs		6.0				6.0
(e)Supplies and materials		10.0				10.0
(f)Contractual services		14.0				14.0
(g)Operating costs		116.9			116.9	
(h)Capital outlay		5.0			5.0	
(i)Out-of-state Travel		2.0				2.0

Authorized FTE: 17.00 Permanent

Subtotal 42,165.4

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
WORKERS' COMPENSATION ADMINISTRATION:						
(a)Personal services		4,289.2				4,289.2
(b)Employee benefits		1,552.5				1,552.5
(c)Travel		124.5		124.5		
(d)Maintenance and repairs				145.1		145.1
(e)Supplies and materials		64.2			64.2	
(f)Contractual services		815.3			815.3	
(g)Operating costs			1,048.7			1,048.7
(h)Capital outlay			10.8		10.8	
(i)Out-of-state Travel		18.1			18.1	
(j)Other financing uses		2.0			2.0	

Authorized FTE: 141.00 Permanent

The workers' compensation administration shall establish its fiscal year 1998 operating budget by division in accordance with the reorganization adopted on October 18, 1996.

Subtotal 8,070.4

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
DIVISION OF VOCATIONAL REHABILITATION:						
(1) Rehabilitative services unit:						

(a)Personal services	971.2			4,917.5	5,888.7
(b)Employee benefits	314.2			1,591.2	1,905.4
(c)Travel	46.0		241.8	287.8		
(d)Maintenance and repairs	20.5			96.1	116.6
(e)Supplies and materials	26.0			146.7	172.7
(f)Contractual services	74.0			379.2	453.2
(g)Operating costs	391.2		1,971.8		2,363.0
(h)Other costs	2,235.4	153.7		8,286.3	10,675.4
(i)Capital outlay	2.1		44.4	46.5	
(j)Out-of-state Travel	6.6			53.3	59.9
(k)Other financing uses	.4			2.4	2.8

Authorized FTE: 184.00 Permanent; 21.00 Term

The division of vocational rehabilitation may apply an indirect cost rate of up to five percent for administering and monitoring independent living projects.

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-Funds	Federal Total	
(2)	Disability determination unit:					
	(a)Personal services			9.4	2,902.8	2,912.2
	(b)Employee benefits			3.1	932.9	936.0
	(c)Travel		32.1	32.1		
	(d)Maintenance and repairs				80.2	80.2
	(e)Supplies and materials				56.9	56.9

(f)Contractual services				10.0	10.0
(g)Operating costs			787.2	787.2	
(h)Other costs			4,499.1		4,499.1
(i)Out-of-state Travel				19.9	19.9
(j)Other financing uses				3.5	3.5

Authorized FTE: 97.00 Permanent

Unexpended or unencumbered balances in the division of vocational rehabilitation remaining at the end of fiscal year 1998 from appropriations made from the general fund shall not revert.

Subtotal			31,309.1		

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-Agency	Federal Funds	Total
GOVERNOR'S COMMITTEE ON CONCERNS OF THE HANDICAPPED:						
(a)Personal services			228.1			228.1
(b)Employee benefits			83.7			83.7
(c)Travel		9.9		9.9		
(d)Maintenance and repairs			2.0			2.0
(e)Supplies and materials			8.2			8.2
(f)Contractual services			22.6			22.6
(g)Operating costs		27.6			27.6	
(h)Other costs		.8			.8	
(i)Out-of-state Travel			5.0			5.0
(j)Other financing uses			.1			.1

Authorized PTE: 7.00 Permanent

Subtotal					388.0		

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-		Federal Funds	Total
DEVELOPMENTAL DISABILITIES PLANNING COUNCIL:							
(a)Personal services		170.3				78.5	248.8
(b)Employee benefits		55.9				26.3	82.2
(c)Travel		14.0		11.9	25.9		
(d)Maintenance and repairs						.4	.4
(e)Supplies and materials		1.5				5.0	6.5
(f)Contractual services		6.5				23.0	29.5
(g)Operating costs		48.3		12.0	4.8	65.1	
(h)Other costs					287.2	287.2	
(i)Out-of-state Travel						4.6	4.6
(j)Other financing uses		.1					.1
Authorized FTE: 6.00 Permanent; 1.50 Term							
Subtotal					750.3		

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-		Federal Funds	Total
MINERS' HOSPITAL:							
(a)Personal services				4,721.9		55.0	4,776.9
(b)Employee benefits				1,670.9		25.0	1,695.9
(c)Travel		51.2			51.2		

(d)Maintenance and repairs			358.1		358.1
(e)Supplies and materials		1,421.7			1,421.7
(f)Contractual services		1,027.0		75.0	1,102.0
(g)Operating costs	690.9		690.9		
(h)Other costs	6.0		6.0		
(i)Capital outlay	224.5		224.5		
(j)Out-of-state Travel		10.0		10.0	
(k)Other financing uses		6.1		6.1	

Authorized FTE: 187.50 Permanent; 13.50 Term

Subtotal			10,343.3		

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
DEPARTMENT OF HEALTH:						
(1) Office of the secretary:						
(a)Personal services		299.0			299.0	
(b)Employee benefits		97.1			97.1	
(c)Travel		9.0		9.0		
(d)Maintenance and repairs		.6				.6
(e)Supplies and materials		4.2			4.2	
(f)Operating costs		19.4		19.4		
(g)Out-of-state Travel		5.0			5.0	
(h)Other financing uses		.1			.1	

Authorized FTE: 6.00 Permanent; 1.00 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-Funds	Federal Funds	Total
(2)	Administrative services division:					
	(a)Personal services	1,979.1		157.5	869.3	3,005.9
	(b)Employee benefits	649.3		76.0	294.9	1,020.2
	(c)Travel	11.9	7.0	18.9		
	(d)Maintenance and repairs	21.7			11.6	33.3
	(e)Supplies and materials	50.4		7.0	19.1	76.5
	(f)Contractual services	179.0			60.0	239.0
	(g)Operating costs	749.7		236.9	986.6	
	(h)Capital outlay		9.9	15.1	25.0	
	(i)Out-of-state Travel				4.0	4.0
	(j)Other financing uses			1.2	.1	1.3

Authorized FTE: 94.00 Permanent; 7.00 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-Funds	Federal Funds	Total
(3)	Internal audit and quality improvement:					
	(a)Personal services	449.5			449.5	
	(b)Employee benefits	124.3			124.3	
	(c)Travel	27.2		27.2		
	(d)Maintenance and repairs	1.3				1.3

(e)Supplies and materials	3.0					3.0
(f)Contractual services	2.5					2.5
(g)Operating costs	70.7				70.7	
(h)Capital outlay	5.0				5.0	
(i)Out-of-state Travel	3.0					3.0
(j)Other financing uses	.2	500.0				500.2

Authorized FTE: 12.00 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(4) General counsel:						
(a)Personal services		446.6				446.6
(b)Employee benefits		137.8				137.8
(c)Travel		13.0		13.0		
(d)Maintenance and repairs		2.8				2.8
(e)Supplies and materials		8.5				8.5
(f)Contractual services		5.0				5.0
(g)Operating costs		49.9			49.9	
(h)Capital outlay		7.0			7.0	
(i)Out-of-state Travel		1.5				1.5
(j)Other financing uses		.1				.1

Authorized FTE: 11.00 Permanent

			Other	Intrnl Svc		

Item	General Fund	State Funds	Agency Trnsf	Funds/Inter-Agency Trnsf	Federal Funds	Total
(5) Division of epidemiology, evaluation and planning:						
(a)Personal services		710.4			821.2	1,531.6
(b)Employee benefits		218.7			247.2	465.9
(c)Travel	12.3		15.3	27.6		
(d)Maintenance and repairs	2.2				4.8	7.0
(e)Supplies and materials		9.3			10.7	20.0
(f)Contractual services		338.5				338.5
(g)Operating costs	193.1			50.5	243.6	
(h)Other costs				2.0	2.0	
(i)Capital outlay	18.0				18.0	
(j)Out-of-state Travel		4.8			9.2	14.0

Authorized FTE: 23.50 Permanent; 16.50 Term; 1.50 Temporary

Item	General Fund	State Funds	Other Agency Trnsf	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(6) Reproduction services:						
(a)Personal services				18.0		18.0
(b)Employee benefits				8.5		8.5
(c)Maintenance and repairs					41.7	41.7
(d)Supplies and materials				75.0		75.0
(e)Operating costs			250.0		250.0	

Authorized FTE: 1.00 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(7)	Long-term care and restorative services division:					
	(a)Personal services		486.5	219.1		705.6
	(b)Employee benefits		154.9	69.5		224.4
	(c)Travel	15.6	6.9	22.5		
	(d)Maintenance and repairs		7.1	3.2		10.3
	(e)Supplies and materials		10.7	4.7		15.4
	(f)Contractual services		224.2	99.3		323.5
	(g)Operating costs	59.0	26.1	85.1		
	(h)Other costs	68.8	30.2	99.0		
	(i)Capital outlay	4.6	2.1	6.7		
	(j)Out-of-state Travel		4.9	2.1		7.0
	(k)Other financing uses		62.8	27.5		90.3

Authorized FTE: 10.00 Permanent; 11.00 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(8)	Scientific laboratory division:					
	(a)Personal services		2,518.6	204.5	680.4	15.2 3,418.7
	(b)Employee benefits		808.4	48.0 288.6	6.8	1,151.8
	(c)Travel	23.3		23.3		
	(d)Maintenance and repairs		144.0	13.2	119.6	276.8

(e)Supplies and materials	568.1	164.5	394.1		1,126.7	
(f)Contractual services	124.0	167.6	237.2		528.8	
(g)Operating costs	28.7	30.6	254.3		313.6	
(h)Other costs		62.0			62.0	
(i)Capital outlay	426.0				426.0	
(j)Out-of-state Travel	16.0				16.0	
(k)Other financing uses		1.6			1.6	

Authorized FTE: 78.00 Permanent; 36.00 Term

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(9) Community health systems divisions:						
(a)Personal services		613.1	30.6	56.8	448.7	1,149.2
(b)Employee benefits		183.0	10.1	27.4	169.3	389.8
(c)Travel	44.3	13.2	24.7	82.2		
(d)Maintenance and repairs				1.0	10.3	11.3
(e)Supplies and materials		24.9	4.3	15.3	18.2	62.7
(f)Contractual services		10,650.3		1,298.6	365.4	12,314.3
(g)Operating costs	650.3	18.6	5.4	91.5	765.8	
(h)Other costs	2,776.5				2,776.5	
(i)Capital outlay	16.8			16.8		
(j)Out-of-state Travel		7.2	4.4	3.9	15.5	
(k)Other financing uses			.5		.5	

Authorized FTE: 15.00 Permanent; 21.00 Term

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(10)	Public health division:					
	(a)Personal services	15,173.7	523.0	1,208.4	6,660.0	23,565.1
	(b)Employee benefits	5,415.7	188.7	425.6	2,367.6	8,397.6
	(c)Travel	693.2	23.5	54.6	298.5	1,069.8
	(d)Maintenance and repairs	153.5	5.2	12.1	66.1	236.9
	(e)Supplies and materials	3,765.7	134.6	312.1	1,707.5	5,919.9
	(f)Contractual services	11,989.3	407.0	943.6	5,162.0	18,501.9
	(g)Operating costs	2,106.8	71.5	165.8	907.1	3,251.2
	(h)Other costs	5,167.2	175.4	406.7	2,224.8	7,974.1
	(i)Capital outlay	39.8	8.1	18.9	103.3	170.1
	(j)Out-of-state Travel	89.7	3.0	7.1	38.6	138.4
	(k)Other financing uses	7.3	.2	.6	3.2	11.3

Authorized FTE: 429.00 Permanent; 395.00 Term

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(11)	Southern New Mexico rehabilitation center:					
	(a)Personal services	1,520.0	1,778.2	70.0		3,368.2
	(b)Employee benefits	477.0	603.6	30.0		1,110.6
	(c)Travel	6.0	1.3	16.3		23.6
	(d)Maintenance and repairs	6.9	18.2	105.8		130.9

(e)Supplies and materials	93.9	18.8	150.7		263.4
(f)Contractual services	98.8	46.7	50.1		195.6
(g)Operating costs	92.5	187.5		280.0	
(h)Other costs	13.7	11.5		25.2	
(i)Capital outlay	43.3	15.0		58.3	
(j)Out-of-state Travel	3.7		1.1		4.8
(k)Other financing uses	1.7				1.7

Authorized FTE: 109.00 Permanent; 18.00 Term

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(12) Northern New Mexico rehabilitation center:						
(a)Personal services		394.5	569.9	136.8		1,101.2
(b)Employee benefits		176.3	223.8	35.5		435.6
(c)Travel	6.3	24.1	8.2		38.6	
(d)Maintenance and repairs		.8	19.6	5.7		26.1
(e)Supplies and materials		9.0	3.4		12.4	
(f)Contractual services		23.2	33.3	18.2		74.7
(g)Operating costs		11.2	48.2	11.1	70.5	
(h)Other costs		3.3	209.1	11.0	223.4	
(i)Other financing uses		.7			.7	

Authorized FTE: 43.00 Permanent; 11.00 Term

			Other	Intrnl Svc		

Item	Fund	General Funds	State Agency Trnsf	Funds/Inter-	Federal Funds	Total
(13)	Women, infants and children program:					
	(a)Personal services		544.7	137.3	4,325.7	5,007.7
	(b)Employee benefits		223.5	57.1	1,583.2	1,863.8
	(c)Travel	19.1	4.4	123.5	147.0	
	(d)Maintenance and repairs		6.2	1.5	40.2	47.9
	(e)Supplies and materials		22.8	5.3	147.4	175.5
	(f)Contractual services		317.2	73.2	2,049.6	2,440.0
	(g)Operating costs	95.2	22.0	615.6	732.8	
	(h)Capital outlay	11.0	2.6	71.1	84.7	
	(i)Out-of-state Travel		2.6	.6	16.8	20.0
	(j)Other financing uses		.4	.1	2.6	3.1

Authorized FTE: 226.00 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(14)	Women, infants and children food:			7,000.0	19,570.6	26,570.6
(15)	Community programs--	substance abuse:				
	(a)Contractual services		7,797.3		5,603.4	13,400.7
	(b)Other financing uses		387.6		278.4	666.0
(16)	Community programs--mental health:					
	(a)Contractual services		17,222.6		1,010.0	18,232.6
	(b)Other financing uses		4,165.9			4,165.9

(17) Community programs-- developmental disabilities: 17,941.8
17,941.8

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-Funds	Federal Funds	Total
(18) Behavioral health services division:						
(a)Personal services		476.6			370.0	846.6
(b)Employee benefits		149.6			113.4	263.0
(c)Travel		17.0		12.9	29.9	
(d)Maintenance and repairs			2.0		1.6	3.6
(e)Supplies and materials		5.2			3.9	9.1
(f)Contractual services		15.9			12.1	28.0
(g)Operating costs		47.3		35.8	83.1	
(h)Out-of-state Travel		3.4			2.6	6.0
(i)Other financing uses		.2			.1	.3

Authorized FTE: 15.00 Permanent; 9.00 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-Funds	Federal Funds	Total
(19) Mental health division:						
(a)Personal services		831.0		136.9	216.4	1,184.3
(b)Employee benefits		243.8		41.2	78.5	363.5
(c)Travel		16.2	4.2	4.4	24.8	
(d)Maintenance and repairs			1.0		1.9	2.9
(e)Supplies and materials		4.3			8.2	12.5

(f)Operating costs	97.1			20.0	117.1		
(g)Out-of-state Travel		3.0				3.0	
(h)Other financing uses		.4				.4	

Authorized FTE: 23.00 Permanent; 7.00 Term

Item	Fund	General Funds	Other State Agency	Intrnl Svc Funds/Inter-Agency Trnsf		Federal Funds	Total
(20) Developmental disabilities division:							
(a)Personal services			1,965.8		329.7	289.1	2,584.6
(b)Employee benefits			632.1		104.4	92.7	829.2
(c)Travel		92.7	15.2	13.5	121.4		
(d)Maintenance and repairs			7.6		1.3	1.1	10.0
(e)Supplies and materials			39.3		6.4	5.7	51.4
(f)Contractual services			737.9		120.8	107.2	965.9
(g)Operating costs		364.7		59.6	53.0	477.3	
(h)Other costs		362.9		59.4	52.7	475.0	
(i)Capital outlay		1.9		.3	.3	2.5	
(j)Out-of-state Travel			6.8		1.1	1.1	9.0
(k)Other financing uses			.8		.2	.1	1.1

Authorized FTE: 52.00 Permanent; 30.00 Term

Item	Fund	General Funds	Other State Agency	Intrnl Svc Funds/Inter-Agency Trnsf		Federal Funds	Total
(21) Las Vegas medical center:							

(a)Personal services	13,692.1		1,586.9	8,013.9		23,292.9
(b)Employee benefits	4,959.9		588.4	3,048.5		8,596.8
(c)Travel	68.9	9.1	32.1	110.1		
(d)Maintenance and repairs	369.7		39.0	179.9	588.6	
(e)Supplies and materials	833.9	81.5	497.6	1,413.0		
(f)Contractual services	1,116.6		127.8	601.3	1,845.7	
(g)Operating costs	1,047.7		112.5	454.0	1,614.2	
(h)Other costs	317.0	34.5	30.3	381.8		
(i)Capital outlay	70.0	8.1	38.7	116.8		
(j)Out-of-state Travel	6.3		1.7	8.0		
(k)Other financing uses	17.9	1.7	193.6	213.2		

Authorized FTE: 902.00 Permanent; 58.00 Term

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(22) Adolescent residential treatment facility:						
(a)Personal services		1,542.4		1,913.9		3,456.3
(b)Employee benefits		539.3		537.1	1,076.4	
(c)Travel		9.0	10.0	19.0		
(d)Maintenance and repairs		33.8		19.7	53.5	
(e)Supplies and materials		109.1	33.5	208.5	351.1	
(f)Contractual services		56.0		122.1	178.1	

(g)Operating costs	75.2		106.0		181.2
(h)Other costs	7.0		12.4		19.4
(i)Capital outlay	3.5		12.1		15.6
(j)Out-of-state Travel		2.1		2.6	4.7
(k)Other financing uses		1.3		.5	1.8

Authorized FTE: 129.00 Permanent

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(23) Fort Bayard medical center:						
(a)Personal services		1,356.0	1,454.0	5,145.8	340.6	8,296.4
(b)Employee benefits		561.3	598.9	2,121.8	140.3	3,422.3
(c)Travel	13.1	14.1	49.8	3.3	80.3	
(d)Maintenance and repairs		67.1	71.7	253.9	16.8	409.5
(e)Supplies and materials		249.0	265.7	941.4	62.2	1,518.3
(f)Contractual services		24.6	26.2	93.0	6.2	150.0
(g)Operating costs	100.9	107.7	381.5	25.2	615.3	
(h)Other costs	13.0	13.9	49.4	3.3	79.6	
(i)Capital outlay	28.7	30.6	108.5	7.2	175.0	
(j)Out-of-state Travel		.4	.4	1.6	.1	2.5
(k)Other financing uses		.9	1.0	3.3	.2	5.4

Authorized FTE: 326.00 Permanent; 25.00 Term; 45.50 Temporary

Item	Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf

Item	General Fund	State Funds	Agency Trnsf	Funds/Inter-	Federal Funds	Total
(24) Turquoise lodge:						
(a)Personal services		1,222.2		16.7	387.8	1,626.7
(b)Employee benefits		442.8	5.4	136.9	585.1	
(c)Travel	16.7	.2	5.0	21.9		
(d)Maintenance and repairs		35.5	.4	10.6	46.5	
(e)Supplies and materials		104.7	1.2	31.1	137.0	
(f)Contractual services		199.5	2.3	59.2	261.0	
(g)Operating costs	88.0	1.0	26.1	115.1		
(h)Other costs	1.1	.1	.4	1.6		
(i)Capital outlay	19.6	.3	5.8	25.7		
(j)Out-of-state Travel		4.6	.1	1.3	6.0	
(k)Other financing uses		.7	.1	.1	.9	

Authorized FTE: 44.00 Permanent; 18.00 Term

Item	General Fund	Other State Funds	Intrnl Svc Agency Trnsf	Funds/Inter-	Federal Funds	Total
(25) Los Lunas community waiver program:						
(a)Personal services		1,103.9		2,045.2	3,096.4	6,245.5
(b)Employee benefits		360.1	773.5	1,008.9		2,142.5
(c)Travel	17.5	26.1	48.9	92.5		
(d)Maintenance and repairs			71.5	47.8	200.2	319.5
(e)Supplies and materials		15.1	16.4	42.3	73.8	

(f)Contractual services		242.3	790.4	678.7		1,711.4	
(g)Operating costs	141.3	96.5	395.7		633.5		
(h)Other costs	254.3	153.5	712.6		1,120.4		
(i)Capital outlay	24.5	144.6	68.7		237.8		
(j)Out-of-state Travel		1.1	11.6	3.2		15.9	
(k)Other financing uses		.7	.4	1.9		3.0	

Authorized FTE: 152.00 Permanent; 108.00 Term

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf		Federal Funds	Total
(26) New Mexico veterans' center:							
(a)Personal services			966.8	1,420.4	946.1	927.2	4,260.5
(b)Employee benefits			315.3	630.0	377.5	368.3	1,691.1
(c)Travel		6.0	5.0	5.5	4.3	20.8	
(d)Maintenance and repairs			26.0	63.6	87.6	54.0	231.2
(e)Supplies and materials			172.5	77.0	268.0	170.3	687.8
(f)Contractual services			13.4	45.2	38.1	93.3	190.0
(g)Operating costs		132.6	151.0	165.7	9.4	458.7	
(h)Other costs					10.5	10.5	
(i)Capital outlay		85.0				85.0	
(j)Out-of-state Travel			1.5			1.5	
(k)Other financing uses			2.8			2.8	

Authorized FTE: 142.00 Permanent; 63.50 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(27)Medicaid waivers:		21,474.8	1,000.0			22,474.8

The other state funds appropriations to the department of health include four million dollars ($4,000,000) from the department's cash balances as of June 30, 1997.

Of the general fund appropriation for medicaid waivers, two million dollars ($2,000,000) of the developmentally disabled waiver match, for reduction of the waiting list, is contingent upon the department of health demonstrating to the department of finance and administration and certification by the state budget division that two million dollars ($2,000,000) of general fund savings was generated from reduced costs for plans of care.

Subtotal 317,803.3

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
DEPARTMENT OF ENVIRONMENT:						
(1) Office of the secretary:						
(a)Personal services		321.0		422.7	115.7	859.4
(b)Employee benefits		97.5		129.0	35.3	261.8
(c)Travel		5.5	10.1	5.9	21.5	
(d)Maintenance and repairs		.5		.8	.4	1.7
(e)Supplies and materials		2.6		4.1	2.0	8.7
(f)Contractual services		2.6		2.9		5.5
(g)Operating costs		22.5	30.6	10.4	63.5	
(h)Capital outlay		.6	1.4	1.0	3.0	
(i)Out-of-state Travel		2.4		3.6	1.7	7.7

(j)Other financing uses	.1		.1	.1	.3	

Authorized FTE: 18.50 Permanent; 1.00 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(2) Administrative services division:						
(a)Personal services		370.6		769.0	1,101.0	2,240.6
(b)Employee benefits		128.8		256.4	366.4	751.6
(c)Travel	2.2	2.2	14.9	19.3		
(d)Maintenance and repairs		12.6		105.8	112.0	230.4
(e)Supplies and materials		3.5		10.7	18.4	32.6
(f)Contractual services		7.4		48.8	50.3	106.5
(g)Operating costs	19.8		63.7	93.6	177.1	
(h)Capital outlay	12.6		109.2	121.6	243.4	
(i)Out-of-state Travel		.2		1.1	14.8	16.1
(j)Other financing uses		.1		.5	7.8	8.4

Authorized FTE: 37.00 Permanent; 30.00 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(3) Environmental protection division:						
(a)Personal services		1,714.3			2,899.7	1,418.7 6,032.7
(b)Employee benefits		555.2		927.2	462.3	1,944.7
(c)Travel	50.6	187.0	35.4	273.0		

(d)Maintenance and repairs	6.8		25.6	7.9	40.3
(e)Supplies and materials	20.8		131.1	22.3	174.2
(f)Contractual services	41.7		151.3	19.7	212.7
(g)Operating costs	215.0	536.7	212.5	964.2	
(h)Capital outlay	48.1	210.2	20.9	279.2	
(i)Out-of-state Travel	2.5		61.8	6.6	70.9
(j)Other financing uses	35.5		116.7	41.3	193.5

Authorized FTE: 70.00 Permanent; 124.00 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(4) Field operations division:						
(a)Personal services		3,094.8		1,066.3	280.4	4,441.5
(b)Employee benefits		1,026.5		338.6	90.8	1,455.9
(c)Travel		69.3	106.7	18.8	194.8	
(d)Maintenance and repairs		10.0		9.8	1.7	21.5
(e)Supplies and materials		18.4		50.1	19.2	87.7
(f)Contractual services				1,918.2	56.7	1,974.9
(g)Operating costs		341.4	482.3	92.4	916.1	
(h)Capital outlay			112.9	31.3	144.2	
(i)Out-of-state Travel		1.3		11.9	9.9	23.1
(j)Other financing uses		.9		5.4	4.5	10.8

Authorized FTE: 111.00 Permanent; 30.00 Term

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(5)	Water and waste management division:					
	(a)Personal services	2,183.2	20.0	618.4	3,510.9	6,332.5
	(b)Employee benefits	675.8	7.0	187.5	1,114.4	1,984.7
	(c)Travel	94.0	.5	57.2	202.4	354.1
	(d)Maintenance and repairs	10.7		7.2	34.8	52.7
	(e)Supplies and materials	44.2		32.5	225.3	302.0
	(f)Contractual services	254.1		293.6	1,557.9	2,105.6
	(g)Operating costs	213.0	2.0	102.8	530.8	848.6
	(h)Capital outlay	44.0		46.0	94.8	184.8
	(i)Out-of-state Travel	15.5		26.8	63.6	105.9
	(j)Other financing uses	14.8		63.2	66.7	144.7

Authorized FTE: 65.00 Permanent; 131.00 Term

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(6)	Tire recycling fund:					
	(a)Other costs	975.0			975.0	
	(b)Other financing uses		261.0			261.0
(7)	Air quality Title V fund:	2,873.2				2,873.2
(8)	Responsible party prepay:	457.2			457.2	
(9)	Hazardous waste fund:		623.0			623.0

(10)	Water quality management fund:	142.4			142.4	
(11)	Water conservation fund:	3,829.0			3,829.0	
(12)	Air quality permit fund:	655.9		655.9		
(13)	Radiologic technology fund:	59.4		59.4		
(14)	Underground storage tank fund:	609.2			609.2	
(15)	Corrective action fund:					
	(a)Contractual services	2,000.0				2,000.0
	(b)Other costs	11,858.6			11,858.6	
	(c)Other financing uses	2,084.6				2,084.6
(16)	Food service sanitation fund:	599.8			599.8	
	Subtotal		63,958.9			

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Funds	Total
OFFICE OF THE NATURAL RESOURCES TRUSTEE:						
	(a)Personal services	100.0			100.0	
	(b)Employee benefits	35.3			35.3	
	(c)Travel	3.9		3.9		
	(d)Maintenance and repairs	.1				.1
	(e)Supplies and materials	2.8			2.8	
	(f)Contractual services	.8			.8	
	(g)Operating costs	5.3		5.3		
	(h)Out-of-state Travel	1.0			1.0	

Authorized FTE: 2.00 Permanent

Subtotal					149.2	

Item	Fund	General Funds	Other State Agency	Intrnl Svc Funds/Inter-Trnsf	Federal Funds	Total
NEW MEXICO HEALTH POLICY COMMISSION:						
(a)Personal services		546.4				546.4
(b)Employee benefits		204.6				204.6
(c)Travel		14.3			14.3	
(d)Maintenance and repairs			4.2			4.2
(e)Supplies and materials		14.7				14.7
(f)Contractual services		481.8	.7			482.5
(g)Operating costs		179.7			179.7	
(h)Capital outlay		10.0			10.0	
(i)Out-of-state Travel		7.5				7.5
(j)Other financing uses		.2				.2
Authorized FTE: 14.00 Permanent						
Subtotal					1,464.1	

Item	Fund	General Funds	Other State Agency	Intrnl Svc Funds/Inter-Trnsf	Federal Funds	Total
NEW MEXICO VETERANS' SERVICE COMMISSION:						
(a)Personal services		755.6				755.6
(b)Employee benefits		304.1				304.1
(c)Travel		21.7	20.0		41.7	

(d)Maintenance and repairs	10.5	2.0			12.5
(e)Supplies and materials	7.0	2.0			9.0
(f)Contractual services	222.4				222.4
(g)Operating costs	75.3	18.5		93.8	
(h)Other costs	1.2			1.2	
(i)Out-of-state Travel	.2	2.0			2.2

Authorized FTE: 28.00 Permanent

Subtotal	1,442.5

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total

CHILDREN, YOUTH AND FAMILIES DEPARTMENT:

(1) Office of the secretary:

(a)Personal services	806.0	252.3		1,058.3
(b)Employee benefits	255.9	80.4		336.3
(c)Travel	12.0	3.8	15.8	
(d)Maintenance and repairs	.5		.2	.7
(e)Supplies and materials	9.7	3.0		12.7
(f)Contractual services	2.0	1.0		3.0
(g)Operating costs	150.8	47.6	198.4	
(h)Out-of-state Travel	1.4	.6		2.0

Authorized FTE: 25.00 Permanent; 1.00 Term

			Other	Intrnl Svc		

Item	Fund	General Funds	State Agency Trnsf	Other Funds	Intrnl Svc Funds/Inter-Agency	Federal Funds	Total
(2)	Financial services division:						
	(a)Personal services	1,043.8			461.4	757.6	2,262.8
	(b)Employee benefits	399.7		167.1	284.3	851.1	
	(c)Travel	18.5	7.1	12.9	38.5		
	(d)Maintenance and repairs	23.0		11.1	17.1	51.2	
	(e)Supplies and materials	24.7		12.7	18.7	56.1	
	(f)Contractual services	90.2		43.0	66.8	200.0	
	(g)Operating costs	497.5	227.2	363.4	1,088.1		

Authorized FTE: 56.00 Permanent; 14.00 Term

Item	Fund	General Funds	State Agency Trnsf	Other Funds	Intrnl Svc Funds/Inter-Agency	Federal Funds	Total
(3)	Juvenile justice division:						
	(a)Personal services	20,733.3		390.5	1,387.7	65.1	22,576.6
	(b)Employee benefits	6,834.8		116.0	476.1	12.2	7,439.1
	(c)Travel	587.7	43.8	16.1	647.6		
	(d)Maintenance and repairs		469.0			469.0	
	(e)Supplies and materials	2,374.7			269.9	17.3	2,661.9
	(f)Contractual services	4,304.3			21.6	35.2	4,361.1
	(g)Operating costs	2,780.3			13.1	2,793.4	
	(h)Other costs	3,135.6	88.5		550.5	3,774.6	
	(i)Capital outlay	184.2	3.1		187.3		

(j)Out-of-state Travel	10.8			1.2	12.0	

Authorized FTE: 762.50 Permanent; 83.00 Term; 6.00 Temporary

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(4) Protective services division:						
(a)Personal services		12,072.4		2,484.5	10,552.9	25,109.8
(b)Employee benefits		4,504.3		918.4	3,926.8	9,349.5
(c)Travel		670.7	141.6	588.2	1,400.5	
(d)Maintenance and repairs		49.9		19.0	49.9	118.8
(e)Supplies and materials		204.6		21.0	163.4	389.0
(f)Contractual services		3,234.9		662.7	2,822.4	6,720.0
(g)Operating costs		2,577.1		526.0	2,247.1	5,350.2
(h)Other costs		9,115.0	11.0	1,881.6	7,971.0	8,978.6
(i)Capital outlay		59.6		73.0	132.6	
(j)Out-of-state Travel		12.3		8.9	21.2	
(k)Other financing uses		96.3			96.3	

Authorized FTE: 829.70 Permanent; 89.00 Term; 2.00 Temporary

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(5) Preventive/intervention division:						
(a)Personal services		2,947.9	102.3	197.0	1,980.3	5,227.5
(b)Employee benefits		1,053.0	63.6	62.7	618.3	1,797.6

(c)Travel	137.8	3.3	3.5	103.1	247.7				
(d)Maintenance and repairs		9.2	.2	.2	14.4	24.0			
(e)Supplies and materials		88.5	5.1	3.2	146.5	243.3			
(f)Contractual services		8,517.9		187.8	163.0	590.1	9,458.8		
(g)Operating costs	615.2	18.7	36.7	602.1	1,272.7				
(h)Other costs	13,078.5		401.2	1,478.2		61,527.9	76,485.8		
(i)Capital outlay	2.3			76.6	78.9				
(j)Out-of-state Travel		7.6		1.5	45.8	54.9			

Authorized FTE: 136.75 Permanent; 42.50 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(6) Human resources division:						
(a)Personal services			709.0	230.8		939.8
(b)Employee benefits			219.6	72.2		291.8
(c)Travel		43.7	13.9	57.6		
(d)Maintenance and repairs			2.4	1.0		3.4
(e)Supplies and materials			23.5	7.7		31.2
(f)Operating costs		191.7	62.8		254.5	
(g)Capital outlay		1.8	.7		2.5	

Authorized FTE: 27.00 Permanent; 1.00 Term

Subtotal 215,236.1

TOTAL HEALTH, HOSPITALS AND HUMAN SERVICES

		657,973.5	**88,017.7**	**120,496.0**	**1,518,391.9**	**2,384,879.1**

G. PUBLIC SAFETY

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Funds	Total
DEPARTMENT OF MILITARY AFFAIRS:						
(a)Personal services		973.2			1,040.3	2,013.5
(b)Employee benefits		354.3			434.6	788.9
(c)Travel		59.1		83.8	142.9	
(d)Maintenance and repairs			502.3		287.7	790.0
(e)Supplies and materials		23.7			35.5	59.2
(f)Contractual services		14.0			157.0	171.0
(g)Operating costs		1,068.3	16.9		793.9	1,879.1
(h)Other costs		10.0		42.0	52.0	
(i)Capital outlay		.3		171.7	172.0	
(j)Out-of-state Travel		6.4			21.3	27.7

Authorized FTE: 30.00 Permanent; 52.00 Term

The general fund appropriation to the department of military affairs in the personal services category includes funding for the adjutant general position not to exceed range 34 and funding for the deputy adjutant general position not to exceed range 26 in the governor's exempt salary plan.

Subtotal						6,096.3

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Funds	Total

CRIME STOPPERS COMMISSION:

(a)Personal services	74.2				74.2
(b)Employee benefits	22.7				22.7
(c)Travel	.6			.6	
(d)Maintenance and repairs	.1				.1
(e)Supplies and materials	1.0				1.0
(f)Contractual services	3.7				3.7
(g)Operating costs	20.5			20.5	

Authorized FTE: 3.00 Permanent

The crime stoppers commission may request increases from other state funds and from internal service funds/interagency transfers and may request category transfers.

Subtotal					122.8	

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
TRANSPORTATION AND EXTRADITION OF PRISONERS:						
		175.0			175.0	
PAROLE BOARD:						
(a)Personal services		346.9			346.9	
(b)Employee benefits		135.0			135.0	
(c)Travel		11.8			11.8	
(d)Maintenance and repairs			1.1			1.1
(e)Supplies and materials		4.2			4.2	
(f)Contractual services		4.9			4.9	

(g)Operating costs	55.3			55.3		
(h)Out-of-state Travel	3.0				3.0	

Authorized FTE: 9.00 Permanent

Subtotal	562.2

Item	Fund	General Funds	State Agency Trnsf	Other Intrnl Svc Funds/Inter-	Federal Funds	Total

JUVENILE PAROLE BOARD:

(a)Personal services	161.0			161.0	
(b)Employee benefits	59.4			59.4	
(c)Travel	18.9		18.9		
(d)Maintenance and repairs	.4				.4
(e)Supplies and materials	7.0			7.0	
(f)Contractual services	3.3			3.3	
(g)Operating costs	45.2			45.2	

Authorized FTE: 6.00 Permanent

Subtotal	295.2

Item	Fund	General Funds	State Agency Trnsf	Other Intrnl Svc Funds/Inter-	Federal Funds	Total

CORRECTIONS DEPARTMENT:

(1) Administrative services division:

(a)Personal services	2,340.6		120.7	2,461.3
(b)Employee benefits	785.6	35.8	821.4	

(c)Travel	29.8	3.0	32.8		
(d)Maintenance and repairs		85.8			85.8
(e)Supplies and materials		27.4	1.8	29.2	
(f)Contractual services		111.5		111.5	
(g)Operating costs	481.6	1,185.7	11.3	1,678.6	
(h)Capital outlay	1.8		1.8		
(i)Out-of-state Travel		7.0		7.0	
(j)Other financing uses		1.0		1.0	

Authorized FTE: 71.00 Permanent

The other state funds appropriation to the administrative services division of the corrections department is appropriated to the corrections department building fund.

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Funds	Total
(2)	Training academy division:					
	(a)Personal services		1,087.3			1,087.3
	(b)Employee benefits		366.4		366.4	
	(c)Travel	10.0		10.0		
	(d)Maintenance and repairs		49.8		49.8	
	(e)Supplies and materials		98.1		98.1	
	(f)Contractual services		36.5		36.5	
	(g)Operating costs	67.2	1.5	68.7		
	(h)Other costs	3.7		3.7		
	(i)Capital outlay	9.0		9.0		

(j)Other financing uses	.3				.3

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	6,619.0	1,259.9			7,878.9
(b)Employee benefits	2,382.6	420.0			2,802.6
(c)Travel	253.8			253.8	
(d)Maintenance and repairs	74.9				74.9
(e)Supplies and materials	119.8				119.8
(f)Operating costs	1,306.7				1,306.7
(g)Other costs	1,524.3				1,524.3
(h)Capital outlay	31.9			31.9	
(i)Out-of-state Travel	14.0				14.0
(j)Other financing uses	3.7				3.7

Authorized FTE: 274.00 Permanent

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(4) Department community corrections:					
(a)Personal services	871.2				871.2
(b)Employee benefits	285.9				285.9
(c)Travel	26.0			26.0	

(d)Maintenance and repairs		.8				.8
(e)Supplies and materials		5.6				5.6
(f)Operating costs		22.9				22.9
(g)Other costs		59.0				59.0
(h)Other financing uses		.4				.4

Authorized FTE: 30.00 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Funds	Total
(5) Vendor community corrections:						
(a)Travel		5.7		5.7		
(b)Contractual services		20.0			20.0	
(c)Other costs		2,888.7			2,888.7	

The appropriations to vendor operated community corrections programs are appropriated to the community corrections grant fund.

Funds appropriated to the field services division, the vendor operated community corrections grant fund and the department operated community corrections program shall not be transferred to any other activity of the corrections department.

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Funds	Total
(6) Adult institutions division director:						
(a)Personal services		2,067.4				2,067.4
(b)Employee benefits		693.9			693.9	
(c)Travel		51.6		51.6		
(d)Maintenance and repairs		283.0				283.0

(e)Supplies and materials	373.4			373.4	
(f)Contractual services	202.4			202.4	
(g)Operating costs	832.8			832.8	
(h)Other costs	12,498.4	51.8		1,500.0	14,050.2
(i)Capital outlay	150.2			150.2	
(j)Out-of-state Travel	8.4			8.4	
(k)Other financing uses	.9			.9	

Authorized FTE: 61.00 Permanent

No more than five million three hundred five thousand two hundred dollars ($5,305,200) of the appropriation to the adult institutions division director of the corrections department shall be used to pay for the housing of an average of two hundred fifty-four inmates and debt service payments at the New Mexico women's correctional facility. The maximum amount has been derived to take credit for the overpayments of one million seventy-eight thousand five hundred dollars ($1,078,500); seven hundred twenty-nine thousand one hundred dollars ($729,100); and three hundred fifty thousand dollars ($350,000) previously made by the state for debt service inflation, gross receipts tax and interest charges, respectively.

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(7) Roswell correctional center:						
(a)Personal services		1,330.4		65.9		1,396.3
(b)Employee benefits		535.2	22.6		557.8	
(c)Travel		71.0		71.0		
(d)Maintenance and repairs		100.6				100.6
(e)Supplies and materials		498.0	37.6		535.6	
(f)Contractual services		4.4			4.4	

(g)Operating costs	142.1			142.1	
(h)Other costs	132.9	100.8		233.7	
(i)Capital outlay	25.0			25.0	
(j)Out-of-state Travel		2.0			2.0
(k)Other financing uses		.8			.8

Authorized FTE: 53.00 Permanent; 3.00 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(8)	Central New Mexico correctional facility--main:					
	(a)Personal services		7,824.1	135.7		7,959.8
	(b)Employee benefits		3,366.1	46.6		3,412.7
	(c)Travel	101.8		101.8		
	(d)Maintenance and repairs	385.5				385.5
	(e)Supplies and materials		1,792.2	45.5		1,837.7
	(f)Contractual services		43.7		43.7	
	(g)Operating costs	1,104.7			1,104.7	
	(h)Other costs	197.0	201.1	398.1		
	(i)Capital outlay	60.0		60.0		
	(j)Out-of-state Travel		3.0		3.0	
	(k)Other financing uses		4.6		4.6	

Authorized FTE: 325.00 Permanent; 8.00 Term

			Other	Intrnl Svc		

Item	Fund	General Funds	State Agency Trnsf	Funds/Inter-	Federal Funds	Total
(9)	Central New Mexico correctional facility--minimum:					
	(a)Personal services	1,700.2	25.5			1,725.7
	(b)Employee benefits	653.8	9.2			663.0
	(c)Travel	51.3		51.3		
	(d)Maintenance and repairs	110.6				110.6
	(e)Supplies and materials	548.2	68.0			616.2
	(f)Operating costs	203.1			203.1	
	(g)Other costs	78.8	115.0		193.8	
	(h)Capital outlay	48.0			48.0	
	(i)Out-of-state Travel	2.0			2.0	
	(j)Other financing uses	.9			.9	

Authorized FTE: 65.00 Permanent; 1.00 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
(10)	Southern New Mexico correctional facility:					
	(a)Personal services	7,270.3	124.9			7,395.2
	(b)Employee benefits	3,105.4	42.8			3,148.2
	(c)Travel	84.2		84.2		
	(d)Maintenance and repairs	346.2				346.2
	(e)Supplies and materials	1,780.8	5.7			1,786.5
	(f)Contractual services	49.8				49.8

(g)Operating costs	1,176.5				1,176.5
(h)Other costs	126.9	317.2		444.1	
(i)Capital outlay	27.5			27.5	
(j)Out-of-state Travel		3.0			3.0
(k)Other financing uses		4.4			4.4

Authorized FTE: 312.00 Permanent; 7.00 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Total
(11) Western New Mexico correctional facility:					
(a)Personal services		4,824.1	90.7		4,914.8
(b)Employee benefits		2,143.2	31.1		2,174.3
(c)Travel		101.1		101.1	
(d)Maintenance and repairs		200.2			200.2
(e)Supplies and materials		1,005.6	4.4		1,010.0
(f)Contractual services		39.1		39.1	
(g)Operating costs		762.0		762.0	
(h)Other costs		28.8	145.7	174.5	
(i)Capital outlay		36.3		36.3	
(j)Out-of-state Travel			11.4		11.4
(k)Other financing uses			2.9		2.9

Authorized FTE: 204.00 Permanent; 6.00 Term

	General	Other State	Intrnl Svc Funds/Inter-	Federal

Item	Fund	Funds	Agency Trnsf	Funds	Total
(12) Penitentiary of New Mexico:					
(a)Personal services	17,757.4		1,000.0		18,757.4
(b)Employee benefits	7,229.2		547.2		7,776.4
(c)Travel	167.9		167.9		
(d)Maintenance and repairs	876.1				876.1
(e)Supplies and materials	511.4	2,500.0			3,011.4
(f)Contractual services	62.9			62.9	
(g)Operating costs	431.9	1,500.0		1,931.9	
(h)Other costs	395.0	218.9	613.9		
(i)Capital outlay	144.0		144.0		
(j)Out-of-state Travel	3.0			3.0	
(k)Other financing uses	10.0			10.0	

Authorized FTE: 706.00 Permanent; 8.00 Term

Notwithstanding the provisions of Section 10 of the General Appropriation Act of 1997, the corrections department may use the appropriation for the penitentiary of New Mexico - main facility to either operate that facility, or to close the facility and house inmates in other corrections department facilities or to contract for leased beds for those inmates.

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(13) Adult health services:						
(a)Personal services		2,243.3				2,243.3
(b)Employee benefits		735.7			735.7	
(c)Travel		15.1		15.1		

(d)Maintenance and repairs		.6				.6
(e)Supplies and materials	54.4				54.4	
(f)Contractual services		12,578.7				12,578.7
(g)Operating costs	48.6				48.6	
(h)Out-of-state Travel		3.0			3.0	
(i)Other financing uses		1.0			1.0	

Authorized FTE: 72.00 Permanent

Item	Fund	General Funds	State Agency Trnsf	Other Intrnl Svc Funds/Inter-	Federal Funds	Total
(14) Adult education:						
(a)Personal services		3,584.7		25.5		3,610.2
(b)Employee benefits		843.1	4.5		847.6	
(c)Travel	22.5			22.5		
(d)Maintenance and repairs		12.7				12.7
(e)Supplies and materials		289.4			289.4	
(f)Contractual services		200.4			200.4	
(g)Operating costs	77.5			77.5		
(h)Other costs	3.6			3.6		
(i)Out-of-state Travel		2.0			2.0	
(j) Other financing uses		1.5				1.5

Authorized FTE: 109.00 Permanent; .66 Term

Item	Fund	General Funds	State Agency Trnsf	Other Intrnl Svc Funds/Inter-	Federal Funds	Total

(15)	Corrections industries:					
	(a)Personal services	182.4	20.0	1,314.8		1,517.2
	(b)Employee benefits			570.5	570.5	
	(c)Travel	58.0		58.0		
	(d)Maintenance and repairs				88.6	88.6
	(e)Supplies and materials			93.5	93.5	
	(f)Contractual services			51.9	51.9	
	(g)Operating costs		83.4		83.4	
	(h)Other costs		2,239.9		2,239.9	
	(i)Out-of-state Travel			7.5	7.5	
	(j)Other financing uses			.7	.7	
Authorized FTE: 40.00 Permanent; 7.00 Term; 2.00 Temporary						
	Subtotal			148,572.8		

Item	Fund	General Funds	Other State Funds	Intrnl Svc/Inter-Agency Trnsf	Federal Funds	Total
CRIME VICTIMS REPARATION COMMISSION:						
	(a)Personal services	257.4	57.7		63.0	378.1
	(b)Employee benefits	89.7	21.9		22.0	133.6
	(c)Travel	16.6	.4	6.0	23.0	
	(d)Maintenance and repairs		.8	.1		.9
	(e)Supplies and materials	7.5	.6		8.5	16.6
	(f)Contractual services	137.5			12.5	150.0

(g)Operating costs	52.8	.8		8.2	61.8	
(h)Other costs	951.3	22.4	315.0	2,423.8		3,712.5
(i)Capital outlay				13.0	13.0	
(j)Out-of-state Travel					13.5	13.5
(k)Other financing uses					237.5	237.5

Authorized FTE: 12.00 Permanent; 2.00 Term

The crime victims reparation commission may request budget increases from other state funds and from internal service funds/interagency transfers and may request category transfers.

Subtotal 4,740.5

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total

DEPARTMENT OF PUBLIC SAFETY:

(1) Administrative services division:

(a)Personal services	1,840.8		44.4	19.5	268.3	2,173.0
(b)Employee benefits	648.1	16.2	.9	69.8	735.0	
(c)Travel	29.4	.1	21.5	51.0		
(d)Maintenance and repairs		743.4	5.8		3.0	752.2
(e)Supplies and materials	46.1	1.7		9.8	57.6	
(f)Contractual services	47.5			35.6	83.1	
(g)Operating costs	815.8	39.9	11.1	48.6	915.4	
(h)Other costs				6,260.0		6,260.0
(i)Capital outlay	14.0			6.0	20.0	
(j)Out-of-state Travel	7.4	5.5		22.7	35.6	

(k)Other financing uses					2,966.0		2,966.0

Authorized FTE: 64.00 Permanent; 8.00 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-Funds	Federal Funds	Total
(2) Special investigations division:						
(a)Personal services		1,054.4			89.8	1,144.2
(b)Employee benefits		405.4			29.7	435.1
(c)Travel		117.2	5.4	122.6		
(d)Maintenance and repairs		2.1			2.1	
(e)Supplies and materials		19.6			.5	20.1
(f)Contractual services		1.2			5.0	6.2
(g)Operating costs		29.6		4.0	33.6	
(h)Other costs		11.4			11.4	
(i)Capital outlay		5.2			5.2	
(j)Out-of-state Travel		11.3			6.8	18.1

Authorized FTE: 32.00 Permanent; 3.00 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-Funds	Federal Funds	Total
(3) Training and recruiting division:						
(a)Personal services		652.2	20.1			672.3
(b)Employee benefits		213.3	6.4			219.7
(c)Travel		53.9		53.9		

(d)Maintenance and repairs	6.3				6.3	
(e)Supplies and materials	106.8				106.8	
(f)Contractual services	242.5	251.0			493.5	
(g)Operating costs	49.5			49.5		
(h)Other costs	13.2			13.2		
(i)Capital outlay	23.9			23.9		
(j)Out-of-state Travel	16.2				16.2	

Authorized FTE: 19.00 Permanent; 1.00 Term

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf		Federal Funds	Total
(4) State police division:							
(a)Personal services		19,132.8	80.0	428.9	209.6		19,851.3
(b)Employee benefits		7,447.3		10.2			7,457.5
(c)Travel	2,710.5	115.0	90.4	31.0	2,946.9		
(d)Maintenance and repairs		294.8					294.8
(e)Supplies and materials		803.9	.5	10.0	814.4		
(f)Contractual services		204.2	20.0	12.0		236.2	
(g)Operating costs		458.4	6.2	32.0	496.6		
(h)Other costs		2.5	175.0	150.0	327.5		
(i)Capital outlay		1,432.3	305.0	96.0		1,833.3	
(j)Out-of-state Travel		30.8		19.0		49.8	

Authorized FTE: 593.00 Permanent; 1.00 Term

Item	Fund	General Funds	State Agency	Other Intrnl Svc Trnsf	Funds/Inter- Funds	Federal Total
(5) Technical and emergency support division:						
(a)Personal services		2,103.4	215.3	38.3	672.9	3,029.9
(b)Employee benefits		744.9	21.0	9.8	214.7	990.4
(c)Travel	64.5	2.4	22.8	35.1	124.8	
(d)Maintenance and repairs		19.2	.4		15.8	35.4
(e)Supplies and materials		150.1	7.8	31.5	11.3	200.7
(f)Contractual services		11.0		30.5	60.0	101.5
(g)Operating costs	2,276.7		381.3	29.5	41.3	2,728.8
(h)Other costs	23.7		148.1	673.7	845.5	
(i)Capital outlay	70.7		71.0		141.7	
(j)Out-of-state Travel		32.9		15.1	12.1	60.1
Authorized FTE: 64.00 Permanent; 33.00 Term						
Subtotal				60,069.9		
TOTAL PUBLIC SAFETY						
		182,943.1	**12,176.1**	**6,117.7**	**19,397.8**	**220,634.7**

H. TRANSPORTATION

Item	Fund	General Funds	State Agency	Other Intrnl Svc Trnsf	Funds/Inter- Funds	Federal Total
STATE HIGHWAY AND TRANSPORTATION DEPARTMENT:						
(1) Office of the secretary:						
(a)Personal services			2,369.1		106.1	2,475.2

(b)Employee benefits		726.3		32.8	759.1	
(c)Travel	182.1		182.1			
(d)Maintenance and repairs			6.5			6.5
(e)Supplies and materials		129.8		8.1	137.9	
(f)Contractual services		426.8		5.2	432.0	
(g)Operating costs	184.4		10.1	194.5		
(h)Other costs	831.5			831.5		
(i)Capital outlay	31.2		1.5	32.7		
(j)Out-of-state Travel		35.9		10.0	45.9	

Authorized FTE: 69.00 Permanent

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Funds	Total
(2)	Administrative division:					
	(a)Personal services		4,657.7			4,657.7
	(b)Employee benefits		4,612.3			4,612.3
	(c)Travel	383.0		383.0		
	(d)Maintenance and repairs			1,448.5		1,448.5
	(e)Supplies and materials		197.1		197.1	
	(f)Contractual services		457.3		457.3	
	(g)Operating costs	4,130.5			4,130.5	
	(h)Capital outlay	276.6		276.6		
	(i)Out-of-state Travel		9.7		9.7	

(j)Other financing uses		19,523.7			19,523.7

Authorized FTE: 155.00 Permanent

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(3) Engineering design division:					
(a)Personal services		9,192.8		2,387.1	11,579.9
(b)Employee benefits		2,900.3		681.6	3,581.9
(c)Travel	548.4	2.6	551.0		
(d)Maintenance and repairs		275.5		.5	276.0
(e)Supplies and materials		203.7	10.0	213.7	
(f)Contractual services		171.3	43.6	214.9	
(g)Operating costs	244.6	6.5	251.1		
(h)Capital outlay	537.5	2.5	540.0		
(i)Out-of-state Travel		21.0	1.1	22.1	

Authorized FTE: 322.00 Permanent; 14.00 Term; 1.00 Temporary

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(4) Field operations division:					
(a)Personal services		45,711.6		5,288.7	51,000.3
(b)Employee benefits		16,337.9		1,583.3	17,921.2
(c)Travel	9,730.5	699.5	10,430.0		
(d)Maintenance and repairs		2,063.0			2,063.0

(e)Supplies and materials		991.5				991.5
(f)Contractual services		521.4				521.4
(g)Operating costs		4,069.7				4,069.7
(h)Capital outlay		12,792.9				12,792.9
(i)Out-of-state Travel		19.9				19.9

Authorized FTE: 2,009.00 Permanent; 13.00 Term; 36.50 Temporary

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Total
(5) Road betterment division:					
(a)Supplies and materials		26,000.0			26,000.0
(b)Contractual services		176,574.0	197,544.7		374,118.7
(c)Other costs		30,781.8			30,781.8
(d)Capital outlay		1,140.5			1,140.5

The other state funds appropriation to the road betterment division of the state highway and transportation department in the other costs category includes 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.

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Total
(6) Aviation division:					
(a)Personal services			232.1		232.1
(b)Employee benefits			68.2		68.2
(c)Travel		10.9	10.0	20.9	

(d)Maintenance and repairs			41.3			41.3
(e)Supplies and materials		9.8			9.8	
(f)Contractual services		18.5		135.0	153.5	
(g)Operating costs	71.1			71.1		
(h)Other costs	753.8			753.8		
(i)Capital outlay	3.5			3.5		
(j)Out-of-state Travel		7.0			7.0	

Authorized FTE: 7.00 Permanent

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(7) Transportation programs division:						
(a)Personal services			714.8		312.4	1,027.2
(b)Employee benefits			235.9		94.5	330.4
(c)Travel		15.7	24.6	40.3		
(d)Maintenance and repairs				22.0	.5	22.5
(e)Supplies and materials			230.6		64.2	294.8
(f)Contractual services			321.2		556.6	877.8
(g)Operating costs		203.6		33.5	237.1	
(h)Other costs		1,612.1			3,428.7	5,040.8
(i)Capital outlay		4.1		51.4	55.5	
(j)Out-of-state Travel					23.6	23.6

Authorized FTE: 26.00 Permanent; 4.00 Term

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-Funds	Federal Funds	Total
(8)	Transportation planning division:					
	(a)Personal services		818.6		2,293.2	3,111.8
	(b)Employee benefits		252.7		695.0	947.7
	(c)Travel	27.4	151.7			179.1
	(d)Maintenance and repairs			21.2	245.3	266.5
	(e)Supplies and materials		12.3		59.2	71.5
	(f)Contractual services		316.5		1,181.8	1,498.3
	(g)Operating costs	68.1		308.3		376.4
	(h)Capital outlay	79.8		344.6		424.4
	(i)Out-of-state Travel				12.9	12.9

Authorized FTE: 88.00 Permanent; 3.00 Term

	Subtotal			606,075.1		

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-Funds	Federal Funds	Total
STATE TRANSPORTATION AUTHORITY:						
	(a)Personal services			27.6		27.6
	(b)Employee benefits			10.4		10.4
	(c)Other financing uses			96.0		96.0

Authorized FTE: 2.00 Permanent

The internal service funds/interagency transfers appropriations to the state transportation authority include one hundred thirty-four thousand dollars ($134,000) from the state road fund.

Unexpended or unencumbered balances in the state transportation authority remaining at the end of fiscal year 1998 from appropriations made from the state road fund shall revert to the state road fund.

If Senate Bill 326 of the forty-third legislature, first session is not enacted into law, the appropriations to the state transportation authority shall reside within the budget of the state highway and transportation department~~, along with one FTE~~, and proposed authority projects shall be submitted to the state highway commission for funding consideration.

Subtotal 134.0

TOTAL TRANSPORTATION

387,622.6 134.0 218,452.5 606,209.1

I. OTHER EDUCATION

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
NEW MEXICO SCHOOL FOR THE VISUALLY HANDICAPPED:						
			7,245.3			7,245.3
NEW MEXICO SCHOOL FOR THE DEAF:						
		2,211.7	6,032.1		263.5	8,507.3
TOTAL OTHER EDUCATION						
		2,211.7	13,277.4		263.5	15,752.6

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 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 justification for the approval.

Except as otherwise provided, unexpended or unencumbered balances remaining at the end of fiscal year 1998 shall not revert to the general fund.

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
COMMISSION ON HIGHER EDUCATION:						
(1) Administration:						
(a)Personal services		812.8	34.6		55.4	902.8
(b)Employee benefits		257.2	10.6		21.1	288.9
(c)Travel		34.8		1.7	36.5	
(d)Maintenance and repairs			7.9			7.9
(e)Supplies and materials		21.0			1.7	22.7
(f)Contractual services		68.6			4.9	73.5
(g)Operating costs		159.2		6.3	165.5	
(h)Other costs				321.4	321.4	

Authorized FTE: 22.00 Permanent; 2.00 Term

Unexpended or unencumbered balances in the commission on higher education remaining at the end of fiscal year 1998 from appropriations made from the general fund shall revert to the general fund.

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(2) Special programs:						
(a)State student incentive grant		7,956.1		23.6		7,979.7

(b)Nursing student loan program	133.2	350.9		484.1	
(c)Medical student loan program	325.7	163.1		488.8	
(d)Osteopathic student loan program		197.3			197.3
(e)Teacher loan for service program	85.6	151.0			236.6
(f)Allied health student loan fund	204.4	53.5		257.9	
(g)Health professional loan repayment	450.5			120.0	570.5
(h)Work-study program	4,695.7	78.8			4,774.5
(i)Student Choice Act	896.7	.5		897.2	
(j)Vietnam veterans' scholarship fund	122.5	15.5	138.0		
(k)Graduate Fellowship Act		597.9			597.9
(l)New Mexico Scholars Act		1,131.6	529.6		1,661.2
(m) Minority doctoral assistance	177.8	37.0		214.8	
(n) Student child care	335.0	11.4		346.4	
(o) Small business development centers	1,828.1		1,828.1		
(p) Math, engineering and science achievement	698.4		698.4		
(q) Working to learn	58.6		58.6		

Earnings from the investment of the state financial aid appropriations shall be added to the corpus of the legislative endowment program for public two-year institution scholarships.

Subtotal	23,249.2

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
UNIVERSITY OF NEW MEXICO:						
(a)Instruction and general purposes		115,395.8	80,363.2		6,178.2	201,937.2
(b)Medical school instruction and general purposes		32,946.6	18,995.7		1,158.5	53,100.8
(c)Athletics		2,398.8	9,811.6		25.7	12,236.1
(d)Educational television		1,107.0	3,635.9		754.5	5,497.4
(e)Extended services instruction		1,325.6	413.7			1,739.3
(f)Gallup branch		7,115.0	3,791.5		105.9	11,012.4
(g)Los Alamos branch		1,519.8	1,395.4		25.4	2,940.6
(h)Valencia county branch		2,875.5	1,958.1		1,541.7	6,375.3
(i)Cancer center		1,921.4	9,537.0		1,938.1	13,396.5
(j)State medical investigator		2,328.2	513.6		11.8	2,853.6
(k)Emergency medical services academy		617.6	300.6		98.8	1,017.0
(l)Out-of-county indigent fund		1,677.7				1,677.7
(m) Children's psychiatric hospital		2,877.7	6,583.0			9,460.7
(n) Specialized perinatal care		443.2			443.2	
(o) Newborn intensive care		1,991.5	345.1			2,336.6
(p) Pediatric oncology		191.5			191.5	

(q) Hemophilia program	478.3	41.7			520.0	
(r) Young children's health center	186.1	421.6	11.8		619.5	
(s) Pediatric pulmonary center	179.5				179.5	
(t) Health resources registry	18.6	32.1			50.7	
(u) Area health education centers	215.2				215.2	
(v) Grief intervention	160.5				160.5	
(w) Carrie Tingley hospital	2,503.1	7,046.0				9,549.1
(x) Pediatric dysmorphology	142.8				142.8	
(y) Locum tenens	299.9	749.0		1,048.9		
(z) Substance abuse program	169.6				169.6	
(aa) Poison control center	791.6	23.5		815.1		
(bb) Student exchange program	1,031.1	289.1			1,320.2	
(cc) Judicial selection	62.6			62.6		
(dd) Southwest research center	953.6	306.8		1,260.4		
(ee) Native American intervention	257.5			257.5		
(ff) Resource geographic information system	137.6		137.6			
(gg) Natural heritage program	88.5			88.5		
(hh) Southwest Indian law clinic	82.3	21.9		104.2		
(ii) BBER census and population analysis	54.4	9.4		63.8		
(jj) Taos off-campus center	558.8	869.6		1,428.4		
(kk) Judicial education center	211.5			211.5		
(ll) New Mexico historical review	89.6			89.6		

(mm) Ibero-American education consortium	180.6		180.6	
(nn) Youth education recreation program	156.4		156.4	
(oo) Advanced materials laboratory	72.8		72.8	
(pp) Manufacturing engineering program	189.8		189.8	
(qq) Spanish resource center	104.0		104.0	
(rr) Office of international technical cooperation	69.8		69.8	
(ss) Hispanic student center	128.0		128.0	
(tt) Wildlife law institute	55.1		55.1	
(uu) Science and engineering women's career	14.6		14.6	
(vv) Disaster medicine program	100.8		100.8	
(ww) Youth leadership development	96.0		96.0	
(xx) Morrissey hall research	48.5		48.5	
(yy) Minority graduate recruitment and retention	182.4		182.4	
(zz) Fetal alcohol study	167.3		167.3	
(aaa) Telemedicine	291.4		291.4	
(bbb) Community based education	453.4		453.4	
(ccc) Pharm D	247.5		247.5	

(ddd) Other--health sciences	108,941.6	26,521.4	1	35,463.0
(eee) Other--main campus	117,433.6	63,284.9	1	80,718.5
Subtotal				663,451.0

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
NEW MEXICO STATE UNIVERSITY:						
(a)Instruction and general purposes		77,318.6	46,812.5		5,082.5	129,213.6
(b)Athletics		2,445.9	4,226.5		42.8	6,715.2
(c)Educational television		917.8	374.5		481.5	1,773.8
(d)Extended services instruction		251.7	401.3			653.0
(e)Alamogordo branch		4,711.7	3,424.0		1,712.0	9,847.7
(f)Carlsbad branch		2,776.3	2,247.0		1,498.0	6,521.3
(g)Dona Ana branch		7,054.4	4,387.0		3,852.0	15,293.4
(h)Grants branch		2,024.5	1,016.5		695.5	3,736.5
(i)Department of agriculture		5,369.9	2,354.0		1,016.5	8,740.4
(j)Agricultural experiment station		9,515.9	2,033.0		6,313.0	17,861.9
(k)Cooperative extension service		7,063.6	2,996.0		4,066.0	14,125.6
(l)Water resources research		343.6	176.6	321.0		841.2
~~(m) Border research institute~~		~~150.0~~	~~10.7~~			~~160.7~~

(n) Indian resources development program	347.8	16.1		37.5	401.4	
(o) Campus security	97.0				97.0	
(p) Coordination of Mexico program				100.1		100.1
(q) Manufacturing development program	335.4	10.7			346.1	
(r) Alliances for underrepresented students	300.0			1,605.0	1,905.0	
(s) Carlsbad manufacturing sector development program	422.0				422.0	
(t) Expanded food and nutrition program	100.0				100.0	
(u) Waste management education				437.6	4,494.0	4,931.6
(v) Other	43,870.0			55,640.0	99,510.0	
Subtotal				323,297.5		

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total
NEW MEXICO HIGHLANDS UNIVERSITY:						
(a) Instruction and general purposes		15,909.3	5,686.4		1,605.0	23,200.7
(b)Athletics		1,128.1	356.1	21.4	1,505.6	
(c)Extended services instruction		429.7	280.3		710.0	

(d)Visiting scientist	20.7			20.7	
(e)Upward bound	66.7			66.7	
(f)Diverse populations studies		188.3			188.3
~~(g) Latin American institute~~		~~193.8~~			~~193.8~~
(h)Advanced placement program		50.0			50.0
(i)Other	5,979.8		13,084.0	19,063.8	
Subtotal				44,999.6	

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total

WESTERN NEW MEXICO UNIVERSITY:

(a) Instruction and general purposes	10,575.5	3,138.7		214.0	13,928.2
(b)Athletics	1,117.4	107.0		1,224.4	
(c)Educational television		95.7			95.7
(d)Extended services instruction		312.9	310.3		623.2
(e)Other	2,388.9		2,461.0		4,849.9
Subtotal				20,721.4	

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total

EASTERN NEW MEXICO UNIVERSITY:

(a) Instruction and general purposes	18,105.5	7,062.0		1,391.0	26,558.5

(b)Athletics	1,330.0	642.0		1,972.0		
(c)Educational television	867.4	486.9		1,354.3		
(d)Extended services instruction	376.4	385.2	642.0	1,403.6		
(e)Roswell branch	7,061.9	4,815.0		1,391.0	13,267.9	
(f)Roswell extended services instruction	70.4		70.4			
(g)Center for teaching excellence	239.5			239.5		
(h)Ruidoso off-campus center	333.3	428.0	107.0	868.3		
(i)Blackwater Draw and museum	95.4	21.4		116.8		
(j)Assessment project	147.2			147.2		
(k)Other	10,785.6		6,420.0	17,205.6		
Subtotal			63,204.1			

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter- Funds	Federal Funds	Total
NEW MEXICO INSTITUTE OF MINING ANDTECHNOLOGY:						
(a)Instruction and general purposes		16,869.9	3,638.0		20,507.9	
(b)Athletics		127.8		127.8		
(c)Extended services instruction		26.6			26.6	
(d)Geophysical research center		626.3	107.0	1,605.0		2,338.3
(e)Bureau of mines		3,156.0	53.5	535.0	3,744.5	
(f)Science and engineering fair		68.4			68.4	
(g)Petroleum recovery research						

center	1,423.9		2,675.0	4,098.9
(h)Bureau of mine inspection	247.4	214.0	461.4	
(i)Energetic materials research center	387.5	10,165.0	10,552.5	
(j)Other	5,885.0	12,840.0	18,725.0	

The general fund appropriation to the 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.

Subtotal 60,651.3

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total

NORTHERN NEW MEXICO STATE SCHOOL:

(a) Instruction and general purposes	6,126.9	2,592.6		2,204.2	10,923.7
(b)Extended services instruction	70.3			70.3	
(c)Northern pueblos institute	52.1			52.1	
(d)Other	749.0	117.7	866.7		

Subtotal 11,912.8

Item	Fund	General Funds	Other State Agency Trnsf	Intrnl Svc Funds/Inter-	Federal Funds	Total

SANTA FE COMMUNITY COLLEGE:

(a)Instruction and general purposes	6,147.6	6,996.6		1,121.1	14,265.3

(b)Other	7,232.8		1,887.7	9,120.5	
Subtotal			23,385.8		

Item	Fund	General Funds	State Agency	Other Intrnl Svc Funds/Inter-Trnsf	Federal Funds	Total
TECHNICAL-VOCATIONAL INSTITUTE:						
(a)Instruction and general purposes		27,755.8	24,610.0		2,247.0	54,612.8
(b)Other		4,815.0		6,420.0	11,235.0	
Subtotal				65,847.8		

Item	Fund	General Funds	State Agency	Other Intrnl Svc Funds/Inter-Trnsf	Federal Funds	Total
LUNA VOCATIONAL TECHNICAL INSTITUTE:						
(a)Instruction and general purposes		5,157.9	880.9	378.2	6,417.0	
(b)Other		680.1	934.9	1,615.0		
Subtotal				8,032.0		

Item	Fund	General Funds	State Agency	Other Intrnl Svc Funds/Inter-Trnsf	Federal Funds	Total
MESA TECHNICAL COLLEGE:						
(a) Instruction and general purposes		1,906.6	289.2	294.0	2,489.8	

(b)Other		294.8			294.8	
Subtotal					2,784.6	

Item	Fund	General Funds	State Agency	Other Funds/Inter-Trnsf	Intrnl Svc Funds	Federal Total
NEW MEXICO JUNIOR COLLEGE:						
(a) Instruction and general purposes		5,658.5	6,043.3		1,021.6	12,723.4
(b)Athletics		32.1	3.0			35.1
(c)Other		1,603.9			3,013.1	4,617.0
Subtotal						17,375.5

Item	Fund	General Funds	State Agency	Other Funds/Inter-Trnsf	Intrnl Svc Funds	Federal Total
SAN JUAN COLLEGE:						
(a)Instruction and general purposes		8,167.8	11,556.0		1,979.5	21,703.3
(b)Other			3,210.0		1,979.5	5,189.5
Subtotal						26,892.8

Item	Fund	General Funds	State Agency	Other Funds/Inter-Trnsf	Intrnl Svc Funds	Federal Total
CLOVIS COMMUNITY COLLEGE:						
(a)Instruction and general purposes		6,922.9	1,926.0	171.2	856.0	9,876.1

(b)Extended services instruction		35.8			35.8	
(c)Other		1,872.5		2,268.4	4,140.9	
Subtotal				14,052.8		

Item	Fund	General Funds	State Agency	Other Intrnl Svc Funds/Inter-Trnsf	Federal Funds	Total
NEW MEXICO MILITARY INSTITUTE:						
(a)Instruction and general purposes		2,020.9	10,973.6		12,994.5	
(b)Athletics		873.2		873.2		
(c)Other		4,602.0		177.8	4,779.8	
Subtotal				18,647.5		
TOTAL HIGHER EDUCATION		**482,811.2**	**634,205.7**	**1,484.3**	**270,004.5**	**1,388,505.7**
GRAND TOTAL FISCAL YEAR 1998 APPROPRIATIONS		**1,615,261.5**	**1,280,324.4**	**462,525.8**	**2,053,993.5**	**5,412,105.2**

Section 5

Section 5. **SPECIAL APPROPRIATIONS.**--The following amounts are appropriated from the general fund or other funds as indicated for the purposes specified. Unless otherwise indicated, the appropriations may be expended in fiscal year 1997 and fiscal year 1998. Unless otherwise indicated, unexpended or unencumbered balances of the appropriations remaining at the end of fiscal year 1998 shall revert to the appropriate fund.

	General	State	Other Intrnl Svc Funds/Inter-	Federal

Item	Fund	Funds	Agency Trnsf	Funds Total
(1)LEGISLATIVE COUNCIL SERVICE:		101.5		101.5

Appropriated from legislative council service cash balances from Subsection J of Section 2 of Chapter 1 of Laws 1995 to the legislative council service for expenditure in fiscal years 1997 and 1998 for the legislative match for legislative retirement required pursuant to State of New Mexico, ex rel., Attorney General Tom Udall v. Public Employees Retirement Board, et al.

(2)DEPARTMENT OF FINANCE AND ADMINISTRATION:

The period of time, as extended by Laws 1994, Chapter 148, Section 71, Subsection B, for expending the appropriations made by Laws 1993, Chapter 366, Section 3, Subsection G from the state road fund and the corrective action fund to the department of finance and administration for activities related to the cleanup of the Terrero mine and the reclamation of the El Molino mill tailings site is extended through fiscal year 1998.

(3)STATE INVESTMENT COUNCIL:		350.0		350.0

Appropriated from the severance tax permanent fund for investment manager fees in fiscal year 1998. The appropriation is contingent upon House Bill 146 of the first session of the forty-third legislature being enacted into law.

(4)STATE INVESTMENT COUNCIL:		625.0		625.0

Appropriated from the land grant permanent funds for investment manager fees in fiscal year 1998. The appropriation is contingent upon House Bill 146 of the first session of the forty-third legislature being enacted into law and the consent of the United States congress to the provisions of Constitutional Amendment 1 approved at the 1996 general election.

(5)GENERAL SERVICES DEPARTMENT:			500.0	500.0

Appropriated from the public liability fund for certain litigation costs incurred by the state.

(6)COMMISSION ON PUBLIC RECORDS:		135.0		135.0

For expenditure in fiscal year 1998 for moving expenses.

(7)PUBLIC EMPLOYEES RETIREMENT

ASSOCIATION: 396.0 396.0

For costs of litigation related to the public employees retirement information system in fiscal year 1998.

(8)OFFICE OF CULTURAL AFFAIRS: 500.0 500.0

For travel, supplies and materials, operating costs, contracts, other costs and capital outlay associated with the opening of the farm and ranch heritage museum. Any unexpended or unencumbered balance remaining at the end of fiscal year 1998 shall not revert.

(9)OFFICE OF CULTURAL AFFAIRS: 150.0 150.0

For continuation of toll-free internet access for those libraries without local internet providers. Any unexpended or unencumbered balance remaining at the end of fiscal year 1998 shall not revert.

(10)ENERGY, MINERALS AND NATURAL

RESOURCES DEPARTMENT: 100.0 100.0

To the forestry division for pre-fire season start-up costs ~~in fiscal year 1997. Any unexpended or unencumbered balance remaining at the end of fiscal year 1997 shall revert to the general fund~~.

(11)ENERGY, MINERALS AND NATURAL

RESOURCES DEPARTMENT: 35.1 35.1

To the forestry division for pre-fire season start-up costs in fiscal year 1998.

(12)ENERGY, MINERALS AND NATURAL

RESOURCES DEPARTMENT: 1,590.6 1,590.6

To the forestry division for expenditure in fiscal year 1998 for 13.00 permanent FTE, and startup and operation of the inmate work camp program.

(13)COMMISSIONER OF PUBLIC

LANDS: 832.8 416.4 1,249.2

For retirement of the oil and natural gas administration and revenue database (ONGARD) bonds and interest payments. The amount indicated in the other state funds column is appropriated from the state lands maintenance fund.

(14)STATE ENGINEER: 600.0 600.0

For a comprehensive assessment of the water resources in the middle Rio Grande basin in fiscal year 1998.

(15)HEALTH DEPARTMENT: 300.0 300.0

For developmental disabilities judicial referral services. The appropriation is from cash balances and is contingent upon cash balances being available on June 30, 1997 in excess of the amount appropriated from cash balances in Sections 4 and 6 of the General Appropriation Act of 1997 to the department of health, as certified by the state budget division.

(16)DEPARTMENT OF

ENVIRONMENT: 315.0 315.0

For the state share of Ambrosia lake cleanup costs in fiscal year 1998.

(17)DEPARTMENT OF

ENVIRONMENT: 116.4 116.4

To pay the state share of the south valley Burton well replacement.

(18)CHILDREN, YOUTH AND FAMILIES

DEPARTMENT: 7,284.8 7,284.8

To pay for emergency costs related to the Joseph A consent decree, overcrowding in juvenile justice facilities~~, the purchase and operations of modular units~~ and start up for camp sierra blanca.

(19)CORRECTIONS

DEPARTMENT: 2,700.0 2,700.0

For the lease of beds to relieve interim overcrowding.

(20)CORRECTIONS DEPARTMENT:

1,700.0 1,700.0

From the general fund operating reserve. The appropriation is contingent upon certification by the secretary of corrections to the secretary of finance and administration and review by the legislative finance committee that prison facilities are overcrowded ~~and no early release process is available to relieve the overcrowding, or that early release has been implemented and overcrowding still exists~~.

(21)NEW MEXICO STATE

UNIVERSITY: 250.0 250.0

To the department of agriculture for adjudication of acequia and community ditch association programs. Any unexpended or unencumbered balance remaining at the end of fiscal year 1997 shall not revert.

(22)COMPUTER SYSTEMS

ENHANCEMENT FUND: 5,628.3 5,628.3

For allocations pursuant to the appropriations in Section 7 of the General Appropriation Act of 1997.

TOTAL SPECIAL

APPROPRIATIONS 21,938.0 2,188.9 500.0 24,626.9

Section 6

Section 6. **SUPPLEMENTAL AND DEFICIENCY APPROPRIATIONS.**-- The following amounts are appropriated from the general fund or other funds as indicated for expenditure in fiscal year 1997 for the purposes specified. Disbursement of these

amounts shall be subject to the following conditions: certification by the agency to the department of finance and administration that no other funds are available in fiscal year 1997 for the purpose specified; approval by the department of finance and administration; and notification of the approval to the legislative finance committee. Unexpended or unencumbered balances remaining at the end of fiscal year 1997 shall revert to the appropriate fund.

Item	Fund	General Funds	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(1)JURY AND WITNESS FEE FUND:		1,300.0				1,300.0
(2)DEPARTMENT OF FINANCE AND ADMINISTRATION:				572.1		572.1

For the judicial retirement fund.

(3)CRIMINAL AND JUVENILE JUSTICE COORDINATING COUNCIL:				25.0		25.0

For member meetings and research funds.

(4)PUBLIC EMPLOYEES RETIREMENT ASSOCIATION:			250.0		250.0	

For the costs of litigation related to the public employees retirement information system.

(5)SECRETARY OF STATE:			150.0			150.0

For expenses of the special election in the third congressional district.

(6)ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT:			303.2			303.2

To the state park and recreation division for capital ~~improvements~~.

(7)HUMAN SERVICES DEPARTMENT:		51,738.7		5,512.0	157,719.7	214,970.4

For medicaid expenditures in fiscal year 1996 and fiscal year 1997.

(8)HEALTH DEPARTMENT: 300.0 300.0

For developmental disabilities tort liability. The appropriation is from cash balances and is contingent upon cash balances being available on June 30, 1997 in excess of the amount appropriated from cash balances in Section 4 of the General Appropriation Act of 1997 to the department of health, as certified by the state budget division.

(9)CHILDREN, YOUTH AND FAMILIES

DEPARTMENT: 4,114.7 4,114.7

For security operations of the youth diagnostic development center, New Mexico boy's school and camp sierra blanca and for expenditures related to overcrowding in juvenile facilities.

(10)DEPARTMENT OF MILITARY AFFAIRS: 130.0 130.0

For utilities.

(11)CORRECTIONS DEPARTMENT: 8,860.2 8,860.2

For costs associated with leasing bed space and the contract for medical services.

(12)STATE DEPARTMENT OF PUBLIC EDUCATION:

In addition to the budget adjustment authority granted in Laws 1996, Chapter 12, Section 10, pursuant to Sections 6-3-23 through 6-3-25 NMSA 1978, the state department of public education may request budget increases in fiscal year 1997 from the development training fund; the instructional material fund; the public school capital outlay fund, and from money appropriated for special projects.

(13)REGIONAL EDUCATION COOPERATIVES:

Pursuant to Sections 6-3-23 through 6-3-25 NMSA 1978, each of the regional education cooperatives may request budget increases in fiscal year 1997 from other state funds.

TOTAL SUPPLEMENTAL AND DEFICIENCY

APPROPRIATIONS 67,193.9 550.0 5,512.0 157,719.7 230,975.6

Section 7

Section 7. **DATA PROCESSING APPROPRIATIONS.**--The following amounts are appropriated from the computer systems enhancement fund in the other state funds

column or other funds as indicated for the purposes specified. Unless otherwise indicated, the appropriations may be expended in fiscal year 1997 and fiscal year 1998. Unless otherwise indicated, unexpended or unencumbered balances remaining at the end of fiscal year 1998 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 and supporting documentation from the requesting agency that identifies benefits that can be quantified and nonrecurring costs and recurring costs for the development and implementation of the proposed system. If the funds are to continue a project, the documentation shall include certification 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)SUPREME COURT:		5.0			5.0

For replacement and upgrade of equipment.

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(2)SUPREME COURT BUILDING COMMISSION:		5.0			5.0

For a personal computer and a printer.

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(3)DEPARTMENT OF FINANCE AND ADMINISTRATION:		571.4			571.4

For the central and agency reporting link and the agency information management system.

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
(4)PUBLIC DEFENDER DEPARTMENT:		267.6			267.6

For the information systems infrastructure.

(5)STATE COMMISSION OF

PUBLIC RECORDS: 65.0 65.0

For the records and archives information network.

(6)PUBLIC EMPLOYEES RETIREMENT

ASSOCIATION: 168.8 168.8

For enhancement of the imaging system. The appropriation is from other revenue.

(7)STATE TREASURER: 51.3 51.3

For the office network.

(8)STATE TREASURER: 89.2 89.2

For the investment accounting system.

(9)STATE CORPORATION COMMISSION: 319.0 319.0

For hardware and software upgrades in the administration, corporations, telecommunications, transportation, pipeline, state fire marshal and firefighters training academy divisions. The appropriation is from the subsequent injury fund.

(10)OFFICE OF CULTURAL AFFAIRS: 227.8 227.8

For the farm and ranch heritage information system.

(11)OFFICE OF CULTURAL AFFAIRS: 315.0 315.0

For equipping the new state library building.

(12)COMMISSIONER OF PUBLIC LANDS: 230.7 230.7

For the wide area network. The appropriation is from the state lands maintenance fund.

(13)STATE ENGINEER: 1,401.0 1,401.0

For hardware, software, professional services, document conversion and implementation of the water rights system.

(14)AGENCY ON AGING: 130.0 130.0

For the aging programs information system.

(15)WORKERS' COMPENSATION

ADMINISTRATION: 134.1 134.1

For replacement of the mini-mainframe. The appropriation is from the workers' compensation administration fund.

(16)HEALTH DEPARTMENT: 300.0 300.0

For the community provider payment system. The appropriation is from cash balances and is contingent upon cash balances being available on June 30, 1997 in excess of the amounts appropriated from cash balances in Sections 4, 5 and 6 of the General Appropriation Act of 1997 to the department of health, as certified by the state budget division.

(17)HEALTH DEPARTMENT: 100.0 100.0

For the vital records re-engineering project. The appropriation is from cash balances and is contingent upon cash balances being available on June 30, 1997 in excess of the amounts appropriated from cash balances in Sections 4, 5 and 6 of the General Appropriation Act of 1997 to the department of health, as certified by the state budget division.

(18)CHILDREN, YOUTH AND

FAMILIES DEPARTMENT: 1,800.0 1,800.0

For the family automated client tracking system.

(19)CORRECTIONS DEPARTMENT: 700.0 700.0

For the criminal information system and migration from the current wang system.

(20)STATE HIGHWAY AND TRANSPORTATION

DEPARTMENT: 1,600.0 1,600.0

For replacement of the computer aided design and drafting VAX system. The appropriation is from the state road fund.

TOTAL DATA PROCESSING APPROPRIATIONS 8,480.9 8,480.9

Section 8

Section 8. **FUND TRANSFERS**.--

A. Two million dollars ($2,000,000) is transferred from the state support reserve fund to the general fund operating reserve.

B. Thirteen million two hundred eighty-one thousand one hundred dollars ($13,281,100) is transferred from undistributed amounts of the state equalization guarantee distribution in the public school fund to the general fund operating reserve.

C. Twenty million dollars ($20,000,000) is transferred from the workers' compensation retention account in the risk reserve to the public liability account in the risk reserve.

D. One million eight hundred thousand dollars ($1,800,000) is transferred from the subsequent injury fund to the general fund operating reserve.

E. Thirteen million dollars ($13,000,000) is transferred from the general fund operating reserve to the appropriation contingency fund.

Section 9

~~Section 9. **COMPENSATION APPROPRIATION**.--~~

A. Thirty-three million eight hundred thousand dollars ($33,800,000) is appropriated from the general fund to the department of finance and administration for expenditure in fiscal year 1998 for the purpose of providing a two percent salary increase to those employees whose salaries are received in fiscal year 1998 as a result of general fund appropriations. The department of finance and administration shall distribute a sufficient amount to each employer to provide the appropriate increase. Any unexpended or unencumbered balance remaining at the end of fiscal year 1998 shall revert to the general fund. For the purposes of receiving a distribution pursuant to this section, agencies are authorized to request the necessary budget adjustments pursuant to Sections 6-3-23 through 6-3-25 NMSA 1978.

B. For those employees whose salaries are received in fiscal year 1998 as a result of nongeneral fund sources, the department of finance and administration shall approve budget increases from the appropriate funds for the amounts required for salary increases equivalent to those provided for in Subsection A of this section. Such funds are appropriated. Any unexpended or unencumbered balances remaining at the end of fiscal year 1998 shall revert to the appropriate fund.

C. In making the distributions set forth in Subsection A of this section:

(1) for employees covered by the Personnel Act and judicial branch employees, the department of finance and administration shall not distribute more than the amount necessary to provide a two percent structure adjustment effective

the first full pay period following October 1, 1997, provided that employees at the maximum of their salary range shall receive their distribution in a lump sum;

(2) for judges, justices, state police and other state employees exempt from the Personnel Act, the department of finance and administration shall not distribute more than the amount necessary to provide a salary increase equal to two percent of each employee's salary effective on the first full pay period following October 1, 1997;

(3) for public school employees, the department of finance and administration shall not distribute to the state equalization guarantee distribution more than the amount necessary for a statewide average two percent salary increase for all public school employees;

(4) for employees of post-secondary education institutions, the department of finance and administration shall not distribute an amount to each institution more than the amount necessary to provide each employee with a two percent salary increase effective on October 1, 1997; and

(5) no distribution shall be made for employees of the district attorneys.

Section 10

Section 10. **BUDGET ADJUSTMENT REQUESTS AUTHORIZED**.--

A. As used in this section:

(1) "budget increase" means an approved increase in expenditures by an agency or division from a specific source;

(2) "budget category" means an item or an aggregation of related items that represents the object of an appropriation. Budget categories include 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;

(3) "category transfer" means an approved transfer of funds from one budget category to another budget category, provided that a category transfer does not include a transfer of funds between divisions;

(4) "division" means an organizational unit within an agency that is the recipient of an appropriation; and

(5) "division transfer" means an approved transfer of funds from one division of an agency to another division of that agency~~, provided that the annual~~

~~cumulative effect of division transfers shall not increase or decrease the appropriation to any division by more than seven and one-half percent~~.

B. Pursuant to Sections 6-3-23 through 6-3-25 NMSA 1978, the following agencies or divisions are specifically authorized to request the specified budget adjustments during fiscal year 1998:

(1) the legislative council service may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(2) the supreme court law library may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(3) the New Mexico compilation commission may request budget increases from other state funds and from internal service funds/interagency transfers and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(4) the judicial standards commission may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(5) the court of appeals may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(6) the supreme court may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(7) the administrative office of the courts may request budget increases from other state funds and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(8) the supreme court building commission may request transfers from the employee benefits, travel, maintenance and repairs, supplies and

materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(9) the jury and witness fee fund may request budget increases from other state funds and may request category transfers;

(10) each district court may request budget increases from other state funds and from internal service funds/interagency transfers and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(11) the Bernalillo county metropolitan court may request budget increases from other state funds and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(12) each district attorney may request budget increases from other state funds and from internal service funds/interagency transfers and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(13) the administrative office of the district attorneys may request budget increases from other state funds and from internal service funds/interagency transfers and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(14) the attorney general may request budget increases from other state funds and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(15) the state auditor may request budget increases from other state funds and from internal service funds/interagency transfers and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(16) the taxation and revenue department may request budget increases from other state funds and from internal service funds/interagency transfers and may request transfers from the employee benefits, travel, maintenance and repairs,

supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(17) the state investment council may request budget increases from internal service funds/interagency transfers and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category except that money appropriated for investment manager fees in the contractual services category shall not be transferred;

(18) the department of finance and administration may request budget increases from other state funds and from internal service funds/interagency transfers, may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category and may request division transfers;

(19) the operations division of the public school insurance authority may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(20) the benefits division and the risk division of the public school insurance authority may request budget increases from internal service funds/interagency transfers;

(21) the administration component of the retiree health care authority may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(22) the benefits division of the retiree health care authority may request budget increases from internal service funds/interagency transfers;

(23) the general services department may request budget increases from other state funds and from internal service funds/interagency transfers and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(24) the educational retirement board may request budget increases from other state funds and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(25) the public defender department may request budget increases from other state funds and from internal service funds/interagency transfers and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(26) the governor may request budget increases from other state funds and from internal service funds/interagency transfers and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(27) the office on information and communication management may request budget increases from other state funds and internal service funds/interagency transfers and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(28) the criminal and juvenile justice coordinating council may request budget increases from other state funds and may request category transfers;

(29) the lieutenant governor may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(30) the public employees retirement association may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category, except that funds authorized for investment manager fees within the contractual services category of the administrative division and for custody services within the other costs category of the administrative division shall not be transferred;

(31) the administrative division of the public employees retirement association may request budget increases from other state funds for investment manager fees or custody services in amounts not to exceed the fees specified in investment manager or fiscal agent contracts approved by the retirement board of the public employees retirement association and the department of finance and administration;

(32) the maintenance division of the public employees retirement association may request budget increases from other state funds to meet the emergencies or unexpected physical plant failures that might affect the health and safety of workers;

(33) the state commission of public records may request budget increases from internal service funds/interagency transfers and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(34) the secretary of state may request budget increases from other state funds and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(35) the personnel board may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(36) the public employee labor relations board may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(37) the state treasurer may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(38) the board of examiners for architects may request budget increases from other state funds and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(39) the border authority may request budget increases from other state funds and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(40) the tourism department may request budget increases from other state funds, may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category and may request division transfers;

(41) the economic development department may request budget increases from other state funds and from internal service funds/interagency transfers, may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category and may request division transfers;

(42) the regulation and licensing department may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(43) the boards and commissions section of the administrative services division of the regulation and licensing department may request budget increases from internal service funds/interagency transfers;

(44) the twenty-seven boards and commissions under the administration of the regulation and licensing department, the real estate recovery fund, the barbers and cosmetologists tuition recovery fund, the journeymen testing revolving fund and the securities education and training fund may request budget increases from other state funds and may request category transfers;

(45) the state corporation commission may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category and may request division transfers;

(46) the department of insurance of the state corporation commission may request budget increases from other state funds;

(47) the New Mexico board of medical examiners may request budget increases from other state funds and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(48) the board of nursing may request budget increases from other state funds and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(49) the state fair commission may request budget increases from other state funds and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs,

other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(50) the state board of registration for professional engineers and surveyors may request budget increases from other state funds and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(51) the state racing commission may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(52) the New Mexico apple commission may request budget increases from other state funds and may request category transfers;

(53) the board of veterinary medicine may request budget increases from other state funds and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(54) the bicycle racing commission may request budget increases from other state funds and may request category transfers;

(55) the office of cultural affairs may request budget increases from other state funds and from internal service funds/interagency transfers, may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category and may request division transfers;

(56) the New Mexico livestock board may request budget increases from other state funds and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(57) the department of game and fish may request budget increases from other state funds and from internal service funds/interagency transfers and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(58) for the share with wildlife program, the department of game and fish may request budget increases from other state funds;

(59) for the endangered species program, the department of game and fish may request budget increases from other state funds and may request category transfers;

(60) the administrative services division, the energy conservation and management division, the forestry division, the state park and recreation division, the mining and minerals division, the oil conservation division and the youth conservation corp of the energy, minerals and natural resources department may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(61) the oil conservation division of the energy, minerals and natural resources department may request budget increases from the oil conservation fund;

(62) the forestry division and the state park and recreation division of the energy, minerals and natural resources department may request budget increases from the New Mexico youth conservation corp fund for projects approved by the New Mexico youth conservation corp commission;

(63) the commissioner of public lands may request budget increases from other state funds and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(64) the New Mexico peanut commission may request budget increases from other state funds and may request category transfers;

(65) the state engineer may request budget increases from other state funds and from internal service funds/interagency transfers and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category and may request division transfers;

(66) for Ute dam operation, the state engineer may request budget increases from internal service funds/interagency transfers;

(67) the New Mexico public utility commission may request transfers from the employee benefits, travel, maintenance and repairs, supplies and

materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(68) the organic commodity commission may request budget increases from other state funds and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(69) the commission on the status of women may request budget increases from other state funds and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(70) the commission for deaf and hard-of-hearing persons may request budget increases from internal service funds/interagency transfers and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(71) the Martin Luther King, Jr. commission may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(72) the commission for the blind may request budget increases from other state funds and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(73) the New Mexico office of Indian affairs may request budget increases from internal service funds/interagency transfers and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(74) the state agency on aging may request budget increases from other state funds and from internal service funds/interagency transfers, may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category and may request division transfers;

(75) the human services department may request budget increases from other state funds and from internal service funds/interagency transfers, may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category and may request division transfers;

(76) the labor department may request budget increases from other state funds, may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category and may request division transfers;

(77) the workers' compensation administration may request budget increases from other state funds, may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category and may request division transfers;

(78) the division of vocational rehabilitation of the state department of public education may request budget increases from other state funds and from internal service funds/interagency transfers and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(79) the governor's committee on concerns of the handicapped may request budget increases from internal service funds/interagency transfers and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(80) the developmental disabilities planning council may request budget increases from internal service funds/interagency transfers and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(81) the miners' hospital of New Mexico may request budget increases from other state funds and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(82) the department of health may request budget increases from other state funds and from internal service funds/interagency transfers, may request

transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category and may request division transfers;

(83) the department of environment may request budget increases from other state funds and from internal service funds/interagency transfers, may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category and may request division transfers;

(84) the office of the natural resources trustee may request budget increases from other state funds and from internal service funds/interagency transfers and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(85) the New Mexico health policy commission may request budget increases from other state funds and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(86) the New Mexico veterans' service commission may request budget increases from other state funds and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(87) the children, youth and families department may request budget increases from other state funds and from internal service funds/interagency transfers, may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category, may request transfers of money appropriated from the general fund among the office of the secretary, the financial services division and the human resources division and may request transfers of money appropriated from nongeneral fund sources among all divisions;

(88) the department of military affairs may request budget increases from other state funds and from internal service funds/interagency transfers and may request transfers from the employee benefits, travel, supplies and materials, contractual services, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(89) the department of military affairs may request transfers from the maintenance and repairs category to the capital outlay category for maintenance or repair of the state's armories;

(90) the crime stoppers commission may request budget increases from other state funds and from internal service funds/interagency transfers and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(91) the parole board may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(92) the juvenile parole board may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(93) the corrections department may request budget increases from other state funds and from internal service funds/interagency transfers, may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category and may request transfers among the administrative services division, the training academy division, the adult institutions division director, the adult institutions, adult health services, adult education and corrections industries;

(94) the crime victims reparation commission may request budget increases from other state funds and from internal service funds/interagency transfers and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(95) the department of public safety may request budget increases from other state funds and from internal service funds/interagency transfers, excluding state forfeitures and forfeiture balances, may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category and may request division transfers;

(96) the state highway and transportation department may request budget increases from other state funds other than the state road fund for the office of the secretary, the administrative division, the engineering design division, the

field operations division, the aviation division, the transportation programs division and the transportation planning division;

(97) ~~for the purpose of matching federal funds,~~ the state highway and transportation department may request budget increases from the state road fund for the office of the secretary, the administrative division, the engineering design division, the field operations division, the aviation division, the transportation programs division and the transportation planning division;

(98) the state highway and transportation department may request division transfers among the office of the secretary, the administrative division, the engineering design division, the field operations division, the aviation division, the transportation programs division and the transportation planning division;

(99) the state highway and transportation department may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(100) the road betterment division of the state highway and transportation department may request budget increases from other state funds, including the state road fund;

(101) the state transportation authority may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(102) the state department of public education may request budget increases from the development training fund, the instructional material fund, the public school capital outlay fund, money appropriated for special projects and from internal service funds/interagency transfers and may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category;

(103) each of the regional education cooperatives may request budget increases from other state funds; and

(104) the commission on higher education may request transfers from the employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay, out-of-state travel or other financing uses category to any other category.

Section 11

Section 11. **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 APPROPRIATIONS AND FINANCE

COMMITTEE SUBSTITUTE FOR HOUSE BILLS

2, 4, 6 and 9, AS AMENDED

CHAPTER 34

RELATING TO CHILDREN; CLARIFYING DUTIES TO REPORT ALLEGED ABUSE OR NEGLECT OF A CHILD; CHANGING PROCEDURES AND TIME FRAMES FOR HEARINGS HELD PURSUANT TO THE ABUSE AND NEGLECT ACT; CLARIFYING ADOPTION PROCEDURES; CLARIFYING THE DUTIES OF THE QUALITY ASSURANCE OFFICE; AMENDING AND ENACTING SECTIONS OF THE ABUSE AND NEGLECT ACT.

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

Section 1

Section 1. Section 32A-4-2 NMSA 1978 (being Laws 1993, Chapter 77, Section 96) is amended to read:

"32A-4-2. DEFINITIONS.--As used in the Abuse and Neglect Act:

A. "abandonment" includes, but is not limited to, instances when the parent, without justifiable cause:

(1) left the child without provision for the child's identification for a period of fourteen days; or

(2) left the child with others, including the other parent or an agency, without provision for support and without communication for a period of:

(a) three months if the child was under six years of age at the commencement of the three-month period; or

(b) six months if the child was over six years of age at the commencement of the six-month period;

B. "abused child" means a child:

(1) who is at risk of suffering serious harm;

(2) who has suffered physical abuse, emotional abuse or psychological abuse inflicted by the child's parent, guardian or custodian;

(3) who has suffered sexual abuse or sexual exploitation inflicted by the child's parent, guardian or custodian;

(4) whose parent, guardian or custodian has knowingly, intentionally or negligently placed the child in a situation that may endanger the child's life or health; or

(5) whose parent, guardian or custodian has knowingly or intentionally tortured, cruelly confined or cruelly punished the child;

C. "neglected child" means a child:

(1) who has been abandoned by the child's parent, guardian or custodian;

(2) who is without proper parental care and control or subsistence, education, medical or other care or control necessary for the child's well-being because of the faults or habits of the child's parent, guardian or custodian or the neglect or refusal of the parent, guardian or custodian, when able to do so, to provide them;

(3) who has been physically or sexually abused, when the child's parent, guardian or custodian knew or should have known of the abuse and failed to take reasonable steps to protect the child from further harm;

(4) whose parent, guardian or custodian is unable to discharge his responsibilities to and for the child because of incarceration, hospitalization or other physical or mental disorder or incapacity; or

(5) who has been placed for care or adoption in violation of the law; provided that nothing in the Children's Code shall be construed to imply that a child who is being provided with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof is for that reason alone a neglected child within the meaning of the Children's Code; and further provided that no

child shall be denied the protection afforded to all children under the Children's Code;

D. "physical abuse" includes, but is not limited to, any case in which the child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling or death and:

(1) there is not a justifiable explanation for the condition or death;

(2) the explanation given for the condition is at variance with the degree or nature of the condition;

(3) the explanation given for the death is at variance with the nature of the death; or

(4) circumstances indicate that the condition or death may not be the product of an accidental occurrence;

E. "sexual abuse" includes, but is not limited to, criminal sexual contact, incest or criminal sexual penetration, as those acts are defined by state law; and

F. "sexual exploitation" includes, but is not limited to:

(1) allowing, permitting or encouraging a child to engage in prostitution;

(2) allowing, permitting, encouraging or engaging a child in obscene or pornographic photographing; or

(3) filming or depicting a child for obscene or pornographic commercial purposes, as those acts are defined by state law."

Section 2

Section 2. Section 32A-4-3 NMSA 1978 (being Laws 1993, Chapter 77, Section 97) is amended to read:

"32A-4-3. DUTY TO REPORT CHILD ABUSE AND CHILD NEGLECT--RESPONSIBILITY TO INVESTIGATE CHILD ABUSE OR NEGLECT--PENALTY.--

A. Every person, including but not limited to a licensed physician, a resident or an intern examining, attending or treating a child, a law enforcement officer, a judge presiding during any proceeding, a registered nurse, a visiting nurse, a schoolteacher or a school official or social worker acting in an official capacity who knows or has a reasonable suspicion that a child is an abused or a neglected child shall report the matter immediately to:

(1) a local law enforcement agency;

(2) the department office in the county where the child resides; or

(3) tribal law enforcement or social services agencies for any Indian child residing in Indian country.

B. Any law enforcement agency receiving the report shall immediately transmit the facts of the report and the name, address and phone number of the reporter by telephone to the department office in the county where the child resides and shall transmit the same information in writing within forty-eight hours. Any office of the department receiving a report shall immediately transmit the facts of the report and the name, address and phone number of the reporter by telephone to a local law enforcement agency and shall transmit the same information in writing within forty-eight hours. The written report shall contain the names and addresses of the child and the child's parents, guardian or custodian, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, and other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person responsible for the injuries. The written report shall be submitted upon a standardized form agreed to by the law enforcement agency and the department.

C. The recipient of the report under Subsection A of this section shall take immediate steps to ensure prompt investigation of the report. The investigation shall ensure that immediate steps are taken to protect the health or welfare of the alleged abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect. A local law enforcement agency is responsible for investigating reports of alleged child abuse or neglect at schools, daycare facilities or child-care facilities.

D. If the child alleged to be abused or neglected is in the care or control of or in a facility administratively connected to the department, the report shall be investigated by local law enforcement.

The investigation shall ensure that immediate steps are taken to protect the health or welfare of the alleged abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect.

E. A law enforcement agency or the department shall have access to any of the records pertaining to a child abuse or neglect case maintained by any of the persons enumerated in Subsection A of this section, except as otherwise provided in the Abuse and Neglect Act.

F. Any person who violates the provisions of Subsection A of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978."

Section 3

Section 3. Section 32A-4-19 NMSA 1978 (being Laws 1993, Chapter 77, Section 113) is amended to read:

"32A-4-19. ADJUDICATORY HEARINGS--TIME LIMITATIONS.--

A. The adjudicatory hearing in a neglect or abuse proceeding shall be commenced within sixty days after the latest of the following dates:

(1) the date that the petition is served on the respondent;

(2) if the trial court orders a mistrial or a new trial, the date that the order is filed; or

(3) in the event of an appeal, the date that the mandate or order is filed in the district court disposing of the appeal.

B. Prior to the adjudicatory hearing, all parties to the hearing shall attend a mandatory meeting and attempt to settle issues attendant to the adjudicatory hearing and develop a proposed treatment plan that serves the child's best interest.

C. The children's court attorney shall represent the state at the adjudicatory hearing.

D. When the adjudicatory hearing on any petition is not begun within the time period specified in Subsection A of this section or within the period of any extension granted, the petition shall be dismissed with prejudice."

Section 4

Section 4. Section 32A-4-20 NMSA 1978 (being Laws 1993, Chapter 77, Section 114) is amended to read:

"32A-4-20. CONDUCT OF HEARINGS--FINDINGS--

DISMISSAL--DISPOSITIONAL MATTERS--PENALTY.--

A. The proceedings shall be recorded by stenographic notes or by electronic, mechanical or other appropriate means.

B. All abuse and neglect hearings shall be closed to the general public.

C. Only the parties, their counsel, witnesses and other persons approved by the court may be present at a closed hearing. Those other persons the court finds to have a proper interest in the case or in the work of the court may be admitted by the court to closed hearings on the condition that they refrain from divulging any information that would identify the child or family involved in the proceedings.

D. Accredited representatives of the news media shall be allowed to be present at closed hearings, subject to the condition that they refrain from divulging information that would identify any child involved in the proceedings or the parent, guardian or custodian of that child and subject to enabling regulations as the court finds necessary for the maintenance of order and decorum and for the furtherance of the purposes of the Children's Code.

E. If the court finds that it is in the best interest of the child, the child may be excluded from a neglect or an abuse hearing. Under the same conditions, a child may be excluded by the court during a hearing on dispositional issues.

F. Those persons or parties granted admission to a closed hearing who intentionally divulge information in violation of this section are guilty of a petty misdemeanor.

G. The court shall determine if the allegations of the petition are admitted or denied. If the allegations are denied, the court shall proceed to hear evidence on the petition. The court after hearing all of the evidence bearing on the allegations of neglect or abuse shall make and record its findings on whether the child is a neglected child, an abused child or both.

H. If the court finds on the basis of a valid admission of the allegations of the petition or on the basis of clear and convincing evidence, competent, material and relevant in nature, that the child is neglected or abused, 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 neglected or abused, the court shall dismiss the petition and may refer the family to the department for appropriate services.

I. In that part of the hearings held under the Children's Code on 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 on adjudicatory issues.

J. On the court's motion or that of a party, the court may continue the hearing on the petition for a period not to exceed thirty days to receive reports and other evidence in connection with disposition. The court shall continue the hearing pending the receipt of the predisposition study and report if that document has not been prepared and received. During any continuances under this subsection, the court shall make an appropriate order for legal custody."

Section 5

Section 5. Section 32A-4-21 NMSA 1978 (being Laws 1993, Chapter 77, Section 115) is amended to read:

"32A-4-21. NEGLECT OR ABUSE PREDISPOSITION STUDIES, REPORTS AND EXAMINATIONS.--

A. Prior to holding a dispositional hearing, the court shall direct that a predisposition study and report be submitted in writing to the court by the department.

B. The predisposition study required pursuant to Subsection A of this section shall contain the following information:

(1) a statement of the specific reasons for intervention by the department or for placing the child in the department's custody and a statement of the parent's ability to care for the child in the parent's home without causing harm to the child;

(2) a statement of how an intervention plan is designed to achieve placement of the child in the least restrictive setting

available, consistent with the best interests and special needs of the child, including a statement of the likely harm the child may suffer as a result of being removed from the parent's home, including emotional harm that may result due to separation from the child's parents, and a statement of how the intervention plan is designed to place the child in close proximity to the parent's home without causing harm to the child due to separation from his parents, siblings or any other person who may significantly affect the child's best interest;

(3) the wishes of the child as to his custodian;

(4) whether the child has a family member who, subsequent to study by the department, is determined to be qualified to care for the child;

(5) a description of services offered to the child, his family and his foster care family and a summary of reasonable efforts made to prevent removal of the child from his family or reasonable efforts made to reunite the child with his family;

(6) a description of the home or facility in which the child is placed and the appropriateness of the child's placement;

(7) the results of any diagnostic examination or evaluation ordered at the custody hearing;

(8) a statement of the child's medical and educational background;

(9) if the child is an Indian child, 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;

(10) a treatment plan that sets forth steps to ensure that the child's physical, medical, psychological and educational needs are met and that sets forth services to be provided to the child and his parents to facilitate permanent placement of the child in the parent's home; and

(11) for children sixteen years of age and older, a plan for developing the specific skills the child requires for successful transition into independent living as an adult, regardless of whether the child is returned to his parent's home.

C. A copy of the predisposition report shall be provided by the department to counsel for all parties five days before the dispositional hearing.

D. If the child is an adjudicated abused child, any temporary custody orders shall remain in effect until the court has received and considered the predispositional study at the dispositional hearing."

Section 6

Section 6. Section 32A-4-22 NMSA 1978 (being Laws 1993, Chapter 77, Section 116) is amended to read:

"32A-4-22. DISPOSITION OF ADJUDICATED ABUSED OR NEGLECTED CHILD.--

A. If not held in conjunction with the adjudicatory hearing, the dispositional hearing shall be commenced within thirty days after the conclusion of the adjudicatory hearing. At the conclusion of the dispositional hearing, the court shall make and include in the dispositional judgment its findings on the following:

(1) the interaction and interrelationship of the child with his parent, 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 parent, guardian or custodian 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 treatment plan prepared as a part of the predisposition study in accordance with the provisions of Section 32A-4-21 NMSA 1978;

(8) the ability of the parent to care for the child in the home so that no harm will result to the child;

(9) whether reasonable efforts were used by the department to prevent removal of the child from the home prior to placement in substitute care and whether reasonable efforts were used to attempt reunification of the child with the natural parent; and

(10) if the child is an Indian child, 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 Indian child's treatment plan provides for maintaining the Indian child's cultural ties. When placement preferences have not been followed, good cause for noncompliance shall be clearly stated and supported.

B. If a child is found to be neglected or abused, the court may enter its judgment making any of the following dispositions to protect the welfare of the child:

(1) permit the child to remain with his parent, guardian or custodian, subject to those conditions and limitations the court may prescribe;

(2) place the child under protective supervision of the department; or

(3) transfer legal custody of the child to any of the following:

(a) the noncustodial parent, if it is found to be in the child's best interest;

(b) an agency responsible for the care of neglected or abused children; or

(c) a child-placement agency willing and able to assume responsibility for the education, care and maintenance of the child and licensed or otherwise authorized by law to receive and provide care for the child.

C. If a child is found to be neglected or abused, in its dispositional judgment the court shall also order the department to implement and the child's parent, guardian or custodian to cooperate with any treatment plan approved by the court.

D. Any parent, guardian or custodian of a child who is placed in the legal custody of the department or other person pursuant to Subsection B of this section shall have reasonable rights of visitation with the child as determined by the court, unless the court finds that the best interests of the child preclude any visitation.

E. The court may order reasonable visitation between a child placed in the custody of the department and the child's siblings or any other person who may significantly affect the child's best interest, if the court finds the visitation to be in the child's best interest.

F. Unless a child found to be neglected or abused is also found to be delinquent, the child shall not be confined in an institution established for the long-term care and rehabilitation of delinquent children.

G. When the court vests legal custody in an agency, institution or department, the court shall transmit with the dispositional judgment copies of the clinical reports, the predisposition study and report and any other information it has pertinent to the care and treatment of the child.

H. Prior to any child being placed in the custody or protective supervision of the department, the department shall be provided with reasonable oral or written notification and an opportunity to be heard. At any hearing held pursuant to this subsection, the department may appear as a party.

I. When a child is placed in the custody of the department, the department shall investigate whether the child is eligible for enrollment as a member of an Indian tribe and, if so, the department shall pursue the enrollment on the child's behalf."

Section 7

Section 7. Section 32A-4-25 NMSA 1978 (being Laws 1993, Chapter 77, Section 119, as amended) is amended to read:

"32A-4-25. PERIODIC REVIEW OF DISPOSITIONAL JUDGMENTS.--

A. The initial judicial review shall be held within sixty days of the disposition. At the initial review, the parties shall demonstrate to the court efforts made to implement the treatment plan approved by the court in its dispositional order. The court shall determine the extent to which the treatment plan has been implemented and make

supplemental orders as necessary to assure compliance with the treatment plan and the safety of the child. Prior to the initial judicial review, the department shall submit a copy of the adjudicatory order, the dispositional order and notice of the initial judicial review to the local substitute care review board for that judicial district created under the Citizen Substitute Care Review Act. A representative of the local substitute care review board shall be permitted to attend and comment to the court.

B. Subsequent periodic reviews of dispositional orders shall be held within six months of the conclusion of the permanency hearing or, if a motion has been filed for termination of parental rights or permanent guardianship, within six months of the decision on that motion and every six months thereafter. 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.

C. 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 Subsections A or B of this section.

D. At any judicial review hearing held pursuant to Subsection B of this section, the department, the child's guardian ad litem and all parties given notice under Subsection C 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.

E. 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.

F. At the conclusion of any hearing held pursuant to this section, the court shall make findings of fact and conclusions of law.

G. 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.

H. Based on its findings at a judicial review hearing held pursuant to Subsection B of this section, 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.

I. 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.

J. The report of the local substitute care review board submitted to the court pursuant to Subsection B of this section shall become a part of the child's permanent court record."

Section 8

Section 8. A new section of the Abuse and Neglect Act is enacted to read as follows:

"PERMANENCY HEARINGS--REBUTTABLE PRESUMPTIONS.--

A. A permanency hearing shall be commenced within six months of the initial judicial review of the child's dispositional order. Prior to the initial permanency hearing, all parties to the hearing shall attend a mandatory meeting and attempt to settle issues attendant to the

permanency hearing and develop a proposed treatment plan that serves the child's best interest. Prior to the initial permanency hearing, the department shall submit a progress report regarding the child to the local substitute care review board for that judicial district. The local substitute care review board may review the child's dispositional order, any continuation of that order and the department's progress report and report its findings and recommendations to the court.

B. During a permanency hearing, there shall be a rebuttable presumption that the child's best interest will be served by returning the child to his parent, guardian or custodian. At the hearing, all parties shall have the opportunity to present evidence and to cross-examine witnesses. At the conclusion of the permanency hearing, the court shall determine if sufficient evidence was presented to rebut the presumption.

C. If insufficient evidence is presented to rebut, by a preponderance of the evidence, the presumption set forth in Subsection B of this section, the court shall order one of the following dispositions:

(1) dismiss the case and return the child to his parent, guardian or custodian; or

(2) return the child to his parent, guardian or custodian, subject to those conditions and limitations the court may prescribe, including protective supervision of the child by the department and continuation of the treatment plan for not more than six months.

D. If sufficient evidence is presented to rebut, by a preponderance of the evidence, the presumption set forth in Subsection B of this section, the court shall order that the child remain in the legal custody of the department and make additional orders regarding the treatment plan. Within three months of a permanency hearing order issued pursuant to this subsection, if a motion to terminate parental rights or appoint a permanent guardian has not been filed or if the child's permanency plan has not been formally changed to provide for emancipation of the child, a subsequent permanency hearing shall be commenced.

E. During a subsequent permanency hearing, there shall be a rebuttable presumption that the child's best interest will be served by changing the child's permanency plan to provide for adoption of the child, emancipation of the child, permanent guardianship for the child or long-term foster care for the child. At the hearing, all parties shall have the opportunity to present evidence and cross-examine witnesses. At

the conclusion of the hearing, the court shall determine if sufficient evidence was presented to rebut the presumption.

F. If insufficient evidence is presented to rebut, by a preponderance of the evidence, the presumption set forth in Subsection E of this section, the court shall order:

(1) the department to change the child's permanency plan to provide for adoption of the child, emancipation of the child, permanent guardianship for the child or long-term foster care for the child; and

(2) that additional efforts to reunite the child and his parent shall not be attempted.

G. If sufficient evidence is presented to rebut, by a preponderance of the evidence, the presumption set forth in Subsection E of this section, the court shall order one of the following dispositions:

(1) dismiss the case and return the child to his parent, guardian or custodian; or

(2) return the child to his parent, guardian or custodian, subject to those conditions and limitations the court may prescribe, including protective supervision of the child by the department and continuation of the treatment plan for not more than six months.

H. 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 permanency hearing held pursuant to this section.

I. The Rules of Evidence shall not apply to permanency hearings. The court may admit testimony by any person given notice of the permanency hearing who has information about the status of the child or the status of the treatment plan. All testimony shall be subject to cross-examination."

Section 9

Section 9. Section 32A-4-28 NMSA 1978 (being Laws 1993, Chapter 77, Section 122, as amended) 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, including the likelihood of the child being adopted if parental rights are terminated.

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. The court may find in some cases that efforts by the department or another agency are unnecessary, when there is a clear showing that the efforts would be futile or when a parent has caused great bodily harm to the child or great bodily harm or death to the child's sibling; 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 (f) 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. If 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 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 10

Section 10. Section 32A-4-29 NMSA 1978 (being Laws 1993, Chapter 77, Section 123) is amended to read:

"32A-4-29. TERMINATION PROCEDURE.--

A. A motion to terminate parental rights may be filed at any stage of the abuse or neglect proceeding. The proceeding may be initiated by any of the following:

(1) the department;

(2) a licensed child placement agency; or

(3) any other person having a legitimate interest in the matter, including the child's guardian ad litem, a petitioner for adoption, a foster parent or a relative of the child.

B. The motion for termination of parental rights shall be signed, verified by the moving party and filed with the court. The motion shall set forth:

(1) the date, place of birth and marital status of the child, if known;

(2) the grounds for termination and the facts and circumstances supporting the grounds for termination;

(3) the names and addresses of the persons or authorized agency or agency officer to whom custody might be transferred;

(4) whether the child resides or has resided with a foster parent who desires to adopt this child;

(5) whether the motion is in contemplation of adoption;

(6) the relationship or legitimate interest of the moving party to the child; and

(7) whether the child is subject to the federal Indian Child Welfare Act of 1978 and, if so:

(a) the tribal affiliations of the child's parents;

(b) the specific actions taken by the moving party to notify the parents' tribes and the results of the contacts, including the names, addresses, titles and telephone numbers of the persons contacted. Copies of any correspondence with the tribes shall be attached as exhibits to the petition; and

(c) 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 tribes.

C. A parent who has not previously been a party to the proceeding shall be named in the motion and shall become a party to

the proceeding, unless the court determines that the parent has not established a protected liberty interest in his relationship with the child.

D. Notice of the filing of the motion, accompanied by a copy of the motion, shall be served by the moving party on all other parties, foster parents with whom the child is residing, foster parents with whom the child has resided for six months within the previous twelve months, the custodian of the child, any person appointed to represent any party and any other person the court orders. Service shall be in accordance with the Rules of Civil Procedure for the District Courts for the service of motions in a civil action in this state, except that foster parents and attorneys of record in this proceeding shall be served by certified mail. The notice shall state specifically that the person served shall file a written response to the motion within twenty days if the person intends to contest the termination. In any case involving a child subject to the federal Indian Child Welfare Act of 1978, the child's parents and upon any "Indian custodian" as that term is defined in 25 U.S.C. Section 1903(6). Further notice shall not be required on a parent who has been provided notice previously pursuant to Section 32A-2-17 NMSA 1978 and who failed to make an appearance.

E. If the identity or whereabouts of a person entitled to service are unknown, the moving party shall file a motion for an order granting service by publication supported by the affidavit of the moving party or his agent or attorney detailing the efforts made to locate the person entitled to service. Upon being satisfied that reasonable efforts to locate the person entitled to service have been made and that information as to the identity or whereabouts of the person is still insufficient to effect service in accordance with the Rules of Civil Procedure for the District Courts, the court shall order service by publication pursuant to the Rules of Civil Procedure for the District Courts.

F. After a motion for the termination of parental rights is filed, the parent shall be advised of the right to counsel, unless the parent is already represented by counsel. Counsel shall be appointed, upon request, for any parent who is unable to obtain counsel due to financial reasons or, if in the court's discretion, the interests of justice require appointment of counsel.

G. The court shall assure that a guardian ad litem represents the child in all proceedings for the termination of parental rights.

H. When a motion to terminate parental rights is filed, the moving party shall request a hearing on the motion. The hearing date

shall be at least thirty days, but no more than sixty days, after service is effected upon the parties entitled to service under this section.

I. In any action for the termination of parental rights brought by a party other than the department and involving a child in the custody of the department, the department may:

(1) litigate a motion for the termination of parental rights that was initially filed by another party; or

(2) move that the motion for the termination of parental rights be found premature and denied.

J. The grounds for any attempted termination shall be proved by clear and convincing evidence. In any proceeding involving a child subject to the federal Indian Child Welfare Act of 1978, the grounds for any attempted termination shall be proved beyond a reasonable doubt and shall meet the requirements set forth in 25 U.S.C. Section 1912(f).

K. When the court terminates parental rights, it shall appoint a custodian for the child and fix responsibility for the child's support.

L. In any termination proceeding involving a child subject to the federal Indian Child Welfare Act of 1978, the court shall in any termination order make specific findings that the requirements of that act have been met.

M. A judgment of the court terminating parental rights divests the parent of all legal rights and privileges and dispenses with both the necessity for the consent to or receipt of notice of any subsequent adoption proceeding concerning the child. A judgment of the court terminating parental rights shall not affect the child's rights of inheritance from and through the child's biological parents."

Section 11

Section 11. Section 32A-5-16 NMSA 1978 (being Laws 1993, Chapter 77, Section 143) is amended to read:

"32A-5-16. TERMINATION PROCEDURES.--

A. A proceeding to terminate parental rights may be initiated in connection with or prior to an adoption proceeding. Venue shall be in the court for the county in which the child is physically

present or in the county from which the child was placed. The proceeding may be initiated by any of the following:

(1) the department;

(2) an agency; or

(3) any other person having a legitimate interest in the matter, including a petitioner for adoption, the child's guardian, the child's guardian ad litem in another action, an agency, a foster parent, a relative of the child or the child.

B. Any petition for termination of parental rights shall be signed and verified by the petitioner, be filed with the court and set forth:

(1) the date, place of birth and marital status of the child, if known;

(2) the grounds for termination and the facts and circumstances supporting the grounds for termination;

(3) the names and addresses of the person, authorized agency or agency officer to whom custody might be transferred;

(4) the basis for the court's jurisdiction;

(5) that the petition is in contemplation of adoption;

(6) the relationship or legitimate interest of the applicant to the child; and

(7) whether the child is an Indian child and, if so:

(a) the tribal affiliations of the child's parents;

(b) the specific actions taken by the moving party to notify the parents' tribe and the results of the contacts, 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

(c) 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 tribes.

C. Notice of the filing of the petition, accompanied by a copy of the petition, shall be served by the petitioner on the parents of the child, the child's guardian, the legal custodian of the child, the person with whom the child is residing, any person with whom the child has resided within the past six months and the department. Service shall be in accordance with the Rules of Civil Procedure for the District Courts for the service of process in a civil action in this state, with the exception that the department may be served by certified mail. The notice shall state specifically that the person served shall file a written response to the petition within twenty days if the person intends to contest the termination. In any case involving an Indian child, notice shall also be served on the child's Indian tribe pursuant to the federal Indian Child Welfare Act of 1978.

D. If the identification or whereabouts of a parent is unknown, the petitioner shall file a motion for an order granting service by publication or an order stating that service by publication is not required. A motion for an order granting service by publication shall be supported by the affidavit of the petitioner, the agency or the petitioner's attorney detailing the efforts made to locate the parent. Upon being satisfied that reasonable efforts to locate the parent have been made and that information as to the identity or whereabouts of the parent is still insufficient to effect service in accordance with SCRA, Rule 1-004, the court shall order service by publication or order that publication is not required because the parent's consent is not required pursuant to the provisions of Section 32A-5-19 NMSA 1978.

E. The court shall, upon request, appoint counsel for any parent who is unable to obtain counsel for financial reasons or if, in the court's discretion, appointment of counsel is required in the interest of justice. Payment for the appointed counsel shall be made by the petitioner.

F. The court shall appoint a guardian ad litem for the child in all contested proceedings for termination of parental rights.

G. Within thirty days after the filing of a petition to terminate parental rights, the petitioner shall request a hearing on the petition. The hearing date shall be at least thirty days after service is effected upon the parent of the child or completion of publication.

H. The grounds for any attempted termination shall be proved by clear and convincing evidence. In any proceeding involving an Indian child, the grounds for any attempted termination shall be proved beyond a reasonable doubt and meet the requirements set forth in the federal Indian Child Welfare Act of 1978.

I. If the court terminates parental rights, it shall appoint a custodian for the child. Upon entering an order terminating the parental rights of a parent, the court may commit the child to the custody of the department, the petitioner or an agency willing to accept custody for the purpose of placing the child for adoption. In any termination proceeding involving an Indian child, the court shall, in any termination order, make specific findings that the requirements of the federal Indian Child Welfare Act of 1978 were met.

J. A judgment of the court terminating parental rights divests the parent of all legal rights. Termination of parental rights shall not affect the child's right of inheritance through the former parent."

Section 12

Section 12. Section 32A-5-19 NMSA 1978 (being Laws 1993, Chapter 77, Section 146) is amended to read:

"32A-5-19. PERSONS WHOSE CONSENTS OR RELINQUISHMENTS ARE NOT REQUIRED.--The consent to adoption or relinquishment of parental rights required pursuant to the provisions of the Adoption Act shall not be required from:

A. a parent whose rights with reference to the adoptee have been terminated pursuant to law;

B. a parent who has relinquished the child to an agency for an adoption;

C. a biological father of an adoptee conceived as a result of rape or incest;

D. any person who has failed to respond when given notice pursuant to the provisions of Section 32A-5-27 NMSA 1978;

E. any putative father who has failed to register with the putative father registry within ten days of the child's birth; or

F. any alleged father."

Section 13

Section 13. Section 32A-5-40 NMSA 1978 (being Laws 1993, Chapter 77, Section 167, as amended) 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, by the department or by an adoptee's sibling; 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 14

Section 14. Section 32A-5-41 NMSA 1978 (being Laws 1993, Chapter 77, Section 168, as amended) 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;

(3) an adoptee's former parent, when the adoptee is eighteen years of age or older; or

(4) an adoptee's sibling.

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 15

Section 15. Section 32A-19-1 NMSA 1978 (being Laws 1993, Chapter 77, Section 228) is amended to read:

"32A-19-1. QUALITY ASSURANCE OFFICE.--

A. The department shall maintain a quality assurance office under the office of the secretary.

B. The purpose of the quality assurance office shall be to facilitate department efforts to efficiently implement the purposes of the Children's Code.

C. In order to measure the quality of services provided, to facilitate satisfactory outcomes for children and families that receive services and to provide a continuing opportunity to improve service delivery, the quality assurance office shall:

(1) monitor the system for receiving and resolving complaints and grievances;

(2) perform periodic investigations and evaluations to assure compliance with the Children's Code and other applicable state and federal laws and regulations;

(3) facilitate monitoring of indicators of the department's performance to determine whether the department is:

(a) providing children and families with individualized, needs-based service plans;

(b) providing services in a timely manner; and

(c) in compliance with applicable state and federal laws and regulations;

(4) identify any deficiencies and recommend corrective action to the secretary of the department;

(5) have access to any records maintained by the department, including confidential information; and

(6) promote continuous improvement of all department processes serving children and families.

D. The quality assurance office shall contribute to and facilitate the publication of public reports assessing the performance of the department. The reports shall not disclose the identity of any individual mentioned in the report, including children or families that receive or are eligible for services or any department employee."

Section 16

Section 16. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE JUDICIARY COMMITTEE SUBSTITUTE

FOR HOUSE BILL 717, AS AMENDED

CHAPTER 35

RELATING TO THE LAND OFFICE BUILDING ACT; ENACTING A NEW SECTION DESIGNATING THE NAME OF THE BUILDING.

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

Section 1

Section 1. A new Section 19-12-7.1 NMSA 1978 is enacted to read:

"19-12-7.1. NAME OF LAND OFFICE BUILDING.--The building located in Santa Fe currently used for offices to administer the trust created by the Enabling Act for New Mexico and other acts of congress granting lands to the state shall be known as the "Edward J. Lopez land office building"."

SENATE BILL 895

CHAPTER 36

RELATING TO REAL ESTATE CONTRACTS; ENACTING THE UNIFORM VENDOR AND PURCHASER RISK ACT; CLARIFYING THE RIGHTS AND DUTIES OF PARTIES TO CONTRACTS FOR THE PURCHASE AND SALE OF REAL ESTATE.

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 Vendor and Purchaser Risk Act".

Section 2

Section 2. RISK OF LOSS.--A contract made after the effective date of the Uniform Vendor and Purchaser Risk Act for the purchase and sale of real estate shall be interpreted as including an agreement that the parties shall have the following rights and duties, unless the contract expressly provides otherwise:

A. if, when neither the legal title nor the possession of the subject matter of the contract have been transferred, all or a material part thereof is destroyed without fault of the purchaser or is taken by eminent domain, the vendor cannot enforce the contract, and the purchaser is entitled to recover any portion of the price that has been paid; or

B. if, when either the legal title or the possession of the subject matter of the contract has been transferred, all or any part thereof is destroyed without fault of the vendor or is taken by eminent domain, the purchaser is not thereby relieved from a duty to pay the price, nor is he entitled to recover any portion thereof that has been paid.

Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

SENATE BILL 186

CHAPTER 37

RELATING TO COUNTIES; PROVIDING THAT CERTAIN COUNTY ORDINANCES TAKE EFFECT IMMEDIATELY AFTER PASSAGE; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 4-37-9 NMSA 1978 (being Laws 1975, Chapter 312, Section 9) is amended to read:

"4-37-9. COUNTY ORDINANCES--RECORDING AND PUBLICATION- -EFFECTIVE DATE.--

A. All county ordinances, immediately after their passage, shall be recorded in a book kept for that purpose and shall be authenticated by the signature of the county clerk.

B. No ordinance shall take effect until thirty days after the ordinance has been recorded in the book kept by the county for that purpose.

C. Notwithstanding the provisions of Subsection B of this section, when a board of county commissioners declares that it is necessary for the public peace, health and safety that an ordinance take effect immediately after passage, the ordinance shall take effect when it is recorded in the book kept by the county for that purpose and authenticated by the signature of the county clerk."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

SENATE BILL 280

CHAPTER 38

RELATING TO THE ENVIRONMENT; PROVIDING FOR VOLUNTARY REMEDIATION OF CONTAMINATED REAL PROPERTY AND VOLUNTARY AGREEMENTS; AUTHORIZING COVENANTS NOT TO SUE; PROVIDING AUTHORIZATION FOR A FEE FOR ADMINISTRATION OF AGREEMENTS; APPROPRIATING FEES FOR OPERATION OF A VOLUNTARY REMEDIATION FUND; 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 "Voluntary Remediation Act".

Section 2

Section 2. PURPOSE.--The purpose of the Voluntary Remediation Act is to provide incentives for the voluntary assessment and remediation of contaminated property, with state oversight, and to remove future liability of lenders and landowners.

Section 3

Section 3. DEFINITIONS.--As used in the Voluntary Remediation Act:

A. "applicable standards" means federal, state or local standards, requirements, criteria or limitations that are legally applicable to the facility;

B. "applicant" means a person that elects to submit an application to participate and enter into an agreement under the Voluntary Remediation Act;

C. "contaminant" means the following substances within the jurisdiction of the department:

(1) solid waste;

(2) hazardous waste as defined in 20 NMAC 4.1.200;

(3) an RCRA hazardous waste constituent listed in Appendices VIII and IX in 20 NMAC 4.1.200;

(4) any substance that could alter, if discharged or spilled, the physical, chemical, biological or radiological qualities of water; or

(5) a hazardous substance, as defined by Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act and 40 C.F.R. Part 302, Table 302.4;

D. "department" means the department of environment;

E. "enforcement action" means:

(1) a written notice from the department or other state agency that requires abatement of contamination under 20 NMAC 6.2;

(2) a written order from the department or other state agency that requires or involves the removal or remediation of contaminants;

(3) a judicial action by the department or other state agency seeking the abatement of contamination or the remediation of contaminants; or

(4) a notice, order or judicial action similar to those enumerated in Paragraphs (1) through (3) of this subsection, but initiated by the federal government;

F. "fraud" means the knowingly false representation, whether by words or conduct, and whether by inaccurate or misleading allegations or by concealment of that which should have been disclosed, that is intended to deceive or circumvent the intent of this statute;

G. "participant" means an applicant that has been approved by the department as eligible for and that signs and performs an agreement pursuant to the provisions of the Voluntary Remediation Act;

H. "person" means an individual or any other entity, including partnerships, corporations, associations, responsible business or association agents or officers, the state or a political subdivision of the state, or any agency, department or instrumentality of the United States and any of its officers, agents or employees;

I. "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, including abandonment or discarding of any contaminant;

J. "remediation" means:

(1) actions necessary to investigate, prevent, minimize or mitigate damages to the public health or to the environment that may otherwise result from a release or threat of release; and

(2) the cleanup or removal of released contaminants to conform with applicable standards;

K. "site" means a parcel of real property for which an application has been submitted pursuant to the provisions of Section 5 of the Voluntary Remediation Act; and

L. "voluntary remediation" means remediation taken under and in compliance with the Voluntary Remediation Act.

Section 4

Section 4. REGULATIONS.--The department shall adopt and promulgate rules and regulations necessary to implement the provisions of the Voluntary Remediation Act. The rules and regulations shall provide for, among other things, the amount of the nonrefundable application fee and a schedule for the cost of the department's oversight of the voluntary remediation.

Section 5

Section 5. APPLICATION AND FEE.--

A. To be eligible for a voluntary remediation agreement an applicant must:

(1) own the site;

(2) operate a facility located on the site;

(3) be a prospective owner of the site; or

(4) be a prospective operator of a facility at the site.

B. An applicant shall pay at the time of submitting the application a reasonable, nonrefundable application fee determined by the department in advance that will pay for the costs to the department of processing the application.

C. The participant shall pay all costs of the department's oversight of the voluntary remediation.

D. The department shall reject an application for a voluntary remediation agreement if the department determines:

(1) the contaminants at the site constitute, with reasonable evidence, an unreasonable threat to human health or the environment or Native American cultural or religious sites;

(2) an administrative state or federal or judicial state or federal enforcement action is pending that concerns remediation of contamination described in the application;

(3) a federal grant requires an enforcement action at the site;

(4) the application is incomplete or inaccurate and the alleged incompleteness or inaccuracy cannot be remedied by the applicant within thirty days;

(5) the site has a state or federal permit that addresses a contaminant described in the application, or a permit is pending;

(6) an agreement between the department and the environmental protection agency precludes the site from being addressed under this statute; or

(7) the applicant has, within ten years immediately preceding the date of submission of the application:

(a) knowingly misrepresented a material fact in an application for a permit or plan submitted pursuant to state environmental laws;

(b) refused or failed to disclose any material information required under this act;

(c) exhibited a history of willful disregard for environmental laws of any state or of the United States; or

(d) had an environmental permit revoked or permanently suspended for cause pursuant to provisions of any environmental laws of any state or of the United States.

E. The department shall determine, on a first-come, first-served basis and within a reasonable period defined by regulation, whether the applicant is eligible to participate in a voluntary remediation agreement pursuant to provisions of the Voluntary Remediation Act.

F. Before the department approves a proposed voluntary remediation agreement, the applicant must:

(1) make the proposed voluntary remediation agreement available for public inspection at a location in reasonable proximity to the site;

(2) notify the following and advise them of the proposed voluntary remediation agreement and the opportunity to submit comments to the department:

(a) any local, state, federal, tribal or pueblo governmental agency potentially affected by the proposed voluntary remediation agreement;

(b) those parties that have requested notification;

(c) the general public by posting at the site on a form provided by the department; and

(d) the general public by publishing in a newspaper of general circulation in the community potentially affected by the voluntary remediation agreement; and

(3) submit to the department a copy of the public notice as well as an affidavit affirming that the applicant has complied with the provisions of this subsection.

G. The department shall:

(1) provide a comment period of at least thirty days following publication of the newspaper notice. During the comment period, interested persons may submit comments to the department concerning the proposed voluntary remediation agreement. The department shall consider public comments in deciding whether to enter into a voluntary remediation agreement;

(2) during the thirty day comment period, allow any interested person to request a public meeting. The request shall be in writing and shall set forth the reasons why the meeting should be held. A public meeting will be held if the secretary of environment determines that there is significant public interest; and

(3) provide for appropriate public participation in the voluntary remediation work plan, including a public meeting if the secretary of environment determines that there is significant public interest.

H. If an agreement is not reached between an applicant and the department on or before the thirtieth day after the department determines an applicant to be eligible pursuant to the provisions of this section, the applicant or the department may withdraw from the negotiations.

Section 6

Section 6. AGREEMENT.--

A. After the department determines that an applicant is eligible, the secretary of environment may enter into a voluntary remediation agreement for remediation of the site that sets forth the terms and conditions of the department's evaluation and implementation of the oversight to be performed.

B. A voluntary remediation agreement shall include a provision for the departments oversight, including access to the site, on-site collection of samples and inspection and copying of site records.

C. The department shall not initiate an enforcement action, including an administrative or judicial action, against a participant for the contamination or release thereof, or for the activity that resulted in the contamination or release thereof, if the contamination is the subject of an agreement pursuant to the provisions of the Voluntary Remediation Act; however, this section shall not be a bar to enforcement if the participant does not successfully initiate or implement the agreement within a reasonable time.

D. The participant may terminate a voluntary remediation agreement on sixty days' written notice. The department may terminate a voluntary remediation agreement on a finding that the participant is not in compliance with the voluntary remediation agreement. The department's costs incurred or obligated before the date the notice of termination is received are recoverable under the agreement if the agreement is terminated.

E. In the event that any participant is unable to resolve a dispute concerning the actions required under a voluntary remediation agreement, that participant may submit a written request for a final decision to the secretary of environment. The secretary of environment shall issue a binding final decision, including a written statement of the reason for the decision.

F. Unless the participant demonstrates that a cleanup is not required in order to comply with applicable standards, after a voluntary remediation agreement becomes effective, the participant shall submit a proposed voluntary remediation work plan for the site remediation.

Section 7

Section 7. CERTIFICATE OF COMPLETION.--If the department determines that a participant has successfully complied with the voluntary remediation agreement and the site conditions meet applicable standards, the department shall issue the participant a certificate of completion.

Section 8

Section 8. COVENANT NOT TO SUE.--

A. After the department issues a certificate of completion for a site, the secretary of environment shall provide a covenant not to sue to a purchaser of the site that did not contribute to the site contamination for any direct liability, including future liability for claims based upon the contamination covered by the agreement and over which the department has authority. Except as may be provided under federal law or as may be agreed to by a federal government entity, the covenant not to sue shall not release a participant from liability to the federal government for claims based on federal law. Except as may be agreed to by a third party, the covenant not to sue shall not release a person from liability to third parties.

B. The secretary of environment's covenant not to sue under this section shall be transferable with title to the site.

Section 9

Section 9. RECISION.--Nothing in this chapter shall prohibit the secretary of environment from rescinding a certificate of completion or a covenant not to sue if the department determines that:

A. contamination addressed in the agreement is, with reasonable evidence, an unreasonable threat to human health or the environment;

B. the voluntary remediation agreement was performed in a manner that fails to comply substantially with the terms and conditions of the agreement or voluntary remediation work plan;

C. the voluntary remediation agreement is a result of fraud; or

D. contamination was present at the site at the time the voluntary remediation agreement was signed but the department did not know of the type, extent or magnitude of the contaminants.

Section 10

Section 10. LENDER LIABILITY.--An applicant who maintains indicia of ownership primarily to protect a security interest in a site that is the subject of a voluntary remediation agreement, who does not participate in the management of the site, and is not in control of or does not have responsibility for daily operation of the site shall not be considered an owner or operator of that site and shall not be liable under any contaminant control or other environmental protection law or regulation administered by the department or otherwise responsible to the department for any environmental contamination or response action costs associated with the site. This section shall apply to all indicia of ownership existing on and after the effective date of the Voluntary Remediation Act.

Section 11

Section 11. VOLUNTARY REMEDIATION FUND.--The "voluntary remediation fund" is created in the state treasury. The fund shall be administered by the department. All fees and oversight payments collected pursuant to the regulations adopted by the secretary of environment pursuant to the provisions of the Voluntary Remediation Act shall be deposited in the fund. The money in the fund shall be appropriated by law to the department for the purpose of administering the Voluntary Remediation Act. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of environment.

Section 12

Section 12. SEVERABILITY.--If any part or application of the Voluntary Remediation Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 13

Section 13. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE FINANCE COMMITTEE SUBSTITUTE FOR

SENTATE CONSERVATION COMMITTEE SUBSTITUTE FOR

SENATE BILLS 446 & 362, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED MARCH 21, 1997

CHAPTER 39

RELATING TO PROPERTY; PROVIDING PROCEDURES AND REMEDIES FOR ESTABLISHING AND ENFORCING LIENS INVOLVING MOBILE HOMES AND MOBILE HOME PARKS.

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

Section 1

Section 1. 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, in excess of seven continuous days; 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 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 a felony under the Controlled Substances Act;

(2) involves a deadly weapon and is a felony under the Criminal Code;

(3) is assault with intent to commit a violent felony, murder, criminal sexual penetration, robbery or burglary under the Criminal Code; or

(4) is 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 2

Section 2. Section 47-10-2 NMSA 1978 (being Laws 1983, Chapter 122, Section 2, as amended) is amended to read:

"47-10-2. DEFINITIONS.--As used in the Mobile Home Park Act:

A. "landlord" or "management" means the owner or any person responsible for operating and managing a mobile home park or an agent, employee or representative authorized to act on the management's behalf in connection with matters relating to tenancy in the park;

B. "mobile home" means a single-family dwelling built on a permanent chassis designed for long-term residential occupancy and containing complete electrical, plumbing and sanitary facilities designed to be installed in a permanent or semipermanent manner with or without a permanent foundation, which dwelling is capable of being drawn over public highways as a unit or in sections by special permit. "Mobile

home" does not include a recreational travel trailer or a recreational vehicle, as those terms are defined in Section 66-1-4.15 NMSA 1978;

C. "mobile home park", "trailer park" or "park" means a parcel of land used for the continuous accommodation of twelve or more occupied mobile homes and operated for the pecuniary benefit of the owner of the parcel of land, his agents, lessees or assignees. "Mobile home park" does not include mobile home subdivisions or property zoned for manufactured home subdivisions;

D. "mobile home space", "space", "mobile home lot" or "lot" means a parcel of land within a mobile home park designated by the management to accommodate one mobile home and its accessory buildings and to which the required sewer and utility connections are provided by the mobile home park;

E. "premises" means a mobile home park and existing facilities and appurtenances therein, including furniture and utilities where applicable, and grounds, areas and existing facilities held out for the use of the residents generally or the use of which is promised to the resident;

F. "rent" means any money or other consideration to be paid to the management for the right of use, possession and occupation of the premises;

G. "rental agreement" means a written agreement, including those conditions implied by law, between the management and the resident establishing the terms and conditions of a tenancy, including reasonable rules and regulations promulgated by the park management. A lease is a rental agreement;

H. "resident" means any person or family of such person owning a mobile home that is subject to a tenancy in a mobile home park under a rental agreement;

I. "tenancy" means the right of a resident to use a space or lot within a park on which to locate, maintain and occupy a mobile home, lot improvements and accessory structures for human habitation, including the use of services and facilities of the park;

J. "utility services" means electric, gas, water or sewer services, but does not include refuse services;

K. "first lienholder" means a person or his successor in interest who has a security interest in a mobile home, whose interest

has been perfected pursuant to the provisions of Section 66-3-201 NMSA 1978 and whose interest is prior to any other security interest in the mobile home; and

L. "abandoned" means absence of the resident from the mobile home, without notice to the landlord, in excess of seven continuous days, providing such absence occurs after the mobile home lot rent is delinquent."

Section 3

Section 3. Section 47-10-9 NMSA 1978 (being Laws 1983, Chapter 122, Section 9) is amended to read:

"47-10-9. REMEDIES.--

A. Upon granting judgment for possession by the landlord in a forcible entry and detainer action, the court shall issue the writ of restitution as provided in Section 47-8-46 NMSA 1978.

B. The notice of judgment shall state that at a specified time, not less than forty-eight hours from the entry of judgment, the sheriff will return to serve a writ of restitution and superintend the peaceful and orderly removal of the mobile home under that order of court. The notice of judgment shall also advise the mobile home owner to prepare the mobile home for removal from the premises by removing the skirting, disconnecting utilities, attaching tires and otherwise making the mobile home safe and ready for highway travel.

C. Should the mobile home owner fail to have the mobile home safe and ready for physical removal from the premises or should inclement weather or other unforeseen problems occur at the time specified in the notice of judgment, the landlord and the sheriff may by written agreement extend the time for the execution of the writ of restitution to allow time for the landlord to arrange to have the necessary work done or to permit the sheriff's execution of the writ of restitution at a time when weather or other conditions will make removal less hazardous to the mobile home.

D. If the mobile home is not removed from the landlord's land on behalf of the mobile home owner within the time permitted by the writ of restitution, the landlord and the sheriff shall have the right to take possession of the mobile home for the purposes of removal and storage. The liability of the landlord and the sheriff in that event shall be limited to gross negligence or willful and wanton disregard of the property rights of the mobile home owner. The responsibility to prevent

freezing and to prevent wind and weather damage to the mobile home lies exclusively with those persons who have a property interest in the mobile home.

E. Utility charges, other charges incurred by the landlord for which the resident is liable to the landlord pursuant to the provisions of a rental agreement, including amounts awarded to the landlord in an action brought pursuant to this section, rents and reasonable removal and storage charges may be paid by any party in interest. Those charges constitute a lien that will run with the mobile home. The lien may be foreclosed in the same manner as a landlord's lien created pursuant to Section 48-3-5 NSMA 1978.

F. Prior to the issuance of the writ of restitution, the court shall make a finding of fact that the mobile home is or is not subject to the security interest of a first lienholder. A written statement on the mobile home resident's owner's application for tenancy identifying a lienholder by name and address shall be prima facie evidence of the existence of the interest of the lienholder. If the application for tenancy contains no information or states that no liens exist, the landlord shall obtain a written title search statement from the motor vehicle division of the taxation and revenue department and the matter contained in that document shall be conclusive evidence of the existence or nonexistence of security interests in the mobile home.

G. If the court finds there is a security interest in favor of a first lienholder on the mobile home subject to the writ of restitution or if the mobile home has been abandoned by the resident or possession of the mobile home has been surrendered to the landlord by the resident, then, upon receipt of the writ of restitution, the landlord shall notify the first lienholder in writing that the landlord has obtained a writ of restitution for the mobile home park space where the mobile home is located or that the mobile home has been abandoned or surrendered by the resident. The notice shall be provided in accordance with the provisions of Subsection J of this section and shall:

(1) state that an action for restitution has been filed against the resident and the effective date of a writ of restitution, if issued, or the date the mobile home was abandoned or voluntarily surrendered by the resident;

(2) disclose the amount of the utility charges, other charges incurred by the landlord as provided in the rental agreement, rents and reasonable removal and storage charges, accruing daily rent calculated pursuant to this section, and the date upon which the resident is required to make regular payments to the landlord; and

(3) attach a copy of the lease and the landlord's rules and regulations that apply to the resident.

H. Notwithstanding the provisions of the Subsection E of this section, the landlord shall be entitled to collect from the first lienholder only the utility charges, other charges incurred by the landlord as provided in the rental agreement and rents and reasonable removal and storage charges accruing from and after the date the landlord provides the first lienholder the written notice prescribed under Subsection G of this section. The first lienholder shall notify the landlord within thirty days of receipt of the notice whether it intends to pay the rents and charges collectible under this subsection or remove the mobile home. The rents and charges due under this subsection shall be prorated to the date the mobile home is removed or the date a new lease with a new resident becomes effective, and the first lienholder shall not be liable for any rents and charges thereafter. The maximum rent payable to the landlord under this subsection is a daily rate equal to one-thirtieth of the then-current lot rental amount that would have been payable by the resident under the lease. The maximum daily rent may be increased over time in accordance with the notice requirements under the applicable provisions of the Mobile Home Park Act. The first lienholder shall have thirty days from the date notice is provided by the landlord to pay the rent and charges accruing to the notice date. Thereafter, the first lienholder shall pay the rent and charges in accordance with the resident's lease. If the first lienholder desires to remove the mobile home prior to a payment due date, the first lienholder shall pay the rent and charges accrued to the date of removal prior to removing the mobile home.

I. If the first lienholder fails to pay the rent and charges due as provided in Subsection H of this section, the landlord may give the first lienholder notice of the nonpayment in accordance with Section 47-10-6 NMSA 1978. If the first lienholder fails to make payment within the time period specified in the notice, the landlord may proceed against the first lienholder by exercising the remedies granted it under the Mobile Home Park Act. The landlord may also seek any other remedies to which it is entitled by law. The prevailing party in any action brought in an event to seek relief under this section, including an action for damages, is entitled to an award for reasonable attorney fees and costs incurred in the suit. Notwithstanding anything in this section to the contrary, the judgment obtained in such an action, if in favor of the landlord, constitutes a lien against the mobile home having priority over the lien of the first lienholder. The lien may be foreclosed pursuant to the procedures pertaining to a landlord's lien created in Section 48-3-5 NMSA 1978.

J. Any notice required by this section between the first lienholder and landlord shall be in writing and either hand delivered or mailed by certified mail, return receipt requested. The notice shall be effective the date of delivery or mailing. If hand delivered, the notice shall be delivered at the principal office or place of business of the addressee during regular business hours to the person in charge of the office or place of business.

K. If the mobile home is sold to third parties who intend to remain in the park, they will not be allowed to reside in the mobile home unless the parties have been qualified by the landlord as residents. Until the purchasers and the landlord enter into a written lease agreement, the landlord may refuse to recognize the sale and treat any persons living in the mobile home as trespassers.

L. If the first lienholder has paid in full all money due under Subsection H of this section, it shall be unlawful for the landlord to refuse to allow the first lienholder to remove the mobile home. If the landlord refuses to allow the first lienholder to remove the mobile home, the landlord is liable to the first lienholder for each day the landlord unlawfully maintains possession of the mobile home, at a daily rate equal to one-thirtieth of the monthly payment required by a contract between the first lienholder and resident. In all disputes between the landlord and the first lienholder, the court shall award reasonable attorney fees and costs to the prevailing party. In the event the mobile home has not been resold within six months of the landlord providing notice pursuant to Subsection G of this section, the landlord may request the first lienholder to remove the mobile home within thirty days of the request. Notice of the request shall be given to the first lienholder in accordance with Subsection J of this section."

Section 4

Section 4. 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 does not attach if the premises rented is a dwelling unit.

B. For purposes of this section, "dwelling unit" means a structure, mobile home and a leased parcel of land upon which it is located, 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."

SENATE BILL 904, AS AMENDED

WITH CERTIFICATE OF CORRECTIONS

CHAPTER 40

RELATING TO EDUCATION; AMENDING AND ENACTING CERTAIN SECTIONS OF THE PUBLIC SCHOOL CODE AND THE PUBLIC SCHOOL FINANCE ACT TO ABOLISH CERTAIN SIZE ADJUSTMENT UNITS, TO PROVIDE FOR AT-RISK PROGRAM UNITS, TO REVISE SPECIAL EDUCATION INDICES AND TO ESTABLISH PROGRAM UNITS FOR SPECIAL EDUCATION ANCILLARY SERVICE PROGRAMS;

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

Section 1

Section 1. Section 22-1-6 NMSA 1978 (being Laws 1989, Chapter 308, Section 1, as amended) is amended to read:

"22-1-6. ANNUAL SCHOOL DISTRICT ACCOUNTABILITY REPORT REQUIRED.--

A. Each school district shall be required to publish an annual school district accountability report to provide district-wide data for the previous school year. The school district shall send to the state superintendent the required data with the year-end reports prior to August 15 each year. The state superintendent shall compile the district reports data and send a draft compilation report to the districts by October 15 each year and send a final compilation state report to the governor and legislature prior to November 15 each year.

B. The accountability report shall include a brief statement of the mission of the local school board, enrollment statistics, total expenditures per pupil for the school year, administrative expenditures per student for the school year, the average teacher salary, a summary of student scores on all state-mandated tests and college entrance

exam scores, including the norm base year; a summary of services provided for students receiving services through the additional at-risk program units; the number of New Mexico scholars eligible for and receiving scholarships; the percentage of the graduating high school class applying for entrance into a four- year post-secondary institution; the percentage of seniors beginning the year who graduate; the percentage of ninth graders, plus any newcomers entering during grades nine through twelve, who graduate; the percentage of full-time-equivalent students participating in bilingual programs, chapter I programs, special education programs and other federally funded programs, with the percentage of the district budget attributable to each program; the percentage of the district budget utilized to employ certified teachers, administrators, support personnel and non-certified classified personnel; the number of students enrolled in advanced placement courses; a concise annual budget report, including revenue and expense data; budget funding sources; the student drop-out rate; continual student progress follow-up study; a statement of school district goals for the upcoming year; an invitation to all citizens to participate in school planning and school activities; and other data and information that clearly communicate the activities and progress of the school district to the residents of that school district. The published accountability report shall compare district, state and national data whenever appropriate and shall include the rank of the school district among all of the school districts in the state, for all state-mandated tests and college exam scores, graduation percentages, drop-out rate, per-student administration expenditure, total per-student expenditure and average teacher salary data. The published report shall use tables and graphs to better communicate complex information and, using the ranking data, shall include a graphic representation of the school district's progress over the preceding three years.

C. The annual accountability report shall also include the results of a survey of parents' views of the quality of their children's school. The survey shall be conducted each year in time to include the results in the annual accountability report. The survey shall compile the results of a written questionnaire that shall be sent home with the students to be given to their parents. The survey may be completed anonymously. The survey shall be no more than one page, shall be clearly and concisely written and shall include not more than twenty questions that shall be answered with options of a simple sliding scale ranging from "strongly agree" to "strongly disagree" and shall include the optional response "don't know". The survey shall also include a request for optional written comments, which may be written on the back of the questionnaire form. The questionnaire shall include questions in the following areas:

(1) parent-teacher-school relationship and communication;

(2) quality of educational and extracurricular programs;

(3) instructional practices and techniques;

(4) resources;

(5) school personnel, including the school principal; and

(6) parents' view of teaching staff expectations for the students.

The state board shall develop no more than ten of the questions, which shall be reviewed by the legislative education study committee prior to implementation. No more than five questions shall be developed by the local school board and no more than five questions shall be developed by the staffs of each individual school site, provided that at least half of those questions are developed by teachers rather than administrators, in order to gather information that is specific to the particular community surveyed.

D. The annual accountability report for each school district shall be published no later than November 15 of each year and shall be published at least once each school year in a newspaper of general circulation in the county where the district is located. In publication, the report shall be titled "the school district report card"."

Section 2

Section 2. 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, include 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 3

Section 3. Section 22-8-18 NMSA 1978 (being Laws 1974, Chapter 8, Section 8, as amended) is amended to read:

"22-8-18. PROGRAM COST CALCULATION--LOCAL SCHOOL BOARD RESPONSIBILITY.--

A. The total program units for the purpose of computing the program cost shall be calculated by multiplying the sum of the program units itemized as Paragraphs (1) through (4) in this subsection by the instruction staff training and experience index and adding the program units itemized as Paragraphs (5) through (8) in this subsection. The itemized program units are as follows:

(1) early childhood education;

(2) basic education;

(3) special education, adjusted by subtracting the units derived from membership in class D special education programs in private, nonsectarian, nonprofit training centers;

(4) bilingual multicultural education;

(5) size adjustment;

(6) at-risk program;

(7) enrollment growth or new district adjustment; and

(8) special education units derived from membership in class D special education programs in private, nonsectarian, nonprofit training centers.

B. The total program cost calculated as prescribed in Subsection A of this section includes the cost of early childhood, special, bilingual multicultural and vocational education and other remedial or enrichment programs. It is the responsibility of the local school board to determine its priorities in terms of the needs of the community served by that board. Funds generated under the Public School Finance Act are discretionary to local school boards, provided that the special program needs as enumerated in this section are met."

Section 4

Section 4. Section 22-8-19 NMSA 1978 (being Laws 1974, Chapter 8, Section 9, as amended) is amended to read:

"22-8-19. EARLY CHILDHOOD EDUCATION PROGRAM UNITS.--

A. The number of early childhood education program units is determined by multiplying the early childhood education MEM by the cost differential factor 1.44. No early childhood education student shall be counted for more than 0.5 early childhood education MEM.

B. For the purpose of calculating early childhood education program units, developmentally disabled three- and four-year-old students shall be counted in early childhood education membership. No developmentally disabled three- or four-year old student shall be counted for more than 0.5 early childhood education MEM."

Section 5

Section 5. Section 22-8-21 NMSA 1978 (being Laws 1974, Chapter 8, Section 11, as amended by Laws 1992, Chapter 75, Section 1 and also by Laws 1992, Chapter 84, Section 1) is amended to read:

"22-8-21. SPECIAL EDUCATION PROGRAM UNITS.--

A. For the purpose of the Public School Finance Act, special education programs for exceptional children are those approved by the department and classified as follows:

(1) class A programs, in which department certified individuals provide services to children whose individualized education programs require a minimal amount of special education and in which the ratio of students to professionals is regulated by the state board;

(2) class B programs, in which department certified individuals provide services to children whose individualized education programs require a moderate amount of special education and in which the ratio of students to professionals is regulated by the state board;

(3) class C programs, in which department certified individuals provide services to children whose individualized education programs require an extensive amount of special education and in which the ratio of students to professionals is regulated by the state board;

(4) class D programs, in which department certified individuals provide services to children whose individualized education programs require a maximum amount of special education and in which the ratio of students to professionals is regulated by the state board. Students in class D programs may be enrolled in private, nonsectarian, nonprofit educational training centers in accordance with the provisions of Section 22-13-8 NMSA 1978; and

(5) programs for developmentally disabled three- and four- year-old children meeting standards approved by the state board.

B. All students assigned to the programs for exceptional children classified in Subsection A of this section shall have been so assigned as a result of diagnosis and evaluation performed in accordance with the standards of the department before the students may be counted in the determination of special education program units as provided in Subsection C of this section.

C. The number of special education program units is the sum of the following:

(1) the MEM in approved class A and B programs as defined in Subsection A of this section multiplied by the cost differential factor .7;

(2) the MEM in approved class C programs as defined in Subsection A of this section multiplied by the cost differential factor 1.0;

(3) the MEM in approved class D programs as defined in Subsection A of this section multiplied by the cost differential factor 2.0;

(4) the MEM for developmentally disabled three- and four-year-old children as defined in Subsection A of this section multiplied by the cost differential factor 2.0; provided that no developmentally disabled three- or four-year-old student shall be counted for additional ancillary service units; and

(5) for related services ancillary to providing special education, the number of full-time-equivalent certified or licensed ancillary service and diagnostic service personnel multiplied by the cost differential factor 25.0.

D. For the purpose of calculating membership in class C and class D programs, students shall be counted in actual grade placement or according to chronological age if not in actual grade placement."

Section 6

Section 6. Section 22-8-23 NMSA 1978 (being Laws 1975, Chapter 119, Section 1, as amended) is amended to read:

"22-8-23. SIZE ADJUSTMENT PROGRAM UNITS.--

A. An approved public school with a MEM of less

than 400, including early childhood education full-time-equivalent MEM but excluding membership in class C and class D programs and excluding full-time- equivalent membership in three- and four-year-old developmentally disabled programs, is eligible for additional program units. Separate schools established to provide special programs, including but not limited to vocational and alternative education, shall not be classified as public schools for purposes of generating size adjustment program units. The number of additional program units to which a school district is entitled under this subsection is the sum of elementary-junior high units and senior high units computed in the following manner:

Elementary-Junior High Units

$$\frac{\textbf{200 - MEM}}{200} \times 1.0 \times \text{MEM} = \text{Units}$$

where MEM is equal to the membership of an approved elementary or junior high school, including early childhood education full-time-equivalent membership but excluding membership in class C and class D programs and excluding full-time- equivalent membership in three- and four-year-old developmentally disabled programs;

Senior High Units

$$\frac{\textbf{200 - MEM}}{200} \times 2.0 \times \text{MEM} = \text{Units}$$

or,

Senior High Units

$$\frac{\textbf{400 - MEM}}{400} \times 1.6 \times \text{MEM} = \text{Units}$$

whichever calculation for senior high units is higher, where MEM is equal to the membership of an approved senior high school excluding membership in class C and class D programs.

B. A school district with total MEM of less than 4,000, including early childhood education full-time-equivalent MEM , is eligible for additional program units. The number of additional program units to which a district is entitled under this subsection is the number of district units computed in the following manner:

District Units

$$\frac{\textbf{4000 - MEM}}{4000} \times 0.15 \times \text{MEM} = \text{Units}$$

where MEM is equal to the total district membership, including early childhood education full-time-equivalent membership .

C. A school district with over 10,000 MEM with a ratio of MEM to senior high schools less than 4,000:1 is eligible for additional program units based on the number of approved regular senior high

schools that are not eligible for senior high units under Subsection A of this section. The number of additional program units to which an eligible school district is entitled under this subsection is the number of units computed in the following manner:

$$\frac{\textbf{4000 - MEM}}{\text{Senior High Schools}} \times 0.50 = \text{Units}$$

where MEM is equal to the total district membership, including early childhood education full-time-equivalent membership , and where senior high schools are equal to the number of approved regular senior high schools in the district.

Section 7

Section 7. A new section of the Public School Finance Act, Section 22-8- 23.3 NMSA 1978, is enacted to read:

"22-8-23.3. AT-RISK PROGRAM UNITS.--

A. A school district is eligible for additional program units if it establishes within its state-board-approved educational plan identified services to assist students to reach their full academic potential. A school district receiving additional at-risk program units shall include a report of specified services in its annual accountability report pursuant to Section 22-1-6 NMSA 1978. The number of additional units to which a district is entitled under this section is computed in the following manner:

At-Risk Index x MEM = Units

where MEM is equal to the total district membership, including early childhood education, full-time-equivalent membership and special education membership, and where the at-risk index is calculated in the following manner:

Refined At-Risk Cluster x 0.015 = At-Risk Index.

B. To calculate the refined at-risk cluster, the department shall rank order each school district in the state on the basis of the district's percentage of membership used to determine its Title I allocation, the percentage of membership classified as limited English proficient using criteria established by the federal office of civil rights, the percentage of student mobility and the percentage of dropouts in the school district. Using this data, the department shall initially group

districts into nine clusters using a neural network computer analysis. Each school district shall be assigned a whole number from one to nine reflecting its initial cluster assignment, with higher need districts receiving a higher number and lower need districts receiving a lower number. This number shall be modified on the basis of a school district's relative position in the cluster and further refined through the use of a second neural network computer analysis, a back propagation. Using the results of this analysis, the department shall refine the cluster assignment and the number assigned to each school district. The number obtained from this calculation is the refined at-risk cluster.

C. The department shall recalculate the at-risk index for each school district every two years."

Section 8

Section 8. Section 22-8-25 NMSA 1978 (being Laws 1981, Chapter 176, Section 5, as amended by Laws 1993, Chapter 226, Section 23 and also by Laws 1993, Chapter 231, Section 14) is amended to read:

"22-8-25. STATE EQUALIZATION GUARANTEE DISTRIBUTION--

DEFINITIONS--DETERMINATION OF AMOUNT.--

A. The state equalization guarantee distribution is that amount of money distributed to each school district to ensure that the school district's operating revenue, including its local and federal revenues as defined in this section, is at least equal to the school district's program cost.

B. "Local revenue", as used in this section, means ninety-five percent of receipts to the school district derived from that amount produced by a school district property tax applied at the rate of fifty cents ($.50) to each one thousand dollars ($1,000) of net taxable value of property allocated to the school district and to the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act and upon the assessed value of equipment in the school district as determined under the Oil and Gas Production Equipment Ad Valorem Tax Act.

C. "Federal revenue", as used in this section, means ninety-five percent of receipts to the school district, excluding amounts which, if taken into account in the computation of the state equalization guarantee distribution, result, under federal law or regulations, in a

reduction in or elimination of federal school funding otherwise receivable by the school district, derived from the following:

(1) the school district's share of forest reserve funds distributed in accordance with Section 22-8-33 NMSA 1978; and

(2) grants from the federal government as assistance to those areas affected by federal activity authorized in accordance with Sections 236 through 240 of Title 20 of the United States Code (commonly known as "PL 874 funds") or an amount equal to the revenue the district was entitled to receive if no application was made for such funds but deducting from those grants the additional amounts to which school districts would be entitled because of the provisions of Subparagraph (D) of Paragraph (2) of Subsection (d) of Section 238 of Title 20 of the United States Code.

D. To determine the amount of the state equalization guarantee distribution, the state superintendent shall:

(1) calculate the number of program units to which each school district is entitled using the basic program membership of the fortieth day for all programs; provided that special education program units shall be calculated using the membership in special education programs on December 1; or

(2) calculate the number of program units to which a school district operating under an approved year-round school calendar is entitled using the basic program membership on an appropriate date established by the state board; or

(3) calculate the number of program units to which a school district with a basic program MEM of 200 or less is entitled by using the basic program membership on the fortieth day of either the prior or the current year, whichever is greater; provided that special education program units shall be calculated using the membership in special education programs on December 1 of either the prior or the current year; and

(4) using the results of the calculations in Paragraph (1), (2) or (3) of this subsection and the instructional staff training and experience index from the October report of the prior school year, establish a total program cost of the school district;

(5) calculate the local and federal revenues as defined in this section;

(6) deduct the sum of the calculations made in Paragraph (5) of this subsection from the program cost established in Paragraph (4) of this subsection; and

(7) deduct the total amount of guaranteed energy savings contract payments that the state superintendent determines will be made to the school district from the public school energy efficiency fund during the fiscal year for which the state equalization guarantee distribution is being computed.

E. The amount of the state equalization guarantee distribution to which a school district is entitled is the balance remaining after the deductions made in Paragraphs (6) and (7) of Subsection D of this section.

F. The state equalization guarantee distribution shall be distributed prior to June 30 of each fiscal year. The calculation shall be based on the local and federal revenues specified in this section received from June 1 of the previous fiscal year through May 31 of the fiscal year for which the state equalization guarantee distribution is being computed. In the event that a district has received more state equalization guarantee funds than its entitlement, a refund shall be made by the district to the state general fund.

G. Notwithstanding the methods of calculating the state equalization guarantee distribution in this section and Laws 1974, Chapter 8, Section 22, if a school district received funds under Section 2391 of Title 42 USCA and if the federal government takes into consideration grants authorized by Sections 236 through 240 of Title 20 of the United States Code and all other revenues available to the school district in determining the level of federal support for the school district for the sixty-fourth and succeeding fiscal years, the state equalization guarantee distribution for school districts receiving funds under this subsection shall be computed as follows:

$$\frac{\text{fiscal year program cost excluding special education for the year for which the state equalization guarantee distribution is being computed}}{\text{prior fiscal year program cost}} \times \text{prior fiscal year state equalization guarantee distribution excluding special education}$$

excluding special education

plus special education funding in accordance with Paragraphs (1), (2) or (3) and (4) of Subsection D of this section and Section 22-8-21 NMSA 1978 plus an amount that would be produced by applying a rate of eight dollars forty-two and one-half cents ($8.425) to each one thousand dollars ($1,000) of net taxable value of property as defined in the Property Tax Code for property taxation purposes in the school district and to each one thousand dollars ($1,000) of the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act and upon the assessed value of equipment in the school district as determined under the Oil and Gas Production Equipment Ad Valorem Tax Act and then reduced by the total amount of guaranteed energy savings contract payments, if any, that the state superintendent determines will be made to the school district from the public school energy efficiency fund during the fiscal year for which the state equalization guarantee distribution is being computed, equals the fiscal year state equalization guarantee distribution for the year for which the state equalization guarantee distribution is being computed.

If at any time grants from the federal government as assistance to those areas affected by federal activity authorized in accordance with Sections 236 through 240 of Title 20 of the United States Code (commonly known as "PL 874 funds") are reduced or are no longer available, the state equalization guarantee distribution shall be computed by the formula contained in this subsection plus an increase by fifty percent of the amount the prior year's PL 874 funds exceed PL 874 funds for the year for which the state equalization guarantee distribution is being computed."

Section 9

Section 9. TEMPORARY PROVISION.--In the event that the program units of Section 22-8-18 NMSA 1978 as amended by this act are not fully funded, no school district shall receive less than its previous year's total program cost due to the change in the program cost calculation with the program cost adjusted for the establishment of a high school in Rio Rancho.

Section 10

Section 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE APPROPRIATIONS AND FINANCE

COMMITTEE SUBSTITUTE FOR

HOUSE BILL 215, AS AMENDED

CHAPTER 41

RELATING TO THE LEGISLATURE; MAKING APPROPRIATIONS TO THE LEGISLATIVE COUNCIL SERVICE FOR INTERIM LEGISLATIVE EXPENSE AND LEGISLATIVE RETIREMENT; PROVIDING FOR A STUDY.

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

Section 1

Section 1. APPROPRIATION.--

A. Eight hundred ninety-five thousand two hundred dollars ($895,200) is appropriated from the general fund to the legislative council service for expenditure in fiscal year 1998 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.

B. The New Mexico legislative council shall conduct a study on the feasibility of providing permanent staff support for the legislative leaders of the house and senate.

C. The New Mexico legislative council may transfer amounts from the appropriation in Subsection A during fiscal year 1998 to any other legislative appropriation where the amounts may be needed.

Section 2

Section 2. APPROPRIATION.--One hundred two thousand dollars ($102,000) is appropriated from the cash balances of the legislative council service from Subsection J of Section 2 of Chapter 1 of Laws 1995 to the legislative council service for expenditure in fiscal years 1997 and 1998 for the legislative match for legislative retirement required pursuant to State of New Mexico, ex rel., Attorney General Tom Udall v. Public Employees Retirement Board, et al. Any unexpended or unencumbered balance remaining at the end of fiscal year 1998 shall not revert to the general fund.

HOUSE BILL 838, AS AMENDED

CHAPTER 42

RELATING TO PUBLIC FINANCES; AMENDING THE PUBLIC BUILDING ENERGY EFFICIENCY ACT TO INCLUDE WATER CONSERVATION MEASURES AND TO PROVIDE THAT STATE AGENCIES MAY CARRY OVER UTILITY SAVINGS AND CONSERVATION-RELATED OPERATING COST SAVINGS REALIZED THROUGH GUARANTEED UTILITY SAVINGS CONTRACTS.

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

Section 1

Section 1. Section 6-23-1 NMSA 1978 (being Laws 1993, Chapter 231, Section 1) is amended to read:

"6-23-1. SHORT TITLE.--Chapter 6, Article 23 NMSA 1978 may be cited as the "Public Building Energy Efficiency and Water Conservation Act"."

Section 2

Section 2. Section 6-23-2 NMSA 1978 (being Laws 1993, Chapter 231, Section 2) is amended to read:

"6-23-2. DEFINITIONS.--As used in the Public Building Energy Efficiency and Water Conservation Act:

A. "energy conservation measure" means a training program or facility alteration designed to reduce energy consumption or conservation-related operating costs and may include:

(1) insulation of the building structure or systems within the building;

(2) storm windows or doors, caulking or weatherstripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area or other window and door system modifications that reduce energy consumption;

(3) automated or computerized energy control systems;

(4) heating, ventilating or air conditioning system modifications or replacements;

(5) replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code for the lighting system after the proposed modifications are made;

(6) energy recovery systems;

(7) solar heating and cooling systems or other renewable energy systems;

(8) cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings; or

(9) energy conservation measures that provide long-term operating cost reductions;

B. "governmental unit" means an agency, institution or instrumentality of the state, including two- and four-year institutions of higher education, a municipality, a county or a school district;

C. "guaranteed utility savings contract" means a contract for the evaluation and recommendation of energy or water conservation measures, or both, and for the implementation of one or more of those measures, and which contract provides that all payments, except obligations on termination of the contract before its expiration, are to be made over time and the savings are guaranteed to the extent necessary to make the payments for the energy or water conservation measures, or both;

D. "qualified provider" means a person or business experienced in the design, implementation and installation of energy or water conservation measures, or both, and who meets the experience qualifications developed by the energy, minerals and natural resources department for energy conservation measures or the state engineer's office for water conservation measures; and

E. "water conservation measures" means a training program, change in maintenance practices or facility or landscape

alteration designed to reduce water consumption or conservation-related operating costs."

Section 3

Section 3. Section 6-23-3 NMSA 1978 (being Laws 1993, Chapter 231, Section 3) is amended to read:

"6-23-3. ENERGY EFFICIENCY AND WATER CONSERVATION CONTRACTS AUTHORIZED--ENERGY OR WATER SAVINGS GUARANTEE REQUIRED.--

A. A governmental unit may enter into a guaranteed utility savings contract with a qualified provider to reduce energy, water or conservation- related operating costs if, after review of the utility efficiency proposal from the qualified provider, the governmental unit finds that:

(1) the amount the governmental unit would spend on the energy or water conservation measures, or both, recommended in the proposal is not likely to exceed the amount to be saved in energy and conservation-related operational costs over ten years from the date of installation if the recommendations in the proposal were followed; and

(2) the qualified provider can provide a written guarantee that the energy, water or conservation-related operating cost savings will meet or exceed the costs of the system.

B. A guaranteed utility savings contract shall include a written guarantee from the qualified provider that annual savings shall meet or exceed the cost of the energy or water conservation measures, or both.

C. A guaranteed utility savings contract may extend beyond the fiscal year in which it becomes effective and may provide for payments over a period of time not to exceed ten years; provided, however, such payments shall be made only from special funds authorized for that purpose pursuant to the Public Building Energy Efficiency and Water Conservation Act or other law.

D. A governmental unit may enter into an installment payment contract or lease-purchase agreement for the purchase and installation of energy or water conservation measures, or both, pursuant to a guaranteed utility savings contract, but only in accordance with the

provisions of the Public Building Energy Efficiency and Water Conservation Act.

E. A governmental unit may enter into a utility savings contract pursuant to Section 13-1-129 NMSA 1978 in accordance with the provisions of the Public Building Energy and Water Conservation Efficiency Act."

Section 4

Section 4. Section 6-23-4 NMSA 1978 (being Laws 1993, Chapter 231, Section 4) is amended to read:

"6-23-4. GUARANTEED UTILITY SAVINGS CONTRACT--PERFORMANCE BOND REQUIRED.--A governmental unit shall not enter into a guaranteed utility savings contract unless a performance bond that meets the requirements of this section is delivered by the qualified provider to the governmental unit and that bond becomes binding on the parties upon the execution of the guaranteed utility savings contract. The qualified provider shall provide a performance bond satisfactory to the governmental unit and its approving agency executed by a surety company authorized to do business in this state and approved in federal circular 570 published by the United States treasury department or by the state board of finance. The bond shall be in an amount equal to the amount of the guarantee given by the qualified provider in the guaranteed utility savings contract."

Section 5

Section 5. Section 6-23-5 NMSA 1978 (being Laws 1993, Chapter 231, Section 5) is amended to read:

"6-23-5. CONTRACT APPROVAL REQUIRED.--

A. A governmental unit shall not enter into a guaranteed utility savings contract with a qualified provider or any installment payment contract or lease-purchase agreement pursuant to that contract unless the contracts and agreements are reviewed and approved as follows:

(1) for school districts, by the superintendent of public instruction;

(2) for agencies, institutions and instrumentalities of the state, by the secretary of general services; and

(3) for municipalities and counties, by the secretary of finance and administration.

B. The approval required under this section shall be given upon:

(1) a determination that the contracts and agreements comply with the provisions of the Public Building Energy Efficiency and Water Conservation Act and other applicable law;

(2) certification by the energy, minerals and natural resources department that the qualified provider of energy conservation measures meets the experience requirements set by the department and the guaranteed energy savings from the energy conservation measures proposed appear to be accurately estimated and reasonable; and

(3) certification by the state engineer's office that the qualified provider of water conservation measures meets the experience requirements set by that office and the guaranteed water savings from the water conservation measures proposed appear to be accurately estimated and reasonable."

Section 6

Section 6. Section 6-23-6 NMSA 1978 (being Laws 1993, Chapter 231, Section 6) is amended to read:

"6-23-6. CONTRACTS AND AGREEMENTS NOT A GENERAL OBLIGATION OF THE GOVERNMENTAL UNIT.--Payment obligations of a governmental unit pursuant to a guaranteed utility savings contract with a qualified provider and any installment payment contract or lease-purchase agreement pursuant to a guaranteed utility savings contract are not general obligations of the governmental unit and are collectible only from revenues pledged for that purpose in accordance with the Public Building Energy Efficiency and Water Conservation Act."

Section 7

Section 7. A new Section 6-23-6.1 NMSA 1978 is enacted read:

"6-23-6.1. REPORTING AND RETENTION OF UTILITY COST SAVINGS FOR STATE AGENCIES.--

A. A state agency entering into a guaranteed utility savings contract with a qualified provider shall, no later than thirty days after the

close of the fiscal year, furnish the energy, minerals and natural resources department a consumption and savings report, in a format established jointly by that department and the department of finance and administration, which estimates any cost savings resulting from the implementation of the guaranteed utility savings contract during the fiscal year. The report shall include:

(1) the name or description of each facility or major utility system covered by the report;

(2) utility account numbers;

(3) a record of monthly consumption of water, energy by fuel type, or both; and

(4) a record of monthly per-unit cost of water, energy by fuel type, or both.

B. If the consumption and savings report for a state agency shows a utility or conservation-related operating cost savings at the end of the fiscal year that resulted from implementation of a guaranteed utility savings contract and causes an unexpended and unencumbered balance in the agency's utility line item, the department of finance and administration shall carry forward the dollar amount of the energy, water or conservation-related operating cost savings as a reserved designated fund balance to the subsequent fiscal year.

C. Beginning the year after the utility cost savings and conservation-related operating cost savings measures are implemented, and until any alternative financing for a guaranteed utility savings contract is repaid, or for a period of no more than ten years, whichever is less, all utility budgets and appropriations for the state agency shall be based on:

(1) the energy or water consumption levels, or both, before the energy or water conservation measures were implemented;

(2) the same allowance for escalation or decrease of utility costs given state agencies that did not participate in a guaranteed utility savings contract; and

(3) any adjustments for acquisitions, expansions, sale or disposition of state agency facilities.

D. At the end of the repayment period for the guaranteed utility savings contract, or ten years, whichever is less, new budgets or

appropriations for utilities shall again be based upon actual utility consumption.

E. Upon carryover of the dollar amount of energy, water or conservation-related operating cost savings as a reserved designated fund balance to the subsequent fiscal year, state agencies may submit a budget adjustment request to use those funds for the following purposes:

(1) up to one hundred percent of the funds may be used for additional energy or water conservation measures, or both; and

(2) after encumbrances for additional energy or water conservation measures, or both, have been made, up to fifty percent of the remaining funds may be used for purposes consistent with the duties and responsibilities assigned to the state agency, while the remaining funds shall revert to the general fund.

F. For the purposes of this section, "state agency" means an agency, institution or instrumentality of the state of New Mexico eligible to receive income from lands granted for the use of certain institutions and deposited in income funds pursuant to Section 19-1-17 NMSA 1978. "State agency" does not include a municipality, county or school district."

Section 8

Section 8. Section 6-23-7 NMSA 1978 (being Laws 1993, Chapter 231, Section 7) is amended to read:

"6-23-7. PUBLIC SCHOOL UTILITY CONSERVATION FUND CREATED--USE.--

A. The "public school utility conservation fund" is created as a special fund in the state treasury. The fund shall consist of money transferred to the fund, from year to year, from the income of the permanent fund and land income of which the common schools are the beneficiary. No other money from any school district or state source shall be deposited or paid into the public school utility conservation fund.

B. Annually, after the calculation of the state equalization guarantee distribution has been made, the superintendent of public instruction shall determine the sum of the deductions made in the state equalization guarantee distribution of school districts pursuant to

Paragraph (6) of Subsection D of Section 22-8-25 NMSA 1978 and shall certify that amount to the secretary of finance and administration. Income from the permanent fund and land income of which the common schools are the beneficiary equal to that amount shall be transferred from the common school current fund to the public school utility conservation fund.

C. Money in the public school utility conservation fund is appropriated to the state department of public education solely for the purpose of disbursing money to school districts to make payments pursuant to any guaranteed utility savings contract between the school district and a qualified provider or any installment contract or lease-purchase agreement for the purchase and installation of energy or water conservation measures, or both pursuant to that guaranteed utility savings contract.

D. Disbursements from the public school utility conservation fund shall be made only to school districts and only upon certification by the superintendent of public instruction that the disbursement is for a payment authorized by the Public Building Energy Efficiency and Water Conservation Act.

E. The superintendent of public instruction shall submit to the legislative finance committee prior to each regular legislative session a list of school districts proposing to enter into approved guaranteed utility savings contracts in the succeeding fiscal year. The list shall include information on the amount of the school district's proposed annual payments and specific amounts that utility and operational budget items are guaranteed to be reduced to achieve the savings to make the payments.

F. Any unexpended or unencumbered balance remaining in the public school utility conservation fund at the end of any fiscal year shall be transferred to the public school fund."

Section 9

Section 9. Section 6-23-8 NMSA 1978 (being Laws 1993, Chapter 231, Section 8) is amended to read:

"6-23-8. MUNICIPALITIES--USE OF CERTAIN REVENUES AUTHORIZED.--Upon adoption of an ordinance by an affirmative vote of a majority of the members of the governing body at any regular or special meeting of the governing body called for this purpose, a municipality may pledge any or all revenues not otherwise pledged or obligated from gross receipts taxes received by the municipality

pursuant to Section 7-1-6.4 NMSA 1978 and Section 7-1-6.12 NMSA 1978 for payments pursuant to a guaranteed utility savings contract with a qualified provider and any installment payment contract or lease-purchase agreement pursuant to that guaranteed utility savings contract. The ordinance shall declare the necessity for the guaranteed utility savings contract and related contracts or agreements and shall designate the source of the pledged revenues. Any revenues pledged for such contract payments shall be deposited in a special fund, and the municipality shall not use any other revenues to make such payments. At the end of each fiscal year, any money remaining in the special fund after payment obligations are met may be transferred to any other fund of the municipality."

Section 10

Section 10. Section 6-23-9 NMSA 1978 (being Laws 1993, Chapter 231, Section 9) is amended to read:

"6-23-9. COUNTIES--USE OF CERTAIN REVENUES AUTHORIZED.-- Upon adoption of an ordinance by an affirmative vote of a majority of the members of the board of county commissioners at any regular or special meeting of the board called for this purpose, a county may pledge any or all of the revenue not otherwise pledged or obligated from the first one-eighth of one percent increment and of one-half of the revenue from the third 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 or all of the revenue from the distribution related to the first one-eighth of one percent increment made pursuant to Section 7-1-6.16 NMSA 1978 for the purpose of making payments pursuant to a guaranteed utility savings contract with a qualified provider or any installment payment contract or lease-purchase agreement pursuant to that guaranteed utility savings contract. The ordinance shall declare the necessity for the guaranteed utility savings contract and related contracts or agreements and shall designate the source of the pledged revenues. Any revenues pledged for such contract payments shall be deposited in a special fund and the county shall not use any other county or state revenue to make such payments. At the end of each fiscal year, any money remaining in the special fund after the payment obligations are met may be transferred to any other fund of the county."

Section 11

Section 11. Section 6-23-10 NMSA 1978 (being Laws 1993, Chapter 231, Section 10) is amended to read:

"6-23-10. STATE INSTITUTIONS AND BUILDINGS--USE OF CERTAIN REVENUES AUTHORIZED.--Income from lands granted for the use of certain institutions and public buildings and deposited in income funds for such institutions and buildings pursuant to Section 19-1-17 NMSA 1978 may be appropriated and pledged for payments pursuant to any guaranteed utility savings contract or related lease-purchase agreement or installment payment contract pursuant to the Public Building Energy Efficiency and Water Conservation Act. Any money so appropriated shall be deposited in a special fund or account of the institution or fund and that revenue and no other revenue shall be used to make such payments pursuant to the Public Building Energy Efficiency and Water Conservation Act."

HOUSE BILL 736, AS AMENDED

CHAPTER 43

RELATING TO MOTOR VEHICLES; AUTHORIZING THE USE OF CONVICTIONS FROM OTHER JURISDICTIONS FOR DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS AS PRIOR CONVICTIONS; PROVIDING FOR PARTICIPATION IN A SCREENING PROGRAM; 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 66-8-102 NMSA 1978 (being Laws 1953, Chapter 139, Section 54, as amended) is amended to read:

"66-8-102. PERSONS UNDER INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

A. It is unlawful for any person who is under the influence of intoxicating liquor to drive any vehicle within this state.

B. It is unlawful for any person who is under the influence of any drug to a degree that renders him incapable of safely driving a vehicle to drive any vehicle within this state.

C. It is unlawful for any person who has an alcohol concentration of eight one-hundredths or more in his blood or breath to drive any vehicle within this state.

D. Aggravated driving while under the influence of intoxicating liquor or drugs consists of a person who:

(1) has an alcohol concentration of sixteen one-hundredths or more in his blood or breath while driving any vehicle within this state;

(2) has caused bodily injury to a human being as a result of the unlawful operation of a motor vehicle while driving under the influence of intoxicating liquor or drugs; or

(3) refused to submit to chemical testing, as provided for in the Implied Consent Act, and in the judgment of the court, based upon evidence of intoxication presented to the court, was under the influence of intoxicating liquor or drugs.

E. Every person under first conviction under this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than ninety days or by a fine of not more than five hundred dollars ($500), or both; provided that if the sentence is suspended in whole or in part or deferred, the period of probation may extend beyond ninety days but shall not exceed one year. Upon a first conviction under this section, an offender may be sentenced to not less than forty-eight hours of community service or a fine of three hundred dollars ($300). The offender shall be ordered by the court to participate in and complete a screening program described in Subsection H of this section and to attend a driver rehabilitation program for alcohol or drugs, also known as a "DWI school", approved by the traffic safety bureau of the state highway and transportation department and also may be required to participate in other rehabilitative services as the court shall determine to be necessary. In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to not less than forty-eight consecutive hours in jail. If an offender fails to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court, the offender shall be sentenced to not less than an additional forty-eight consecutive hours in jail. Any jail sentence imposed under this subsection for failure to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court or for aggravated driving while under the influence of intoxicating liquor or drugs shall not be suspended, deferred or taken under advisement. On a first conviction under this section, any time spent in jail for the offense prior to the conviction for that offense shall be credited to any term of imprisonment fixed by the court. A deferred

sentence under this subsection shall be considered a first conviction for the purpose of determining subsequent convictions.

F. A second or third conviction under this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than three hundred sixty-four days or by a fine of not more than one thousand dollars ($1,000), or both; provided that if the sentence is suspended in whole or in part, the period of probation may extend beyond one year but shall not exceed five years. Notwithstanding any provision of law to the contrary for suspension or deferment of execution of a sentence:

(1) upon a second conviction, each offender shall be sentenced to a jail term of not less than seventy-two consecutive hours, forty-eight hours of community service and a fine of five hundred dollars ($500). In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than ninety-six consecutive hours. If an offender fails to complete, within a time specified by the court, any community service, screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional seven consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement; and

(2) upon a third conviction, an offender shall be sentenced to a jail term of not less than thirty consecutive days and a fine of seven hundred fifty dollars ($750). In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than sixty consecutive days. If an offender fails to complete, within a time specified by the court, any screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional sixty consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement.

G. Upon a fourth or subsequent conviction under this section, an offender is guilty of a fourth degree felony, as provided in Section 31-18-15 NMSA 1978, and shall be sentenced to a jail term of not less than six months, which shall not be suspended or deferred or taken under advisement.

H. Upon any conviction under this section, an offender shall be required to participate in and complete, within a time specified by the court, an alcohol or drug abuse screening program and if necessary, a

treatment program approved by the court. The penalty imposed pursuant to this subsection shall not be suspended, deferred or taken under advisement.

I. In the case of a first, second or third offense under this section, the magistrate court has concurrent jurisdiction with district courts to try the offender.

J. A conviction under a municipal or county ordinance in New Mexico or a law of any other jurisdiction, territory or possession of the United States which is equivalent to New Mexico law for driving under the influence of intoxicating liquor or drugs, prescribing penalties for driving while under the influence of intoxicating liquor or drugs shall be deemed to be a conviction under this section for purposes of determining whether a conviction is a second or subsequent conviction.

K. In addition to any other fine or fee which may be imposed pursuant to the conviction or other disposition of the offense under this section, the court may order the offender to pay the costs of any court-ordered screening and treatment programs.

L. As used in this section:

(1) "bodily injury" means an injury to a person that is not likely to cause death or great bodily harm to the person, but does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the person's body; and

(2) "conviction" means an adjudication of guilt and does not include imposition of a sentence."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 83, AS AMENDED

CHAPTER 44

RELATING TO CRIMINAL LAW; MAKING IT UNLAWFUL TO BRING CONTRABAND INTO A JUVENILE DETENTION FACILITY OR JUVENILE CORRECTIONAL FACILITY; PROVIDING 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 is enacted to read:

"BRINGING CONTRABAND INTO A JUVENILE DETENTION FACILITY OR JUVENILE CORRECTIONAL FACILITY--PENALTY.--

A. Bringing contraband into a juvenile detention facility or juvenile correctional facility consists of carrying, transporting or depositing contraband onto the grounds of any facility designated by the children, youth and families department for the detention or commitment of children. Whoever commits bringing contraband into a juvenile correctional facility is guilty of a third degree felony. Whoever commits bringing contraband into a juvenile detention facility is guilty of a fourth degree felony.

B. As used in this section, "contraband" means:

(1) any deadly weapon, as defined in Section 30-1-12 NMSA 1978, or an essential component part thereof, including ammunition, explosive devices and explosive materials, but does not include a weapon carried by a peace officer in the lawful discharge of his duties;

(2) currency brought onto the grounds of a juvenile detention facility or juvenile correctional facility and not declared upon entry to the facility for the purpose of transfer to a child detained in or committed to the facility, but does not include currency carried into areas designated by the facility administrator as areas for the deposit and receipt of currency for credit to a child's account before contact is made with any child;

(3) any alcoholic beverage brought within the physical confines of the juvenile detention or juvenile correctional facility; or

(4) any controlled substance, as defined in the Controlled Substances Act, but does not include a controlled substance carried into a juvenile detention facility or juvenile correctional facility through regular facility channels and pursuant to the direction or prescription of a regularly licensed physician."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 947, AS AMENDED

CHAPTER 45

RELATING TO THE SEVERANCE TAX PERMANENT FUND; CHANGING INVESTMENT RESTRICTIONS; AUTHORIZING AND LIMITING NON-UNITED STATES INVESTMENTS AND VENTURE CAPITAL INVESTMENTS; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 7-27-5.1 NMSA 1978 (being Laws 1983, Chapter 306, Section 8, as amended) is amended to read:

"7-27-5.1. MARKET RATE INVESTMENTS.--

A. Money made available from the severance tax permanent fund for investment for a period in excess of one year in market rate investments may be invested in the following classes of securities and investments:

(1) bonds, notes or other obligations of the United States government, its agencies, government-

sponsored enterprises, corporations or instrumentalities and that portion of bonds, notes or other obligations guaranteed as to principal and interest and issued by the United States government, its agencies, government-

sponsored enterprises, corporations or instrumentalities or issued pursuant to acts or programs authorized by the United States government;

(2) bonds, notes, debentures and other obligations issued by the state of New Mexico or a municipality or other political subdivision of the state that are secured by an investment grade bond rating from a national rating service, pledged revenue or other collateral or insurance necessary to satisfy the standard of prudence set forth in Section 6-8-10 NMSA 1978;

(3) bonds, notes, debentures, equipment trust certificates, conditional sales agreements or other evidences of indebtedness of any corporation organized and operating within the United States rated not less that Baa or BBB or the equivalent by a national rating service;

(4) 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 that 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 in an amount sufficient to pay all principal and interest on the mortgage;

(5) common and preferred stocks and convertible issues of any corporation; provided that it has a minimum net worth of twenty-five million dollars ($25,000,000) and securities listed on one or more national stock exchanges or included in a nationally recognized list of stocks; and provided further that the fund shall not own more than five percent of the voting stock of any company;

(6) securities of non-United States governmental, quasi-governmental or corporate entities, and these may be denominated in foreign currencies; provided:

(a) aggregate non-United States investments shall not exceed fifteen percent of the book value of the severance tax permanent fund;

(b) for non-United States stocks and non-United States bonds and notes, issues permitted for purchase shall be limited to those issues traded on a national stock exchange or included in a nationally recognized list of stocks or bonds;

(c) currency contracts may be used for investing in non-United States securities only for the purpose of hedging foreign currency risk and not for speculation;

(d) the investment management services of a trust company or national bank exercising trust powers or of an investment counseling firm may be employed; and

(e) reasonable compensation for investment management services and other administrative and investment expenses related to these investments shall be paid directly from the

assets of the fund, subject to budgeting and appropriation by the legislature;

(7) stocks or shares of a diversified investment company registered under the federal Investment Company Act of 1940, as amended, and listed securities of long-term unit investment trusts or individual, common or collective trust funds of banks or trust companies that invest primarily in equity securities authorized in Paragraphs (5) and (6) of this subsection; provided that the investment company has total assets under management of at least one hundred million dollars ($100,000,000); and provided further that the council may allow reasonable administrative and investment expenses to be paid directly from the assets derived from these investments, subject to budgeting and appropriation by the legislature; and

(8) participation interests in New Mexico real-property-related business loans. The actual amount invested under this paragraph shall not exceed ten percent of the severance tax permanent fund and shall be included in any minimum amount of severance tax permanent fund investments required to be placed in New Mexico certificates of deposit. Investments authorized in this paragraph are subject to the following:

(a) the state investment officer may purchase from eligible institutions a participation interest of up to eighty percent in any loan secured by a first mortgage or a deed of trust on the real property located in New Mexico of an eligible business entity, or its subsidiary, that is operating or shall use loan proceeds to commence operations within New Mexico plus any other guarantees or collateral that may be judged by the eligible institution or the state investment officer to be prudent. To be eligible for investment the following minimum requirements shall be met: 1) the loan proceeds shall be used exclusively for the purpose of expanding or establishing businesses in New Mexico, including the refinancing of such businesses for expansion purposes only. If a portion of the loan proceeds were used for refinancing or repaying an existing loan and payment of principal and interest to the state has not been made within ninety days from the due date, unless extended pursuant to agreement between the originating institution and the state investment officer, the originating institution shall buy back the state's participation interest in the loan and begin foreclosure proceedings; 2) eligible business entities shall not include public utilities or financial institutions or shopping centers, apartment buildings or other such passive investments; 3) the minimum loan amount shall be two hundred fifty thousand dollars ($250,000) and may be met by packaging up to ten separate loans satisfying the requirements of this paragraph. The maximum loan amount shall be two

million dollars ($2,000,000); 4) the loan maturity shall be not less than five years or more than thirty years; 5) the maximum loan-to-value ratio shall be seventy-five percent and based on current appraisal of the real property by an appraiser who is licensed or certified in New Mexico and approved by the state investment officer, which shall be made not more than one hundred eighty days from the loan origination date; 6) the interest rate of the loan shall be fixed for five years and shall be adjusted at every fifth anniversary of the note to the rate specified in Item 7) of this subparagraph; 7) the yield on the state's participation interest shall in no case be less than the greater of the then-prevailing yield on United States treasury securities of five-year maturity plus two and one-half percent or the yield received by the lending institution calculated exclusive of servicing fees; 8) if payment of principal or interest has not been made within one hundred eighty days from the due date, unless extended pursuant to agreement between the originating institution and the state investment officer, the originating institution shall buy back the state's participation interest in the loan, substitute another qualifying loan or begin foreclosure proceedings; and 9) if foreclosure proceedings are commenced, the state and the originating institution shall share in proportion to their participation interest, as provided in this subparagraph, in the legal and other foreclosure expenses and in any loss incurred as a result of a foreclosure sale;

(b) a standardized participation agreement, the form of which shall be approved by the attorney general's office, shall be executed between the investment office and each eligible originating institution. The participation agreement shall provide that the originating institution shall not assign its interest in any loan covered by the agreement without the prior written consent of the state investment officer;

(c) a formal forward commitment program may be instituted by the state investment officer with the approval of the council;

(d) the council shall adopt regulations: 1) defining passive investments; 2) establishing underwriting guidelines; 3) ensuring diversification across a variety of types of collateral, types of businesses and regions of the state; and 4) providing for the review by the state investment officer of servicing and other fees that may be charged by the eligible institution;

(e) eligible institutions include banks, savings and loan associations and credit unions operating in the state; and

(f) real property is defined as land and attached buildings, but excludes all interests that may be secured by a security interest under Article 9 of the Uniform Commercial Code, and mineral resource values.

B. Not more than sixty-five percent of the book value of the severance tax permanent fund shall be invested at any given time in securities described in Paragraphs (5), (6) and (7) of Subsection A of this section, and no more than ten percent of the book value of the severance tax permanent fund shall be invested at any given time in securities described in Paragraph (3) of Subsection A of this section that are rated Baa or BBB. Assets of the severance tax permanent fund may be combined for investment in common pooled funds to effectuate efficient management.

C. Commissions paid for the purchase and sale of any security shall not exceed brokerage rates prescribed and approved by national stock exchanges or by industry practice."

Section 2

Section 2. Section 7-27-5.6 NMSA 1978 (being Laws 1987, Chapter 219, Section 2, as amended) is amended to read:

"7-27-5.6. VENTURE CAPITAL INVESTMENTS.--

A. The state investment officer may make commitments to venture capital funds to invest up to three percent of the market value of the severance tax permanent fund in accordance with the provisions of this section. If invested capital should at any time exceed three percent of the market value of the severance tax permanent fund, no further commitments shall be made until the invested capital is less than three percent of the market value of the severance tax permanent fund.

B. Not more than ten percent of the amount authorized for investment pursuant to Subsection A of this section shall be invested in any one venture capital fund. The amount invested in any one venture capital fund shall not exceed twenty percent of the committed capital of that fund.

C. In making investments pursuant to this section, the state investment officer and the council shall give consideration to investments in venture capital funds whose investments enhance the economic development objectives of the state, provided such investments offer a rate of return and safety comparable to other venture capital investments currently available.

D. The state investment officer shall make investments pursuant to this section only upon approval of the council and upon review of the recommendation of the venture capital investment advisory committee.

E. As used in this section:

(1) "committed capital" means the sum of the fixed amounts of money that accredited investors have obligated for investment in a venture capital fund and which fixed amounts may be invested in that fund in one or more payments over time; and

(2) "venture capital fund" means a limited partnership, limited liability company or corporation that:

(a) has as its primary business activity the investment of funds in return for equity in businesses for the purpose of providing capital for start-up, expansion, new product development or similar business purposes;

(b) holds out the prospects for capital appreciation from such investments comparable to similar investments made by other professionally managed venture capital funds;

(c) has a minimum committed capital of ten million dollars ($10,000,000);

(d) accepts investments only from accredited investors, as that term is defined in Section 2 of the Federal Securities Act of 1933, as amended, 15 U.S.C. Section 77(b), and rules and regulations promulgated pursuant to that section; and

(e) has full-time management with at least five years of experience in managing venture capital funds."

Section 3

Section 3. A new Section 7-27-5.23 NMSA 1978 is enacted to read:

"7-27-5.23. SHORT-TERM INVESTMENTS--REPURCHASE AGREEMENTS AND SECURITIES LENDING.--

A. Money in or derived from the severance tax permanent fund made available for investment for a period of less than one year may be invested in:

(1) 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 state. No such contract shall be invested in unless the contract is fully secured by:

(a) obligations of the United States or other securities backed by the United States if the obligations or securities have a market value of at least one hundred two percent of the amount of the contract; or

(b) A1 or P1 commercial paper, corporate obligations rated AA or better and maturing in five years or less or asset-backed securities rated AAA if the commercial paper, corporate obligations or asset-backed securities have a market value of a least one hundred two percent of the market value of the contract;

(2) securities-lending contracts for the temporary exchange of state-owned securities for the use of broker-dealers, banks or other recognized institutional investors in securities, for periods not to exceed one year, for a specified fee rate. No such contract shall be invested in unless the contract is fully secured by exchange of an irrevocable letter of credit running to the state, cash or equivalent collateral of at least one hundred two percent of the market value of the securities plus accrued interest temporarily exchanged. Such contracts may authorize the state investment officer 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. The state investment officer may enter into a contract that apportions income derived from the investment of cash to pay its agent in securities-lending transactions;

(3) commercial paper issued by corporations organized and operating within the United States and rated "prime" quality by a national rating service; and

(4) prime bankers' acceptances issued by money center banks.

B. The collateral required for either of the forms of investment specified in Paragraph (1) or (2) of Subsection A of this section shall be delivered to the state fiscal agent or its 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.

C. Neither of the contracts specified in Paragraphs (1) and (2) of Subsection A of this section shall be invested in unless the contracting bank, brokerage firm or recognized institutional investor has a net worth in excess of five hundred million dollars ($500,000,000) or is a primary broker or primary dealer."

Section 4

Section 4. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 144, WITH EMERGENCY CLAUSE

AND CERTIFICATE OF CORRECTIONS

SIGNED APRIL 8, 1997

CHAPTER 46

RELATING TO LICENSING BOARDS; EXTENDING THE SUNSET DATES ON CERTAIN BOARDS AND COMMISSIONS.

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

Section 1

Section 1. Section 60-13-58 NMSA 1978 (being Laws 1978, Chapter 194, Section 1, as amended) is amended to read:

"60-13-58. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The construction industries commission and division and its trade bureaus are terminated on July 1, 2005 pursuant to the Sunset Act. The construction industries commission and division and its trade bureaus shall continue to operate according to the provisions of Chapter 60, Article 13 NMSA 1978 and Chapter 70, Article 5 NMSA 1978 until July 1, 2006. Effective July 1, 2006, Chapter 60, Article 13 NMSA 1978 and Chapter 70, Article 5 NMSA 1978 are repealed."

Section 2

Section 2. Section 61-2-18 NMSA 1978 (being Laws 1979, Chapter 12, Section 3, as amended) is amended to read:

"61-2-18. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of optometry is terminated on July 1, 2003 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 2 NMSA 1978 until July 1,2004. Effective July 1, 2004, Chapter 61, Article 2 NMSA 1978 is repealed."

Section 3

Section 3. Section 61-3-31 NMSA 1978 (being Laws 1979, Chapter 379, Section 11, as amended by Laws 1991, Chapter 189, Section 4 and also by Laws 1991, Chapter 190, Section 23) is amended to read:

"61-3-31. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of nursing is terminated on July 1, 2003 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 3 NMSA 1978 until July 1, 2004. Effective July 1, 2004, Chapter 61, Article 3 NMSA 1978 is repealed."

Section 4

Section 4. Section 61-4-17 NMSA 1978 (being Laws 1979, Chapter 77, Section 2, as amended) is amended to read:

"61-4-17. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The chiropractic board is terminated on July 1, 2003 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 4 NMSA 1978 until July 1, 2004. Effective July 1, 2004, Chapter 61, Article 4 NMSA 1978 is repealed."

Section 5

Section 5. Section 61-5A-30 NMSA 1978 (being Laws 1994, Chapter 55, Section 42) is amended to read:

"61-5A-30. DELAYED REPEAL.--The New Mexico board of dental health care is terminated on July 1, 2003 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Dental Health Care Act and the Impaired Dentists and Dental Hygienists Act until July 1, 2004. Effective July 1, 2004, the Dental Health Care Act and the Impaired Dentists and Dental Hygienists Act are repealed."

Section 6

Section 6. Section 61-6-35 NMSA 1978 (being Laws 1979, Chapter 40, Section 2, as amended) is amended to read:

"61-6-35. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The New Mexico board of medical examiners is terminated on July 1, 2003 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 6 NMSA 1978 until July 1, 2004. Effective July 1, 2004, Chapter 61, Article 6 NMSA 1978 is repealed."

Section 7

Section 7. Section 61-7A-15 NMSA 1978 (being Laws 1989, Chapter 387, Section 15, as amended) is amended to read:

"61-7A-15. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board is terminated on July 1, 2005 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Nutrition and Dietetics Practice Act until July 1, 2006. Effective July 1, 2006, the Nutrition and Dietetics Practice Act is repealed."

Section 8

Section 8. Section 61-8-17 NMSA 1978 (being Laws 1979, Chapter 385, Section 2, as amended) is amended to read:

"61-8-17. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of podiatry is terminated on July 1, 2003 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 8 NMSA 1978 until July 1, 2004. Effective July 1, 2004, Chapter 61, Article 8 NMSA 1978 is repealed."

Section 9

Section 9. Section 61-9-19 NMSA 1978 (being Laws 1978, Chapter 188, Section 2, as amended by Laws 1996, Chapter 51, Section 8 and also by Laws 1996, Chapter 54, Section 11) is amended to read:

"61-9-19. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The New Mexico state board of psychologist examiners is terminated on July 1, 2003 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 9 NMSA 1978 until July 1, 2004. Effective July 1, 2004, Chapter 61, Article 9 NMSA 1978 is repealed."

Section 10

Section 10. Section 61-10-22 NMSA 1978 (being Laws 1979, Chapter 36, Section 2, as amended) is amended to read:

"61-10-22. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of osteopathic medical examiners is terminated on July 1, 2003 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 10 NMSA 1978 until July 1, 2004. Effective July 1, 2004, Chapter 61, Article 10 NMSA 1978 is repealed."

Section 11

Section 11. Section 61-11-29 NMSA 1978 (being Laws 1979, Chapter 266, Section 2, as amended) is amended to read:

"61-11-29. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of pharmacy is terminated on July 1, 2003 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 11 NMSA 1978 until July 1, 2004. Effective July 1, 2004, Chapter 61, Article 11 NMSA 1978 is repealed."

Section 12

Section 12. Section 61-12-21 NMSA 1978 (being Laws 1979, Chapter 369, Section 12, as amended) is amended to read:

"61-12-21. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The physical therapists' licensing board is terminated on July 1, 2005 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 12 NMSA 1978 until July 1, 2006. Effective July 1, 2006, Chapter 61, Article 12 NMSA 1978 is repealed."

Section 13

Section 13. Section 61-12A-24 NMSA 1978 (being Laws 1996, Chapter 55, Section 24) is amended to read:

"61-12A-24. TERMINATION OF AGENCY LIFE--DELAYED

REPEAL.--The board of examiners for occupational therapy is terminated on July 1, 2005 pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the provisions of the Occupational Therapy Act until July 1, 2006. Effective July 1, 2006, the Occupational Therapy Act is repealed."

Section 14

Section 14. Section 61-12B-16 NMSA 1978 (being Laws 1984, Chapter 103, Section 17, as amended) is amended to read:

"61-12B-16. TERMINATION OF BOARD--DELAYED REPEAL.--

The board is terminated on July 1, 2003 pursuant to the Sunset Act. The board shall continue to operate until July 1, 2004. Effective July 1, 2004, the Respiratory Care Act is repealed."

Section 15

Section 15. Section 61-13-17 NMSA 1978 (being Laws 1978, Chapter 206, Section 1, as amended) is amended to read:

"61-13-17. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of nursing home administrators is terminated on July 1, 2005 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 13 NMSA 1978 until July 1, 2006. Effective July 1, 2006, Chapter 61, Article 13 NMSA 1978 is repealed."

Section 16

Section 16. Section 61-14-20 NMSA 1978 (being Laws 1979, Chapter 76, Section 2, as amended) is amended to read:

"61-14-20. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of veterinary medicine is terminated on July 1, 2005 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 14 NMSA 1978 until July 1, 2006. Effective July 1, 2006, Chapter 61, Article 14 NMSA 1978 is repealed."

Section 17

Section 17. Section 61-14B-25 NMSA 1978 (being Laws 1996, Chapter 57, Section 25) is amended to read:

"61-14B-25. TERMINATION OF AGENCY LIFE--DELAYED

REPEAL.--The speech language pathology, audiology and hearing aid dispensing practices board is terminated on July 1, 2005 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Speech Language

Pathology, Audiology and Hearing Aid Dispensing Practices Act until July 1, 2006. Effective July 1, 2006, the Speech Language Pathology, Audiology and Hearing Aid Dispensing Practices Act is repealed."

Section 18

Section 18. Section 61-24B-17 NMSA 1978 (being Laws 1985, Chapter 151, Section 18, as amended) is amended to read:

"61-24B-17. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of landscape architects is terminated on July 1, 2005 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Landscape Architects Act until July 1, 2006. Effective July 1, 2006, the Landscape Architects Act is repealed."

Section 19

Section 19. Section 61-31-25 NMSA 1978 (being Laws 1989, Chapter 51, Section 27, as amended) is amended to read:

"61-31-25. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of social work examiners is terminated on July 1, 2005 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Social Work Practice Act until July 1, 2006. Effective July 1, 2006, the Social Work Practice Act is repealed."

HOUSE BILL 145

CHAPTER 47

RELATING TO TRANSPORTATION; REMOVING THE REQUIREMENT THAT BICYCLE RIDERS USE SIDE PATHS ADJACENT TO ROADWAYS; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 66-3-705 NMSA 1978 (being Laws 1978, Chapter 35, Section 104) is amended to read:

"66-3-705. RIDING ON ROADWAYS AND BICYCLE PATHS.--

A. Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.

B. Persons riding bicycles upon a roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.

C. Notwithstanding any provision of this section, no bicycle shall be operated on any roadway in a manner that would create a public safety hazard."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 197, AS AMENDED

CHAPTER 48

RELATING TO LENDING INSTITUTIONS; EXPANDING THE AUTHORITY OF LENDING INSTITUTIONS TO SELL CERTAIN INSURANCE AND ANNUITIES; REPEALING AND ENACTING A CERTAIN 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 repealed and a new Section 59A-12-10 NMSA 1978 is enacted to read:

"59A-12-10. LICENSING OF LENDING INSTITUTION--

DEFINITIONS AND EXCEPTIONS.--

A. As used in this section:

(1) "lending institution" means an institution, including its holding company, subsidiary or insurance agent, solicitor or broker affiliate, whose business includes accepting deposits or lending

money in New Mexico, including banks, savings and loan associations and credit unions; "lending institution" does not include insurance companies;

(2) "holding company", "subsidiary" and "affiliate" mean those terms as defined in regulations adopted by the superintendent, except "bank holding company" means that term as defined in Section 2 of the federal Bank Holding Company Act of 1956;

(3) "public utility" means a private employer subject to the jurisdiction of the New Mexico public utility commission or the state corporation commission, or a successor entity, that is engaged in the business of providing telecommunications, electric, gas, water or stream heat services to the public;

(4) "sell" means to engage in the solicitation, sale and placement of insurance and such other related activities conducted by an agent, solicitor or broker pursuant to the Insurance Code;

(5) "service contract" means a contract issued on consumer products pursuant to which the vendor or manufacturer bears the cost of the repair or replacement of the consumer product;

(6) "insurance premium finance agreement" means an agreement by which an insured or a prospective insured promises to pay to any person engaged in the business of premium financing, the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent or broker in payment of premiums on an insurance contract; and

(7) "loan transaction" and any other reference to lending or extension of credit does not include loans made by broker-dealers registered in accordance with applicable state and federal securities laws that are wholly collateralized by securities.

B. A lending institution may be licensed to sell:

(1) any insurance except title insurance in accordance with the Insurance Code and to the extent authorized by federal and state lending institution regulators; and

(2) annuities to the extent authorized by law and federal and state lending institution regulators, but nothing in this paragraph shall affect the rights and obligations of nationally chartered lending institutions.

C. A public utility or its holding company, subsidiary or affiliate shall not be licensed to sell insurance or act as a broker for insurance in New Mexico.

D. As used in Subsections E through Y of this section, "insurance" means all products defined or regulated as insurance under the Insurance Code except:

(1) credit life, credit accident and health, credit involuntary unemployment, credit casualty and credit property insurance, and when providing insurance coverage to a borrower or co-borrower or both, the following insurance products: accidental death and dismemberment, accidental disability and any other accidental casualty insurance product;

(2) insurance placed by a lending institution on the collateral pledged as security for a loan when the debtor breaches the contractual obligation to provide that insurance;

(3) private mortgage insurance and financial guarantee insurance;

(4) annuities;

(5) service contracts;

(6) insurance premium finance agreements; and

(7) travel accident or baggage insurance.

E. A lending institution shall not require as a condition precedent to the extension of credit, or any subsequent renewal thereof, or the procurement of other bank services that the customer purchase insurance through a particular insurer, agent, solicitor or broker.

F. A lending institution shall not extend credit, lease or sell property or furnish any other service or fix or vary the consideration for any of the foregoing on the condition or requirement that the customer obtain insurance from that lending institution or from a particular insurer, agent, solicitor or broker.

G. A lending institution shall not impose a requirement on an insurance agent, solicitor or broker who is not associated with the lending institution that is not imposed on an insurance agent, solicitor or broker who is associated with that institution or, unless otherwise authorized by applicable federal or state law, require a debtor, insurer, agent, solicitor or broker to pay a separate charge in connection with the handling of insurance that is required under a contract.

H. A lending institution, except an institution that does not accept deposits that are federally insured, that sells insurance on its premises shall:

(1) conspicuously post a notice that is clearly visible to anyone who may purchase insurance that insurance is not a deposit account insured by a federal deposit insuring agency;

(2) orally inform a prospective purchaser of insurance that insurance is not a deposit account insured by a federal deposit insuring agency; and

(3) provide a written disclosure to the customer containing the following statements before the sale of insurance is complete:

(a) insurance is not a lending institution deposit account and is not insured by its federal deposit insuring agency;

(b) insurance is not an obligation of or guaranteed by the lending institution;

(c) the customer is not required to obtain insurance from a particular lending institution, agent, solicitor or broker; and

(d) where applicable, insurance involves investment risk, including potential loss of principal.

I. The sale of insurance by a lending institution, except an institution that does not accept deposits that are federally insured, shall be effectuated in such a manner so as to avoid confusion between federally insured deposit products offered by a lending institution and the nonfederally insured insurance sold. Insurance advertisements and other sales material shall be accurate and not misleading or deceptive. Insurance advertising and other sales materials regarding insurance shall include disclosures that contain language that is the same or substantially similar to the following:

(1) insurance is not a lending institution deposit and is not insured by its federal deposit insuring agency;

(2) insurance is not an obligation of or guaranteed by the lending institution; and

(3) where applicable, insurance involves investment risk, including potential loss of principal.

J. Insurance operations may be conducted by the lending institution, its holding company, an affiliate or subsidiary of either or through a separate corporate entity or partnership.

K. A lending institution shall not provide nonpublic customer information to a third party for the purpose of another's sale of insurance without written authorization from the customer. As used in this subsection, "nonpublic customer information" means information regarding a person that has been derived from a record of a financial institution. "Nonpublic customer information" does not include customer names and addresses and telephone numbers or information about an individual that could be obtained from an unaffiliated credit bureau that is subject to the Fair Credit Reporting Act by a third party that is not entering into a credit relationship with the individual but has a legitimate need for the information in connection with a business transaction with the individual, except that "nonpublic customer information" includes information concerning insurance premiums, the terms and conditions of insurance coverage, insurance expirations, insurance claims and insurance history of an individual. Notwithstanding any provision in this section to the contrary, compliance with Section 603 of the federal Fair Credit Reporting Act by a lending institution shall be deemed to be full compliance with this subsection. Nonpublic customer information does not include material excluded from the definition of "consumer report" by Section 603(d)(2)(A) of the federal Fair Credit Reporting Act.

L. Records relating to the insurance sales of a lending institution, including files relating to and reflecting customer complaints, shall be kept separate and apart from all records relating to the banking transactions of the lending institution. Records pertaining to insurance activities of the lending institution or copies of those records shall be kept in the principal in-state office in the state of the financial institution or with the institutions resident agent, solicitor or broker and shall be subject to the inspection and audit by the insurance department. If the department determines to inspect and audit the records relating to the insurance activities of a lending institution, that institution shall make available to the department, at a location of the lending institution in the state or in the office of the institutions resident agent, solicitor or broker, knowledgeable personnel to assist in the interpretation of the lending institution's records.

M. A lending institution, or officer, director or employee acting on behalf of the institution, who qualifies for issuance of an agents, solicitors or broker's license pursuant to the Insurance Code may be issued an agent or broker license authorizing the sale of insurance.

N. A lending institution shall not pay a commission or other valuable consideration to a person for services of an insurance agent, solicitor or broker unless the person performing the service holds a valid insurance license for the class of insurance for which the service is rendered or performed at the time the service is performed. No person, other than a person properly licensed in accordance with the Insurance Code, shall accept any commission or valuable consideration for those services.

O. A lending institution shall not offer an inducement to a customer to purchase insurance from the institution other than as plainly expressed in the insurance policy. Investment programs, memberships or other programs designed or represented to waive, reduce, pay, produce or provide funds to pay all or part of the cost on insurance are an illegal inducement.

P. A lending institution may not in the same transaction solicit the purchase of insurance from a customer who has applied for a loan from the institution before the time the customer has received a written commitment from the lending institution with respect to that loan, or, in the event that no written commitment has been or will be issued in connection with the loan, a lending institution shall not solicit the purchase of insurance before the time the customer receives notification of approval of the loan by the lending institution, and the institution creates a written record of the loan approval. This subsection shall not apply when a lending institution contacts a customer in the course of direct or mass marketing to a group of persons in a manner that bears no relation to the customer's loan application or credit decision.

Q. The sale of insurance by a lending institution, credit union, sales finance company, insurance company, insurance agent, an institution that grants or arranges consumer credit or an institution that solicits or makes loans in New Mexico may be conducted by a person whose responsibilities include loan transactions or other transactions involving the extension of credit so long as the person who is primarily responsible for making the specific loan or extension of credit is not the same person engaged in the sale of insurance for that same transaction; provided, however, that the provisions of this subsection shall not apply to:

(1) a broker or dealer registered under the federal Securities Exchange Act of 1934; or

(2) a lending institution location that has three or fewer persons with lending authority.

R. If insurance is required as a condition of obtaining a loan, the credit and insurance transactions shall be completed independently and through separate documents.

S. A loan for premiums on required insurance shall not be included in the primary credit without the written consent of the customer, which may be evidenced by compliance with the federal Truth in Lending Act.

T. A person who engages in loan transactions at any office of, or on behalf of, a lending institution or any other agent, employee, director or officer of the lending institution may refer a customer who seeks to purchase, or seeks an opinion or advice on any insurance product, to a person, or may give the phone number of a person who sells or provides opinions or advice on such products only if the customer expressly requests the referral; the person who engages in loan transactions does not solicit the customer request; and the person who engages in the loan transaction does not receive any compensation for the referral.

U. The location for the sale of insurance on the premises of a lending institution, except an institution that does not accept deposits that are federally insured, to the extent practicable shall be:

(1) physically located to be distinct from the lending activities of the institution; and

(2) clearly and conspicuously signed to be easily distinguishable by the public as separate and distinct from the lending activities of the institution.

V. Signs and other informational material concerning the availability of insurance products from the lending institution or third party soliciting the purchase of or selling insurance on the premises of the lending institution shall not be displayed to the extent practicable in an area where application for loans or other extensions of credit are being taken or closed.

W. Nothing in this section grants a lending institution, including its holding company, subsidiary or affiliate, except those enumerated in this section, the power to sell insurance that was not allowed prior to July 1, 1997.

X. Nothing in this section precludes the superintendent from adopting reasonable rules and regulations for the purposes of the administration of the provisions of this section, including rules and regulations for written disclosures.

Y. If any of the provisions of this section are preempted by federal law, then those preempted provisions shall not apply to any person or lending institution subject to the provisions of this section.

Section 2

Section 2. 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.

Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 238, AS AMENDED

CHAPTER 49

RELATING TO AGRICULTURE; DEFINING PURE HONEY FOR PURPOSES OF THE FOOD SERVICE SANITATION ACT; CREATING AN EXEMPTION.

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

Section 1

Section 1. Section 25-1-2 NMSA 1978 (being Laws 1977, Chapter 309, Section 2, as amended) is amended to read:

"25-l-2. DEFINITIONS.--As used in the Food Service Sanitation Act:

A. "agency" or "division" means the department of environment;

B. "board" means the environmental improvement board;

C. "employee" means any individual employed in a food service establishment who transports food or food containers, who handles food during storage, preparation or serving, who comes in contact with any utensils or who is employed in a room in which food is stored, prepared or served;

D. "food" means any solid or liquid substance intended for human consumption by eating or drinking;

E. "general public" includes beneficiaries of governmental feeding programs and private charitable feeding programs and residents and employees of institutions that provide meals to their residents and employees either with or without direct payment to the institution by the residents or employees;

F. "temporary food service establishment" means a food service establishment that operates at a fixed location in conjunction with a single event or celebration for a short period of time not exceeding the event or celebration or not exceeding thirty days;

G. "person" means an individual or any other legal entity;

H. "food service establishment" means:

(1) any fixed or mobile place where food is served and sold for consumption on the premises;

(2) any fixed or mobile place where food is prepared for sale to or consumption by the general public either on or off the premises, including any place where food is manufactured for ultimate sale in a sealed original package, but "prepared" as used in this paragraph does not include the preparation of raw fruits, vegetables or pure honey for display and sale in a grocery store or similar operation. For purposes of this paragraph, "pure honey" means natural liquid or solid honey, extracted from the combs or in the comb, taken from beehives, with no processing or additional ingredients. "Food service establishment" does not mean a dairy establishment; and

(3) meat markets, whether or not operated in conjunction with a grocery store;

I. "utensil" means any implement used in the storage, preparation, transportation or service of food; and

J. "dairy establishment" means a milk processing or milk producing facility."

HOUSE BILL 340

CHAPTER 50

RELATING TO TELECOMMUNICATIONS SERVICE; PROHIBITING CERTAIN ACTS; ESTABLISHING CRIMINAL PENALTIES; PROVIDING FOR PRIVATE REMEDIES; REPEALING 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 "Telecommunications Service Theft Act".

Section 2

Section 2. DEFINITIONS.--As used in the Telecommunications Service Theft Act:

A. "provider" means a person that offers telecommunications service for lawful compensation; and

B. "telecommunications service" means any audio, video, data or programming offered for a fee or other consideration to facilitate the origination, transmission, emission or reception of signs, signals, data, writings, images, sounds or intelligence of any nature delivered by telephone or telephone service, cable television service, including cellular or other wireless telephones, wire, radio, electromagnetic, photoelectronic or photo-optical equipment, coaxial or fiber optic cable, terrestrial microwave, television broadcast or satellite transmission.

Section 3

Section 3. ILLEGAL SERVICE--PROHIBITED ACTS--PENALTIES.--

A. It is unlawful for any person to:

(1) obtain or attempt to obtain telecommunications service by trick, artifice, deception, use of an illegal device or decoder or other fraudulent means without authorization of the provider;

(2) assist or instruct any person to obtain or attempt to obtain any telecommunications service without authorization of the provider;

(3) make or attempt to make or assist any person to make or maintain a telecommunications service connection, whether

physical, electrical, mechanical, acoustical or by other means, with any cables, wires, components or other devices used for the distribution of telecommunications service without authorization of the provider; or

(4) make or maintain any modification or alteration to any device that was installed with the authorization of the provider for the purpose of intercepting or receiving any telecommunications service without authorization of the provider.

B. Any person who violates this section is guilty of a misdemeanor upon conviction for a first offense and shall be punished by a fine of up to five hundred dollars ($500); and upon conviction for a second or subsequent offense, is guilty of a misdemeanor and shall be punished by either a fine of not less than five hundred dollars ($500) or more than one thousand dollars ($1,000), by imprisonment for a definite term not to exceed thirty days, or both.

Section 4

Section 4. ILLEGAL DEVICES--PROHIBITED ACTS--PENALTIES.--

A. It is unlawful for any person to:

(1) own or possess any device, including a printed circuit board, designed to receive or permit reception of any telecommunications service, regardless of whether that service is encoded, filtered, scrambled or otherwise made unintelligible, with the intent to distribute such device for the purpose of permitting reception or use of telecommunications service without authorization by the provider;

(2) publish or advertise for sale or lease any kit or plan for a device designed in whole or in part to receive without authorization of the provider any telecommunications service, regardless of whether that service is encoded, filtered, scrambled or otherwise made unintelligible;

(3) advertise for sale or lease any device or printed circuit or kit for a device or printed circuit designed in whole or in part to receive any telecommunications service without authorization of the provider, regardless of whether the service is encoded, filtered, scrambled or otherwise made unintelligible; or

(4) manufacture, import into New Mexico, distribute, sell, lease or offer for sale or lease any device, printed circuit or any plan or kit for a device or for a printed circuit, designed in whole or in part to receive any telecommunications service,

regardless of whether the service is encoded, filtered, scrambled or otherwise made unintelligible, that can be used to receive that service without the authorization of the provider.

B. Any person who violates this section is guilty of a misdemeanor upon conviction for a first offense and shall be punished by either a fine of not less than one thousand dollars ($1,000), imprisonment for a definite term of not less than thirty days, or both; and upon conviction for a second or subsequent offense, is guilty of a fourth degree felony and shall be punished as provided in Section 31-18-15 NMSA 1978.

Section 5

Section 5. PRIVATE REMEDIES.--

A. A person damaged by a violation of Section 3 or 4 of the Telecommunications Service Theft Act may be granted an injunction under the principles of equity and on terms that the court considers reasonable. Proof of monetary damage, loss of revenue or intent to deceive and take unfair advantage of any person is not required.

B. The relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other New Mexico statutes.

Section 6

Section 6. REPEAL.--Sections 63-10-1 through 63-10-3 NMSA 1978 (being Laws 1977, Chapter 95, Section 1 and Laws 1985, Chapter 74, Sections 3 and 1, as amended) are repealed.

Section 7

Section 7. SEVERABILITY.--If any part of the Telecommunications Service Theft Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

HOUSE BILL 345, AS AMENDED

CHAPTER 51

RELATING TO HEALTH; AMENDING THE INDIGENT HOSPITAL AND COUNTY HEALTH CARE ACT TO AUTHORIZE FUNDING OF COUNTYWIDE OR MULTICOUNTY HEALTH PLANNING, BROADEN CRITERIA FOR ELIGIBLE PAYMENTS AND ESTABLISH TIME LIMITS FOR APPROVAL AND PAYMENT OF CLAIMS.

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

Section 1

Section 1. Section 27-5-2 NMSA 1978 (being Laws 1965, Chapter 234, Section 2, as amended) is amended to read:

"27-5-2. PURPOSE OF INDIGENT HOSPITAL AND COUNTY HEALTH CARE ACT.--The purpose of the Indigent Hospital and County Health Care Act is:

A. to recognize that the individual county of this state is the responsible agency for ambulance transportation or the hospital care or the provision of health care to indigent patients domiciled in that county for at least three months or for such period of time, not in excess of three months, as determined by resolution of the board of county commissioners, and to provide a means whereby each county can discharge this responsibility through a system of payments to ambulance providers, hospitals or health care providers for the care and treatment of, or the provision of health care services to, indigent patients;

B. to recognize that the counties of the state are also responsible for supporting indigent patients by providing local revenues to match federal funds for the state medicaid program, including the provision of matching funds for payments to sole community provider hospitals and the transfer of funds to the county-supported medicaid fund pursuant to the Statewide Health Care Act; and

C. to recognize that the counties of the state can improve the provision of health care to indigent patients by providing local revenues for countywide or multicounty health planning."

Section 2

Section 2. Section 27-5-4 NMSA 1978 (being Laws 1965, Chapter 234, Section 4, as amended) is amended to read:

"27-5-4. DEFINITIONS.--As used in the Indigent Hospital and County Health Care Act:

A. "ambulance provider" or "ambulance service" means a specialized carrier based within the state authorized under provisions and subject to limitations as provided in individual carrier certificates issued by the state corporation commission to transport persons alive, dead or dying en route by means of ambulance service. The

rates and charges established by state corporation commission tariff shall govern as to allowable cost. Also included are air ambulance services approved by the board. The air ambulance service charges shall be filed and approved pursuant to Subsection D of Section 27-5-6 NMSA 1978 and Section 27-5-11 NMSA 1978;

B. "board" means a county indigent hospital and county health care board;

C. "indigent patient" means a person to whom an ambulance service, a hospital or a health care provider has provided medical care, ambulance transportation or health care services and who can normally support himself and his dependents on present income and liquid assets available to him but, taking into consideration this income and those assets and his requirement for other necessities of life for himself and his dependents, is unable to pay the cost of the ambulance transportation or medical care administered or both. If provided by resolution of a board, it shall not include any person whose annual income together with his spouse's annual income totals an amount that is fifty percent greater than the per capita personal income for New Mexico as shown for the most recent year available in the survey of current business published by the United States department of commerce. Every board that has a balance remaining in the fund at the end of a given fiscal year shall consider and may adopt at the first meeting of the succeeding fiscal year a resolution increasing the standard for indigency. The term "indigent patient" includes a minor who has received ambulance transportation or medical care or both and whose parent or the person having custody of that minor would qualify as an indigent patient if transported by ambulance or admitted to a hospital for care or treated by a health care provider or all three;

D. "hospital" means any general or limited hospital licensed by the department of health, whether nonprofit or owned by a political subdivision, and may include by resolution of a board the following health facilities if licensed or, in the case of out-of-state hospitals, approved, by the department of health:

(l) for-profit hospitals;

(2) state-owned hospitals; or

(3) licensed out-of-state hospitals where treatment provided is necessary for the proper care of an indigent patient when that care is not available in an in-state hospital;

E. "cost" means all allowable ambulance transportation costs, medical care costs or costs of providing health care services, to the extent determined by resolution of a board, for an indigent patient. Allowable costs shall be determined in accordance with a uniform system of accounting and cost analysis as determined by regulation of a board, which includes cost of ancillary services but shall not include the

cost of servicing long-term indebtedness of a hospital, health care provider or ambulance service;

F. "fund" means a county indigent hospital claims fund;

G. "medicaid eligible" means a person who is eligible for medical assistance from the department;

H. "county" means any county except a class A county with a county hospital operated and maintained pursuant to a lease with a state educational institution named in Article 12, Section 11 of the constitution of New Mexico;

I. "department" means the human services department;

J. "sole community provider hospital" means a hospital that is a sole community provider hospital under the provisions of the federal medicare guidelines established in 42 C.F.R. 412.92 pursuant to Title 18 of the federal Social Security Act;

K. "drug rehabilitation center" means an agency of local government, a state agency, a private nonprofit entity or combination thereof that operates drug abuse rehabilitation programs that meet the standards and requirements pursuant to the Drug Abuse Act;

L. "alcohol rehabilitation center" means an agency of local government, a state agency, a private nonprofit entity or combination thereof that operates alcohol abuse rehabilitation programs that meet the standards set by the department of health pursuant to the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act;

M. "mental health center" means a not-for-profit center that provides outpatient mental health services that meet the standards set by the department of health pursuant to the Community Mental Health Services Act;

N. "health care provider" means:

(1) a nursing home;

(2) an in-state home health agency;

(3) an in-state licensed hospice;

(4) a community-based health program operated by a political subdivision of the state or other nonprofit health organization

that provides prenatal care delivered by New Mexico licensed, certified or registered health care practitioners;

(5) a community-based health program operated by a political subdivision of the state or other nonprofit health care organization that provides primary care delivered by New Mexico licensed, certified or registered health care practitioners;

(6) a drug rehabilitation center;

(7) an alcohol rehabilitation center; or

(8) a mental health center;

O. "health care services" means all treatment and services designed to promote improved health in the county indigent population, including primary care, prenatal care, dental care, provision of prescription drugs, preventive care or health outreach services, to the extent determined by resolution of the board; and

P. "planning" means the development of a countywide or multicounty health plan to improve and fund health services in the county based on the county's needs assessment and inventory of existing services and resources and which demonstrates coordination between the county and state and local health planning efforts."

Section 3

Section 3. Section 27-5-6 NMSA 1978 (being Laws 1965, Chapter 234, Section 6, as amended) is amended to read:

"27-5-6. POWERS AND DUTIES OF THE BOARD.--The board:

A. shall administer claims pursuant to the provisions of the Indigent Hospital and County Health Care Act;

B. shall prepare and submit a budget to the board of county commissioners for the amount needed to defray claims made upon the fund and to pay costs of administration of the Indigent Hospital and County Health Care Act and costs of development of a countywide or multicounty health plan. The combined costs of administration and planning shall in no event exceed the following percentages of revenues based on the previous fiscal year revenues for a fund that has existed for at least one fiscal year or based on projected revenues for the year being budgeted for a fund that has existed for less than one fiscal year. The percentage of the revenues in the fund that may be used for such combined administrative and planning costs is equal to the sum of the following:

(1) ten percent of the amount of the revenues in the fund not over five hundred thousand dollars ($500,000);

(2) eight percent of the amount of the revenues in the fund over five hundred thousand dollars ($500,000) but not over one million dollars ($1,000,000); and

(3) four and one-half percent of the amount of the revenues in the fund over one million dollars ($1,000,000);

C. shall make rules and regulations necessary to carry out the provisions of the Indigent Hospital and County Health Care Act; provided that the standards for eligibility and allowable costs for county indigent patients shall be no more restrictive than the standards for eligibility and allowable costs prior to December 31, 1992;

D. shall set criteria and cost limitations for medical care in licensed out-of-state hospitals, ambulance services or health care providers;

E. shall cooperate with appropriate state agencies to use available funds efficiently and to make health care more available;

F. shall cooperate with the department in making any investigation to determine the validity of claims made upon the fund for any indigent patient;

G. may accept contributions or other county revenues, which shall be deposited in the fund;

H. may hire personnel to carry out the provisions of the Indigent Hospital and County Health Care Act;

I. shall review all claims presented by a hospital, ambulance service or health care provider to determine compliance with the rules and regulations adopted by the board or with the provisions of the Indigent Hospital and County Health Care Act, determine whether the patient for whom the claim is made is an indigent patient and determine the allowable medical, ambulance service or health care services costs; provided that the burden of proof of any claim shall be upon the hospital, ambulance service or health care provider;

J. shall state in writing the reason for rejecting or disapproving any claim and shall notify the submitting hospital, ambulance service or health care provider of the decision within sixty days after eligibility for claim payment has been determined;

K. shall pay all claims that are not matched with federal funds under the state medicaid program and that have been approved by the board from the fund and shall make payment within sixty days after approval of a claim by the board;

L. shall determine by county ordinance the types of health care providers that will be eligible to submit claims under the Indigent Hospital and County Health Care Act;

M. shall review, verify and approve all medicaid sole community provider hospital payment requests in accordance with rules and regulations adopted by the board prior to their submittal by the hospital to the department for payment but no later than January 1 of each year;

N. shall transfer to the state treasurer by the last day of March, June, September and December of each year an amount equal to one-fourth of the county's payment for support of sole community provider payments as calculated by the department for that county for the current fiscal year. This money shall be deposited in the sole community provider fund;

O. may provide for the transfer of money from the county indigent hospital claims fund to the county-supported medicaid fund to meet the requirements of the Statewide Health Care Act; and

P. may contract with ambulance providers, hospitals or health care providers for the provision of health care services."

Section 4

Section 4. Section 27-5-12 NMSA 1978 (being Laws 1965, Chapter 234, Section 13, as amended) is amended to read:

"27-5-12. PAYMENT OF CLAIMS.--

A. A hospital, ambulance service or health care provider filing a claim with the board shall:

(1) file claim with the board of the county in which the indigent patient is domiciled;

(2) file claim for each patient separately, with an itemized detail of the total cost; and

(3) file with the claim a verified statement of qualification for ambulance service, indigent hospital care or care from a health care provider signed by the patient or by the parent or person having his custody to the effect that he qualifies under the provisions of the

Indigent Hospital and County Health Care Act as an indigent patient and is unable to pay the cost for the care administered and listing all assets owned by the patient or any person legally responsible for his care. The statement shall constitute an oath of the person signing it, and any false statements in the statement made knowingly constitute a felony.

B. A hospital, ambulance service or health care provider that has contracted with a board for provision of health care services shall provide evidence of health care services rendered for payment for services in accordance with the procedures specified in the contract."

HOUSE BILL 355, AS AMENDED

CHAPTER 52

RELATING TO TRANSPORTATION; ABOLISHING THE STATE TRANSPORTATION AUTHORITY; REPEALING THE RESOURCE TRANSPORTATION AND PASSENGER TRANSPORTATION DEVELOPMENT ACT; PROVIDING FOR THE ISSUANCE OF TRANSPORTATION BONDS BY THE STATE HIGHWAY COMMISSION; AUTHORIZING THE STATE HIGHWAY COMMISSION TO ISSUE REFUNDING BONDS; PROVIDING THE STATE HIGHWAY AND TRANSPORTATION DEPARTMENT WITH THE POWER OF EMINENT DOMAIN FOR CERTAIN TRANSPORTATION PURPOSES; 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 Chapter 67, Article 3 NMSA 1978 is enacted to read:

"STATE HIGHWAY AND TRANSPORTATION DEPARTMENT--POWER TO ACQUIRE PROPERTY FOR TRANSPORTATION SYSTEMS--POWER OF EMINENT DOMAIN.--The state highway and transportation department may:

A. acquire property by purchase, lease, donation, gift, bequest, devise or eminent domain for the purpose of construction and operation of a transportation system; and

B. negotiate for the acquisition of property from any person, governmental entity, Indian tribe or Indian pueblo for the construction and operation of a transportation system."

Section 2

Section 2. A new section of Chapter 67, Article 3 NMSA 1978 is enacted to read:

"TRANSPORTATION BONDS.--

A.The state highway commission may determine that interest or necessity demands the issuance of revenue bonds to finance the development and construction of transportation systems and may by resolution make and issue revenue bonds that shall be known as "transportation bonds". The bonds shall be payable solely out of the net income to be derived from the operation of the project, and the commission shall pledge irrevocably such income to the payment of those bonds. The bonds shall not become a general obligation of the state or any political subdivision of the state.

B. The proceeds from the sale of transportation bonds shall be used solely forthe purpose for which the bonds were issued.

C. Transportation bonds shall not be issued pursuant to this section unless the state board of finance approves the issuance of the bonds, the principal amount of the bonds and the maximum net effective interest rate on the bonds."

Section 3

Section 3. A new section of Chapter 67, Article 3 NMSA 1978 is enacted to read:

"TRANSPORTATION BONDS--TERMS.--Transportation bonds issued by the state highway commission:

A. shall be payable at such times as the commission may provide;

B. may be subject to prior redemption at the commission's option at such time and upon such terms and conditions, with or without payment of premiums, as may be provided in the resolution of the commission;

C. may mature at any time not exceeding fifty years after the date of issuance;

D. may be serial in form and maturity and 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 commission;

E. shall be sold for cash at, above or below par and at the effective interest rate approved by the state board of finance; and

F. may be sold at a public or private sale."

Section 4

Section 4. A new section of Chapter 67, Article 3 NMSA 1978 is enacted to read:

"REFUNDING BONDS.--

A. Transportation bonds issued pursuant to the provisions of Section 2 of this act that are outstanding may be refunded at any time by the state highway commission upon:

(1) the adoption of a resolution providing for the issuance of refunding bonds; and

(2) the issuance of the refunding bonds in an amount the commission determines is necessary to refund:

(a) the principal of the transportation bonds;

(b) all unpaid accrued and unaccrued interest on transportation bonds to the normal maturity date or to selected prior redemption dates of the bonds;

(c) any redemption premiums; and

(d) all estimated costs, including any commission cost, incidental to the issuance of the refunding bonds, as may be determined by the commission.

B. The principal amount of the refunding bonds may be equal to, less than or greater than the principal amount of the bonds so refunded.

C. A refunding may be effected, whether the bonds to be refunded have then matured or thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded or by exchange of the refunding bonds for the bonds to be refunded; provided that the bonds to be refunded shall not be canceled without the consent of the holders to surrender their bonds for payment or exchange prior to the date on which they are payable or if they are called for redemption prior to the date on which they are by their terms subject to redemption.

D. The refunding bonds issued pursuant to this section shall be payable solely from the revenues out of which transportation bonds may be payable or solely from those amounts derived from an escrow as provided in this section, including amounts derived from the investment of refunding bond proceeds and other legally available amounts also provided in this section or from any combination of those sources.

E. Proceeds of refunding bonds shall either be applied immediately to the retirement of the bonds being refunded or be placed in escrow in a commercial bank or

trust company that possesses and exercises trust powers. The escrowed proceeds may be invested in short-term securities, long-term securities or both."

Section 5

Section 5. A new section of Chapter 67, Article 3 NMSA 1978 is enacted to read:

"TRANSPORTATION BONDS ELIGIBLE FOR INVESTMENT.--

Transportation bonds issued by the state highway commission are securities in which public officers and public bodies of this state and its political subdivisions and insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are securities that may properly and legally be deposited with and be received by a state or political subdivision officer for which the deposit of bonds or obligations of the state is authorized by law. No bonds shall be eligible for investment or deposit by or with the state or any of its political subdivisions unless they have been rated AA or higher by an independent nationally recognized bond rating service based solely on the security of the bonds as investments without resort to any collateral guarantees."

Section 6

Section 6. A new section of Chapter 67, Article 3 NMSA 1978 is enacted to read:

"TRANSPORTATION BONDS--EXEMPTION FROM TAXATION.--The construction, operation and maintenance of a transportation project by the state highway commission shall constitute the performance of an essential governmental function. As such, the income from the transportation bonds issued pursuant to Chapter 67, Article 3 NMSA 1978 shall at all times be free from taxation by the state and by its political subdivisions."

Section 7

Section 7. A new section of Chapter 67, Article 3 NMSA 1978 is enacted to read:

"DEFINITION.--As used in Chapter 67, Article 3 NMSA 1978, "transportation system" means facilities used for the transportation of natural resources, manufactured products or passengers and includes communication and transportation structures and other facilities necessary for the operation of the transportation facilities."

Section 8

Section 8. TEMPORARY PROVISION--TRANSFER OF PERSONNEL, ASSETS AND OBLIGATIONS.--On July 1, 1997:

A. all personnel, appropriations, money, records, property, equipment and supplies of the state transportation authority shall be transferred to the state highway and transportation department; and

B. all contracts, agreements and obligations of the state transportation authority shall be binding and effective on the state highway and transportation department.

Section 9

Section 9. REPEAL.--Sections 73-23-1 through 73-23-13 NMSA 1978 (being Laws 1985 (1st. S.S.), Chapter 14, Sections 1 through 13, as amended) are repealed.

Section 10

Section 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

SENATE BILL 326, AS AMENDED

CHAPTER 53

RELATING TO COURTS; PLACING THE MAGISTRATE COURTS UNDER THE DIRECTION AND CONTROL OF THE SUPREME COURT; 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 35-7-1 NMSA 1978 (being Laws 1968, Chapter 62, Section 96) is repealed and a new Section 35-7-1 NMSA 1978 is enacted to read:

"35-7-1. MAGISTRATE COURTS--SUPERVISION BY THE SUPREME COURT.--The magistrate courts shall operate under the direction and control of the supreme court. The director of the administrative office of the courts shall provide administrative support to the magistrate courts, under the supervision of the supreme court."

Section 2

Section 2. REPEAL.--Section 35-7-2 NMSA 1978 (being Laws 1968, Chapter 62, Section 97) is repealed.

Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

SENATE BILL 372

CHAPTER 54

RELATING TO TAXATION; AMENDING THE LOCAL HOSPITAL GROSS RECEIPTS TAX ACT TO AUTHORIZE IMPOSITION OF THE TAX FOR A HOSPITAL OR HEALTH CLINIC IN AN ADDITIONALCOUNTY; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 7-20C-2 NMSA 1978 (being Laws 1991, Chapter 176, Section 2, as amended) is amended to read:

"7-20C-2. DEFINITIONS.--As used in the Local Hospital Gross Receipts Tax Act:

A. "county" means:

(1) a class B county having a population of less than twenty-five thousand according to the most recent federal decennial census and having a net taxable value for rate-setting purposes for the 1990 property tax year or any subsequent year of more than two hundred fifty million dollars ($250,000,000);

(2) a class B county having a population of less than forty-

seven thousand but more than forty-four thousand according to the 1990 federal decennial census and having a net taxable value for rate-setting purposes for the 1992 property tax year of more than three hundred million dollars ($300,000,000) but less than six hundred million dollars ($600,000,000);

(3) a class B county having a population of less than ten thousand according to the most recent federal decennial census and having a net taxable value for rate-setting purposes for the 1990

property tax year or any subsequent year of more than one hundred million dollars ($100,000,000);

(4) a class B county having a population of less than twenty-five thousand according to the 1990 federal decennial census and having a net taxable value for rate-setting purposes for the 1993 property tax year of more than ninety-one million dollars ($91,000,000) but less than one hundred twenty-five million dollars ($125,000,000); or

(5) a class B county having a population of more than seventeen thousand but less than twenty thousand according to the 1990 federal decennial census and having a net taxable value for rate-setting purposes for the 1993 property tax year of more than one hundred fifty-three million dollars ($153,000,000) but less than one hundred fifty-six million dollars ($156,000,000); and

(6) a class B county having a population of more than fifteen thousand according to the 1990 federal decennial census and having a net taxable value for rate-setting purposes for the 1996 taxable year of more than one hundred fifty million dollars ($150,000,000) but less than one hundred seventy-five million dollars ($175,000,000);

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. "governing body" means the board of county commissioners of a county;

D. "health care facilities contract" means an agreement between a hospital or health clinic not owned by the county and a county imposing the tax authorized by the Local Hospital Gross Receipts Tax Act that obligates the county to pay to the hospital revenue generated by the tax authorized in that act as consideration for the agreement by the hospital or health clinic to use the funds only for nonsectarian purposes and to make health care services available for the benefit of the county;

E. "hospital facility revenues" means all or a portion of the revenues derived from a lease of a hospital facility acquired, constructed or equipped pursuant to and operated in accordance with the Local Hospital Gross Receipts Tax Act;

F. "local hospital gross receipts tax" means the tax authorized to be imposed under the Local Hospital Gross Receipts Tax Act;

G. "person" means an individual or any other legal entity; and

H. "state gross receipts tax" means the gross receipts tax imposed under the Gross Receipts and Compensating Tax Act."

Section 2

Section 2. Section 7-20C-3 NMSA 1978 (being Laws 1991, Chapter 176, Section 3, as amended) is amended to read:

"7-20C-3. LOCAL HOSPITAL GROSS RECEIPTS TAX--AUTHORITY TO IMPOSE--ORDINANCE REQUIREMENTS.--

A. A 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:

(1) 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;

(2) 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; and

(3) a rate not to exceed one-half of one percent of the gross receipts of the person engaging in business if the tax is imposed after July 1, 1996 in a county described in Paragraph (4) or (6) of Subsection A of Section 7-

20C-2 NMSA 1978; provided, the tax may be imposed in any number of increments of one-eighth percent not to exceed an aggregate rate of one-half of one percent of gross receipts.

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. The local hospital gross receipts tax imposed after July 1, 1996 in a county described in Paragraph (4) of Subsection A of Section 7-20C-2 NMSA 1978 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 twenty 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) or (5) 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. The governing body of a county enacting an ordinance imposing a local hospital gross receipts tax shall dedicate the revenue from the tax as provided in this subsection. 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. The revenues shall be dedicated as follows:

(1) 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;

(2) if the governing body of a county described in Paragraph (2), (3) or (5) of Subsection A of Section 7-20C-2 NMSA 1978 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 or management contract with the county, for the period of time the tax is imposed not to exceed ten years;

(3) if the governing body of a county described in Paragraph (4) of Subsection A of Section 7-20C-2 NMSA 1978 is enacting the ordinance imposing the tax after July 1, 1995, the governing body shall dedicate the revenue for acquisition of land or buildings for and the renovation, design, construction, equipping or furnishing of a county hospital facility or health clinic to be operated by the county or operated and maintained by another party pursuant to a lease or management contract with the county; and

(4) if the governing body of a county described in Paragraph (6) of Subsection A of Section 7-20C-2 NMSA 1978 is enacting the ordinance imposing the tax after July 1, 1997, the governing body shall dedicate the revenue for either or a combination of the following:

(a) acquisition of land or buildings for and the design, construction, renovation, equipping or furnishing of a hospital facility or health clinic owned by the county or a hospital or health clinic with whom the county has entered into a health care facilities contract; or

(b) operations and maintenance of a hospital or health clinic owned by the county or a hospital or health clinic with whom the county has entered into a health care facilities contract.

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) or (5) 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 3

Section 3. Section 7-20C-9 NMSA 1978 (being Laws 1991, Chapter 176, Section 9, as amended) is amended to read:

"7-20C-9. LOCAL HOSPITAL REVENUE BONDS--AUTHORITY TO ISSUE--PLEDGE OF REVENUES.--

A. A county, other than a county described in Paragraph (2) of Subsection A of Section 7-20C-2 NMSA 1978, may issue local hospital revenue bonds pursuant to the Local Hospital Gross Receipts Tax Act for the purpose of acquiring land for and designing, constructing, equipping and furnishing a county hospital facility or health clinic to be operated by the county or by another party pursuant to a lease or management contract with the county, or a hospital facility or

health clinic with whom the county has entered into a health care facilities contract.

B. The county issuing the local hospital revenue bonds pursuant to the Local Hospital Gross Receipts Tax Act shall pledge irrevocably all of the net receipts derived from the imposition of the local hospital gross receipts tax and may pledge irrevocably any combination of hospital facility revenues and any other revenues as necessary for the payment of principal and interest on the revenue bonds."

Section 4

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1,1997.

SENATE BILL 722, AS AMENDED

CHAPTER 55

RELATING TO LIQUOR LICENSE TRANSFERS; PROVIDING AN ANNUAL LIMIT ON RETAILER'S AND DISPENSER'S LICENSE TRANSFERS; AMENDING AND REPEALING 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 60-6B-12 NMSA 1978 (being Laws 1981, Chapter 39, Section 113, as amended) is amended to read:

"60-6B-12. INTER-LOCAL OPTION DISTRICT TRANSFERS.--

A. All dispenser's and retailer's licenses originally issued before July 1, 1981, except rural dispenser's and rural retailer's licenses and canopy licenses that were replaced by dispenser's licenses pursuant to Section 60-6B-16 NMSA 1978, may be transferred to any location within the state, except class B counties having a population of between fifty-six thousand and fifty-seven thousand according to the 1980 federal decennial census, the municipalities located within those class B counties and any municipality or county that prohibits by election the transfer of a license from another local option district, without regard to the limitations on the maximum number of licenses provided in Section 60-6A-18 NMSA 1978, not otherwise contrary to law subject to the approval of transferring locations of such liquor licenses of the governing body for that location and provided all the requirements of the Liquor Control Act and department regulations for the transfer of licenses are fulfilled and provided further:

(1) the transfer of location does not lower the number of dispenser's and retailer's licenses below that number allowed by law in the local option district from which a license will be transferred;

(2) beginning in calendar year 1997, no more than ten dispenser's or retailer's licenses shall be transferred to any local option district in any calendar year;

(3) the dispenser's or retailer's licenses transferred under this section shall count in the computation of the limitation of the maximum number of licenses that may be issued in the future in any local option district as provided in Section 60-6A-18 NMSA 1978 for the purpose of determining whether additional licenses may be issued in the local option district under the provisions of Subsection E of Section 60-6B-2 NMSA 1978; and

(4) the dispenser's or retailer's licenses shall be operated or leased by the person who transfers the license to the local option district for at least a period of one year from the date of the approval of the transfer by the department.

B. Transfers of location of each liquor license pursuant to Subsection A of this section shall become effective upon approval of the local governing body, unless within one hundred twenty days after the effective date of the Liquor Control Act a petition requesting an election on the question of approval of statewide transfers of liquor licenses into that local option district is filed with the clerk of the local option district and the petition is signed by at least five percent of the number of registered voters of the district. The clerk of the district shall verify the petition signatures. If the petition is verified as containing the required number of signatures of registered voters, the governing body shall adopt a resolution calling an election on the question of approving or disapproving statewide transfers of liquor licenses into that district. Notice of such election shall be published as provided in Section 3-8-35 NMSA 1978, and 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 such election occurs within sixty days after the date of verification. If a majority of the registered voters of the district voting in such election votes to approve statewide transfers of liquor licenses into the local option district, each license proposing to be transferred shall be subject to the approval of the governing body. If the voters of the district voting in the election vote against the approval, then all statewide transfers of liquor licenses pursuant to Subsection A of this section shall be prohibited in that district, unless a petition is filed requesting the question be again submitted to the voters as provided in this subsection. The question of approving or disapproving statewide transfers of liquor licenses into the local option district shall not be submitted again within two years from the date of the last election on the question.

C. Any dispenser's license transferred pursuant to this section outside its local option district shall only entitle the licensee to sell, serve or permit the consumption of alcoholic beverages by the drink on the licensed premises.

D. Rural dispenser's, rural retailer's and rural club licenses issued under any former act may be transferred to any location, subject to the restrictions as to location contained in the Liquor Control Act, within the unincorporated area of the county in which they are currently located; provided they shall not be transferred to any location within ten miles of another licensed premises; and provided further that all requirements of the Liquor Control Act and department regulations for the transfer of licenses are fulfilled."

Section 2

Section 2. REPEAL.--Section 60-6B-13 NMSA 1978 (being Laws 1981, Chapter 39, Section 115) is repealed.

Section 3

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

SENATE BILL 814,

WITH EMERGENCY CLAUSE

SIGNED APRIL 8, 1997

CHAPTER 56

RELATING TO DOMESTIC AFFAIRS; AMENDING SECTION 40-4-7 NMSA 1978 (BEING LAWS 1901, CHAPTER 62, SECTION 27, AS AMENDED) TO PROVIDE FOR CHILD SUPPORT IN CERTAIN CIRCUMSTANCES.

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

Section 1

Section 1. Section 40-4-7 NMSA 1978 (being Laws 1901, Chapter 62, Section 27, as amended) is amended to read:

"40-4-7. PROCEEDINGS--SPOUSAL SUPPORT--SUPPORT OF CHILDREN--DIVISION OF PROPERTY.--

A. In any proceeding for the dissolution of marriage, division of property, disposition of children or spousal support, the court may make and enforce by attachment or otherwise an order to restrain

the use or disposition of the property of either party or for the control of the children or to provide for the support of either party during the pendency of the proceeding, as in its discretion may seem just and proper. The court may make an order, relative to the expenses of the proceeding, as will ensure either party an efficient preparation and presentation of his case.

B. On final hearing, the court:

(1) may allow either party such a reasonable portion of the spouse's property or such a reasonable sum of money to be paid by either spouse either in a single sum or in installments, as spousal support as under the circumstances of the case may seem just and proper, including a court award of:

(a) rehabilitative spousal support that provides the receiving spouse with education, training, work experience or other forms of rehabilitation that increases the receiving spouse's ability to earn income and become self-supporting. The court may include a specific rehabilitation plan with its award of rehabilitative spousal support and may condition continuation of the support upon compliance with that plan;

(b) transitional spousal support to supplement the income of the receiving spouse for a limited period of time; provided that the period shall be clearly stated in the court's final order;

(c) spousal support for an indefinite duration;

(d) a single sum to be paid in one or more installments that specifies definite amounts, subject only to the death of the receiving spouse; or

(e) a single sum to be paid in one or more installments that specifies definite amounts, not subject to any contingencies, including the death of the receiving spouse;

(2) may:

(a) modify and change any order in respect to spousal support awarded pursuant to the provisions of Subparagraph (a), (b) or (c) of Paragraph (1) of this subsection whenever the circumstances render such change proper; or

(b) designate spousal support awarded pursuant to the provisions of Subparagraph (a) or (b) of Paragraph (1)

of this subsection as nonmodifiable with respect to the amount or duration of the support payments;

(3) may set apart out of the property or income of the respective parties such portion for the maintenance and education of:

(a) their unemancipated minor children as may seem just and proper; or

(b) their children until the children's graduation from high school if the children are emancipated only by age, are under nineteen and are attending high school; and

(4) may make such an order for the guardianship, care, custody, maintenance and education of the minor children, or with reference to the control of the property of the respective parties to the proceeding, or with reference to the control of the property decreed or fund created by the court for the maintenance and education of the minor children, as may seem just and proper.

C. The court may order and enforce the payment of support for the maintenance and education after high school of emancipated children of the marriage pursuant to a written agreement between the parties.

D. An award of spousal support made pursuant to the provisions of Subparagraph (a), (b), (c) or (d) of Paragraph (1) of Subsection B of this section shall terminate upon the death of the receiving spouse, unless the court order of spousal support provides otherwise.

E. When making determinations concerning spousal support to be awarded pursuant to the provisions of Paragraph (1) or (2) of Subsection B of this section, the court shall consider:

(1) the age and health of and the means of support for the respective spouses;

(2) the current and future earnings and the earning capacity of the respective spouses;

(3) the good-faith efforts of the respective spouses to maintain employment or to become self-supporting;

(4) the reasonable needs of the respective spouses, including:

(a) the standard of living of the respective spouses during the term of the marriage;

(b) the maintenance of medical insurance for the respective spouses; and

(c) the appropriateness of life insurance, including its availability and cost, insuring the life of the person who is to pay support to secure the payments, with any life insurance proceeds paid on the death of the paying spouse to be in lieu of further support;

(5) the duration of the marriage;

(6) the amount of the property awarded or confirmed to the respective spouses;

(7) the type and nature of the respective spouses' assets; provided that potential proceeds from the sale of property by either spouse shall not be considered by the court, unless required by exceptional circumstances and the need to be fair to the parties;

(8) the type and nature of the respective spouses' liabilities;

(9) income produced by property owned by the respective spouses; and

(10) agreements entered into by the spouses in contemplation of the dissolution of marriage or legal separation.

F. The court shall retain jurisdiction over proceedings involving periodic spousal support payments when the parties have been married for twenty years or more prior to the dissolution of the marriage, unless the court order or decree specifically provides that no spousal support shall be awarded.

G. The court may modify and change any order or agreement merged into an order in respect to the guardianship, care, custody, maintenance or education of the children whenever circumstances render such change proper. The district court shall have exclusive jurisdiction of all matters pertaining to the guardianship, care, custody, maintenance and education of the children until the parents' obligation of support for their children terminates. The district court shall also have exclusive, continuing jurisdiction with reference to the property decreed or funds created for the children's maintenance and education."

SENATE BILL 882

CHAPTER 57

RELATING TO AGRICULTURE; AMENDING AND ENACTING SECTIONS OF THE COTTON BOLL WEEVIL CONTROL ACT TO PROVIDE FOR BOLL WEEVIL CONTROL BY ORGANIC COTTON PRODUCERS.

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

Section 1

Section 1. Section 76-6A-1 NMSA 1978 (being Laws 1996, Chapter 77, Section 1) is amended to read:

"76-6A-1. SHORT TITLE.--Chapter 76, Article 6A NMSA 1978 may be cited as the "Cotton Boll Weevil Control Act"."

Section 2

Section 2. Section 76-6A-3 NMSA 1978 (being Laws 1996, Chapter 77, Section 3) is amended to read:

"76-6A-3. DEFINITIONS.--As used in the Cotton Boll Weevil Control Act:

A. "board" means the board of regents of New Mexico state university;

B. "cotton boll weevil" means any life stage of the cotton insect Anthonomus grandis Boheman;

C. "cotton boll weevil control committee" means the persons, not less than three nor more than seven, elected by a majority of the cotton producers in a designated cotton boll weevil control district;

D. "cotton boll weevil control district" means a designated area duly established under the Cotton Boll Weevil Control Act wherein a program to suppress or eradicate the cotton boll weevil is administered;

E. "cotton producer" means any person growing five or more acres of cotton plants. For the purposes of the Cotton Boll Weevil

Control Act, only one person from any farm, sole proprietorship, corporation, partnership or any other legal business arrangement shall be eligible to vote to establish or dissolve a cotton boll weevil control district;

F. "department" means the New Mexico department of agriculture;

G. "director" means the director of the New Mexico department of agriculture; and

H. "organic cotton producer" means any person growing cotton who is certified by the organic commodity commission as a producer of organic or transitional cotton."

Section 3

Section 3. Section 76-6A-5 NMSA 1978 (being Laws 1996, Chapter 77, Section 5) is amended to read:

"76-6A-5. COTTON BOLL WEEVIL CONTROL COMMITTEE--DUTIES AND POWERS.--

A. A cotton boll weevil control committee shall prescribe control measures for any cotton planted within a cotton boll weevil control district. When prescribing control measures, the cotton boll weevil control committee shall make every effort to adhere to integrated pest management practices, to allow organic cotton producers to choose organic pest management practices that will allow them to maintain their organic certification and to adhere to the management goals of individual cotton producers consistent with the goal of complete eradication of the cotton boll weevil.

B. A cotton boll weevil control committee may adopt regulations to set the method for determining the yield per acre of cotton lands under the control of a cotton producer for purposes of calculating the assessment amount due."

Section 4

Section 4. Section 76-6A-8 NMSA 1978 (being Laws 1996, Chapter 77, Section 8) is amended to read:

"76-6A-8. HEARINGS.--Within sixty days after a petition has been filed with the director and upon payment of the cost estimate, the director shall cause notices to be given of the proposed hearings in areas of the

state where the cotton boll weevil is of economic importance. The notices of hearing shall be published in a newspaper of general circulation in the proposed cotton boll weevil control district, and shall be sent directly to the organic commodity commission, at least fourteen days prior to the date of the hearing."

Section 5

Section 5. Section 76-6A-11 NMSA 1978 (being Laws 1996, Chapter 77, Section 11) is amended to read:

"76-6A-11. COTTON BOLL WEEVIL CONTROL COMMITTEES--ADDITIONAL DUTIES AND POWERS.--

A. Cotton boll weevil control committees may:

(1) conduct programs to suppress or eradicate cotton boll weevils within their cotton boll weevil control districts;

(2) cooperate in the administration of the Cotton Boll Weevil Control Act through the use of state or federal personnel and facilities or both;

(3) enter into contracts or cooperative agreements with state, federal or local agencies;

(4) publish information and conduct seminars on the distribution and control of the cotton boll weevil; and

(5) levy and collect a special assessment, based on cotton acreage or cotton yield per acre within the cotton boll weevil control districts.

B. Cotton boll weevil control committees shall provide a complete accounting of the funds collected through the special assessment to all participating cotton producers in the cotton boll weevil control districts.

C. The cotton boll weevil control committee shall send notice of the establishment of a cotton boll weevil control district and its defined boundaries to the organic commodity commission within fourteen days of its establishment.

D. If the cotton boll weevil control district includes certified organic acreage, the cotton boll weevil control committee shall select an organic farmer operating within the district, who shall have all the

powers of a committee member, to serve on the cotton boll weevil control committee."

Section 6

Section 6. A new section of the Cotton Boll Weevil Control Act is enacted to read:

"ORGANIC COTTON REGULATIONS.--

A. Each organic cotton producer within an established cotton boll weevil control district shall notify the cotton boll weevil control committee in writing of the number of acres on which the organic cotton producer intends to plant organic cotton at least thirty days prior to planting.

B. The cotton boll weevil committee shall require all organic producers to pay the assessment established for the cotton boll weevil control district in the same manner as producers of conventionally grown cotton in the cotton boll weevil control district.

C. After crop planting, the cotton boll weevil control committee shall notify an organic cotton producer as to the boll weevil status of his cotton acres, as well as the boll weevil status of surrounding acres, as documented by the committee's normal boll weevil trapping program.

D. The cotton boll weevil control committee shall confer with the organic cotton producer to determine measures that might be taken to attempt to keep all or a portion of the organic cotton producer's cotton acreage below trigger levels for required treatment. If the organic cotton producer chooses to use a nonconventional method, the cotton boll weevil control committee shall pay the costs of the nonconventional method used by the organic cotton producer, provided the costs do not exceed the equivalent costs of conventional control methods. If boll weevil trigger levels are reached on the organic cotton producer's acres and boll weevil migration from outside these acres has been eliminated as a cause of these levels, then the organic cotton producer shall be allowed to harvest these acres, but shall not be allowed to grow cotton on the acreage for one year. If the organic cotton producer chooses to use conventional methods of treatment, the cotton boll weevil committee shall proceed accordingly."

SENATE BILL 891, AS AMENDED

CHAPTER 58

RELATING TO TAXATION; PROVIDING A CREDIT AGAINST CORPORATE INCOME TAX; ENACTING A SECTION 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 Corporate Income and Franchise Tax Act is enacted to read:

"INTERGOVERNMENTAL BUSINESS TAX CREDIT.--

A. With respect to the net income of a taxpayer engaged in the transaction of business occurring after July 1, 1997 from a new business on Indian land, the person who is liable for the payment of the corporate income tax may claim a credit as provided in Subsection D of this section against the corporate income tax for the aggregate amount of tax paid to an Indian nation, tribe or pueblo located in whole or in part within New Mexico.

B. The credit provided by this section may be referred to as the "intergovernmental business tax credit".

C. As used in this section:

(1) "aggregate amount of tax" means the total of all taxes imposed by an Indian nation, tribe or pueblo located in whole or in part in New Mexico on income derived from the new business's activity on Indian land, except a tax shall not be included in that total if the tax is eligible for a credit pursuant to the provisions of Section 7-29C-1 NMSA 1978 or any other intergovernmental tax credit that provides a similar tax credit;

(2) "Indian land" means all land in New Mexico that on March 1, 1997 was:

(a) within the exterior boundaries of an Indian reservation or pueblo grant; or

(b) lands held in trust by the United States for an individual Indian nation, tribe or pueblo;

(3) "new business" means a manufacturer or processor that occupies a new business facility or a grower that commences operation in New Mexico on or after July 1, 1997; and

(4) "new business facility" means a facility on Indian land that satisfies the following requirements:

(a) the facility is employed by the taxpayer in the operation of a revenue-producing enterprise. The facility shall not be considered a "new business facility" in the hands of the taxpayer if the taxpayer's only activity with respect to the facility is to lease it to another person;

(b) the facility is acquired by or leased to the taxpayer on or after January 1, 1997. The facility shall be deemed to have been acquired by or leased to the taxpayer on or after the specified date if the transfer of title to the taxpayer, the transfer of possession pursuant to a binding contract to transfer title to the taxpayer or the commencement of the term of the lease to the taxpayer occurs on or after that date or if the facility is constructed, erected or installed by or on behalf of the taxpayer, the construction, erection or installation is completed on or after that date;

(c) the facility is a newly acquired facility in which the taxpayer is not continuing the operation of the same or a substantially identical revenue-producing enterprise that previously was in operation on the Indian land of the Indian nation, tribe or pueblo where the facility is now located; a facility is a "newly acquired facility" if the facility was acquired or leased by the taxpayer from another person even if the facility was employed in a revenue-producing enterprise on the Indian land of the same Indian nation, tribe or pueblo immediately prior to the transfer of the title to the facility to the taxpayer or immediately prior to the commencement of the term of the lease of the facility to the taxpayer by another person provided that the revenue-producing enterprise of the previous occupant was not the same or substantially identical to the taxpayer's revenue-producing enterprise; and

(d) the facility is not a replacement business facility for a business facility that existed on the Indian land of the Indian nation, tribe or pueblo where the business is now located.

D. The intergovernmental business tax credit shall be determined separately for each reporting period and shall be equal to fifty percent of the lesser of:

(1) the aggregate amount of tax paid by a taxpayer; or

(2) the amount of the taxpayer's corporate income tax due for the reporting period from the new business's activity conducted on Indian land.

E. The department shall administer and interpret the provisions of this section in accordance with the provisions of the Tax Administration Act.

F. The burden of showing entitlement to a credit authorized by this section is on the taxpayer claiming it, and the taxpayer shall furnish to the appropriate tax collecting agency, in the manner determined by the department, proof of payment of the aggregate amount of tax on which the credit is based.

G. For a taxpayer qualifying for the credit provided by this section that conducts business in New Mexico both on and off Indian land, the taxpayer's corporate income tax liability derived from the new business activity conducted on Indian land shall be equal to the sum of the products of one-half of the taxpayer's New Mexico corporate income tax liability before application of the credit provided by this section multiplied by the payroll factor and one-half of the taxpayer's New Mexico corporate income tax liability before application of the credit provided by this section multiplied by the property factor. The factors shall be determined as follows:

(1) the payroll factor is a fraction, the numerator of which is the amount of compensation paid to employees employed during the tax period by the taxpayer in his new business on Indian land, and the denominator of which is the total amount of compensation paid to employees employed during the tax period by the taxpayer in all of New Mexico, including Indian land; and

(2) the property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the new business on Indian land in New Mexico during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible property owned or rented and used in New Mexico, including on Indian land, during the tax period."

Section 2

Section 2. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 1997.

Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

SENATE WAYS AND MEANS COMMITTEE

SUBSTITUTE FOR SENATE BILL 1211, AS AMENDED

CHAPTER 59

RELATING TO DOMESTIC ABUSE; PROVIDING FOR FILING OF ORDERS OF PROTECTION WITHOUT COST.

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

Section 1

Section 1. 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 filed and 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."

HOUSE BILL 389, AS AMENDED

CHAPTER 60

RELATING TO TAXATION; AMENDING THE CORPORATE INCOME AND FRANCHISE TAX ACT TO CORRECT AN ERROR AND TO PROVIDE FOR A THIRD OPTION FOR PAYING ESTIMATED CORPORATE INCOME TAX.

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

Section 1

Section 1. 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 one 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;

(2) using as the estimate an amount equal to one hundred percent of the tax due for the previous taxable year, if the previous taxable year was a full twelve-month year and if the amount due for that previous taxable year was at least five thousand dollars ($5,000); or

(3) using as the estimate an amount equal to one hundred ten percent of the tax due for the taxable year immediately preceding the previous taxable year, if the taxable year immediately preceding the previous taxable year was a full twelve-month year, the amount due for the taxable year immediately preceding the previous taxable year was at least five thousand dollars ($5,000) and the return for the previous taxable year has not been filed and the extended due date for filing that return has not occurred at the time the first installment is due for the taxable 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) or (3) 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) or (3) 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 2

Section 2. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 1998.

HOUSE BILL 14

CHAPTER 61

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, 1999, 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, 1999 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, 1999 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 33

CHAPTER 62

RELATING TO TAXATION; EXTENDING AND CHANGING CERTAIN PROVISIONS OF THE INVESTMENT CREDIT ACT.

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

Section 1

Section 1. Section 7-9A-8 NMSA 1978 (being Laws 1979, Chapter 347, Section 8, as amended) is amended to read:

"7-9A-8. CLAIMING THE CREDIT FOR CERTAIN TAXES.--

A. A taxpayer shall apply for approval for a credit within one year following the end of the calendar year in which the qualified equipment for the manufacturing operation is purchased or introduced into New Mexico.

B. A taxpayer having applied for and been granted approval for a credit by the department pursuant to the Investment Credit Act may claim an amount of available credit against the taxpayer's compensating tax, gross receipts tax or withholding tax due to the state of New Mexico, provided that no taxpayer may claim an amount of available credit for any reporting period that exceeds eighty-five percent of the sum of the taxpayer's gross receipts tax, compensating tax and withholding tax due for that reporting period. Any amount of available credit not claimed against the taxpayer's gross receipts tax, compensating tax or withholding tax due for a reporting period may be claimed in subsequent reporting periods."

Section 2

Section 2. A new section of the Investment Credit Act is enacted to read:

"TRANSITION PROVISIONS.--

A. The provisions of this section apply on the date that changes to the provisions in the Investment Credit Act become effective limiting the amount of qualified equipment that may be claimed and increasing the employment requirements with respect to qualified equipment.

B. The amount of any available credit unclaimed on the effective date of the changes described in Subsection A of this section may be claimed, until exhausted, in accordance with the provisions of Section 7-9A-8 NMSA 1978 immediately prior to the effective date of the changes described in Subsection A of this section.

C. After the effective date described in Subsection A of this section, the department shall approve claims submitted prior to that effective date but not approved by that effective date if the claim meets the requirements of the Investment Credit Act in effect immediately prior to that effective date. The claimant may claim the amount of any available credit so approved in accordance with the provisions of Section 7-9A-8 NMSA 1978 immediately prior to the effective date of the event described in Subsection A of this section.

D. After the effective date of the changes described in Subsection A of this section, a claimant may submit and the department shall approve claims submitted on or after that effective date if the claim is with respect to qualified equipment located in the state prior to that effective date that otherwise meets the requirements of the Investment Credit Act in effect immediately prior to that effective date. The claimant may claim the amount of any available credit so approved in accordance with the provisions of Section 7-9A-8 NMSA 1978 immediately prior to the effective date of the changes described in Subsection A of this section.

E. After the effective date of the changes described in Subsection A of this section, the department may approve claims submitted on or after that effective date with respect to equipment not located in the state until after that effective date only in accordance with the provisions of the Investment Credit Act in effect after that effective date."

Section 3

Section 3. Laws 1990, Chapter 3, Section 10, as amended by Laws 1992, Chapter 17, Section 1 and also by Laws 1992, Chapter 104, Section 1, is amended to read:

"Section 10. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 1, 2, 4, 5, 7 and 9 of this act is January 1, 1991.

B. The effective date of the provisions of Sections 6 and 8 of this act is January 1, 2000."

HOUSE BILL 49, AS AMENDED

CHAPTER 63

RELATING TO TAXATION; CHANGING CERTAIN PROVISIONS OF THE INCOME TAX ACT PERTAINING TO ESTIMATED TAX PAYMENTS; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 7-2-12.2 NMSA 1978 (being Laws 1996, Chapter 17, Section 1) is amended to read:

"7-2-12.2. ESTIMATED TAX DUE--PAYMENT OF ESTIMATED TAX--PENALTY.--

A. Except as otherwise provided in this section, every individual who is required to file an income tax return under the Income Tax Act shall pay the required annual payment in installments through either withholding or estimated tax payments.

B. For the purposes of this section:

(1) "required annual payment" means the lesser of:

(a) ninety percent of the tax shown on the return of the taxable year or, if no return is filed, ninety percent of the tax for the taxable year; or

(b) one hundred percent of the tax shown on the return for the preceding taxable year if the preceding taxable year

was a taxable year of twelve months and the taxpayer filed a New Mexico tax return for that preceding taxable year; and

(2) "tax" means the tax imposed under Section 7-2-3 NMSA 1978 less any amount allowed for credits provided by Sections 7-2-13 and 7-2-18.1 through 7-2-18.4 NMSA 1978 and for any applicable tax rebates provided by the Income Tax Act.

C. There shall be four required installments for each taxable year. If a taxpayer is not liable for estimated tax payments on March 31, but becomes liable for estimated tax at some point after March 31, he must make estimated tax payments as follows:

(1) if the taxpayer becomes required to pay estimated tax after March 31 and before June 1, fifty percent of the required annual payment must be paid on or before June 15, twenty-five percent on September 15 and twenty-five percent on or before January 15 of the following taxable year;

(2) if the taxpayer becomes required to pay estimated tax after May 31, but before September 1, seventy-five percent of the required annual payment must be paid on or before September 15 and twenty-five percent on or before January 15 of the following taxable year; and

(3) if the taxpayer becomes required to pay estimated tax after August 31, one hundred percent of the required annual payment must be paid on or before January 15 of the following taxable year.

D. Except as otherwise provided in this section, for taxpayers reporting on a calendar year basis, estimated payments of the required annual payment are due on or before April 15, June 15 and September 15 of the taxable year and January 15 of the following taxable year. For taxpayers reporting on a fiscal year other than a calendar year, the due dates for the installments are the fifteenth day of the fourth, sixth and ninth months of the fiscal year and the fifteenth day of the first month following the fiscal year.

E. A rancher or farmer who expects to receive at least two-thirds of his gross income for the taxable year from ranching or farming, or who has received at least two-thirds of his gross income for the previous taxable year from ranching or farming, may:

(1) pay the required annual payment for the taxable year in one installment on or before January 15 of the following taxable year; or

(2) on or before March 1 of the following taxable year, file a return for the taxable year and pay in full the amount computed on the return as payable.

No penalty under Subsection G of this section shall be imposed unless the rancher or farmer underpays his tax by more than one-third. If a joint return is filed, a rancher or farmer must consider his or her spouse's gross income in determining whether at least two-thirds of gross income is from ranching or farming.

F. For the purposes of this section, the amount of tax deducted and withheld with respect to a taxpayer under the Withholding Tax Act shall be deemed a payment of estimated tax. An equal part of the amount of withheld tax shall be deemed paid on each due date for the applicable taxable year unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts withheld shall be deemed payments of estimated tax on the dates on which the amounts were actually withheld. The taxpayer may apply the provisions of this subsection separately to wage withholding and any other amounts withheld under the Withholding Tax Act.

G. Except as otherwise provided in this section, in the case of any underpayment of the required annual payment by a taxpayer, there shall be added to the tax an amount as penalty determined by applying the rate specified in Subsection B of Section 7-1-67 NMSA 1978 to the amount of the underpayment for the period of the underpayment, provided:

(1) the amount of the underpayment shall be the excess of the amount of the required annual payment over the amount, if any, paid on or before the due date for the installment;

(2) the period of the underpayment runs from the due date for the installment to whichever of the following dates is earlier:

(a) the fifteenth day of the fourth month following the close of the taxable year; or

(b) with respect to any portion of the underpayment, the date on which the portion was paid; and

(3)a payment of estimated tax shall be credited against unpaid or underpaid installments in the order in which the installments are required to be paid.

H. No penalty shall be imposed under Subsection G of this section for any taxable year if:

(1) the difference between the following is less than five hundred dollars ($500):

(a) the tax shown on the return for the taxable year or, when no return is filed, the tax for the taxable year; and

(b) any amount withheld under the provisions of the Withholding Tax Act for that taxpayer for that taxable year;

(2) the individual's preceding taxable year was a taxable year of twelve months, the individual did not have any tax liability for the preceding taxable year and the individual was a resident of New Mexico for the entire taxable year;

(3) through either withholding or estimated tax payments, the individual paid the required annual payment as defined in Subsection B of this section; or

(4) the secretary determines that the underpayment was not due to fraud, negligence or disregard of rules and regulations.

I. If, on or before January 31 of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, then no penalty under Subsection G of this section shall be imposed with respect to any underpayment of the fourth required installment for the taxable year.

J. This section shall be applied to taxable years of less than twelve months and to taxpayers reporting on a fiscal year other than a calendar year in the manner determined by regulation or instruction of the secretary.

K. Except as otherwise provided in Subsection L of this section, this section applies to any estate or trust.

L. This section does not apply to any trust that is subject to the tax imposed by Section 511 of the Internal Revenue Code or that is a private foundation. With respect to any taxable year ending before the

date two years after the date of the decedent's death, this section does not apply to:

(1) the estate of the decedent; or

(2) any trust all of which was treated under

Subpart E of Part I of Subchapter J of Chapter 1 of the Internal Revenue Code as owned by the decedent and to which the residue of the decedent's estate will pass under the decedent's will or, if no will is admitted to probate, that is the trust primarily responsible for paying debts, taxes and expenses of administration."

Section 2

Section 2. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 1997.

Section 3

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

HOUSE BILL 128, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 8, 1997

CHAPTER 64

RELATING TO TAXATION; AUTHORIZING THE SECRETARY OF TAXATION AND REVENUE TO ENTER INTO CERTAIN COOPERATIVE AGREEMENTS WITH SANTA CLARA PUEBLO; PROVIDING A GROSS RECEIPTS TAX CREDIT; 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 Taxation and Revenue Department Act, Section 9-11-12.1 NMSA 1978, is enacted to read:

"9-11-12.1. COOPERATIVE AGREEMENTS WITH SANTA CLARA PUEBLO.--

A. The secretary may enter into cooperative agreements with Santa Clara pueblo for the exchange of information and the reciprocal, joint or common enforcement, administration, collection, remittance and audit of gross receipts tax revenues of the party jurisdictions.

B. Money collected by the department on behalf of Santa Clara pueblo in accordance with an agreement entered into pursuant to this section is not money of this state and shall be collected and disbursed in accordance with the terms of the agreement, notwithstanding any other provision of law.

C. The secretary is empowered to promulgate such rules and regulations and to establish such procedures as the secretary deems appropriate for the collection and disbursement of funds due Santa Clara pueblo and for the receipt of money collected by the pueblo for the account of this state under the terms of a cooperative agreement entered into under the authority of this section, including procedures for identification of taxpayers or transactions that are subject only to the taxing authority of the pueblo, taxpayers or transactions that are subject only to the taxing authority of this state, and taxpayers or transactions that are subject to the taxing authority of both party jurisdictions.

D. Nothing in an agreement entered into pursuant to this section shall be construed as authorizing this state or Santa Clara pueblo to tax persons or transactions that federal law prohibits that government from taxing, or as authorizing a state or pueblo court to assert jurisdiction over persons who are not otherwise subject to that court's jurisdiction or as affecting any issue of the respective civil or criminal jurisdictions of this state or the pueblo. Nothing in an agreement entered into pursuant to this section shall be construed as an assertion or an admission by either this state or the pueblo that the taxes of one have precedence over the taxes of the other when the person or transaction is subject to the taxing authority of both governments. An agreement entered into pursuant to this section shall be construed solely as an agreement between the two party governments and shall not alter or affect the government-to-government relations between this state and any other Indian nation, tribe or pueblo.

E. Nothing in an agreement entered into pursuant to this section shall apply to a taxable transaction subject to the taxing authority of a municipality pursuant to a local option gross receipts tax act or distribution to a municipality from gross receipts taxes pursuant to

Section 7-1-6.4 NMSA 1978, except that such agreement shall apply to such taxable transactions, and related distributions, reported from business locations on Santa Clara pueblo land annexed by a municipality after January 1, 1997."

Section 2

Section 2. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"CREDIT--GROSS RECEIPTS TAX--TAX PAID TO SANTA CLARA PUEBLO.--

A. If on a taxable transaction taking place on land owned by or for the benefit of Santa Clara pueblo and located within the exterior boundaries of Santa Clara pueblo a qualifying gross receipts, sales or similar tax has been levied by the pueblo, the amount of the pueblo tax may be credited against any gross receipts tax due this state or its political subdivisions under the Gross Receipts and Compensating Tax Act and any local option gross receipts tax on the same transaction; provided that no credit shall be allowed against any gross receipts tax due on a transaction subject to the taxing authority of a municipality pursuant to a local option gross receipts tax act or distribution to a municipality from gross receipts taxes pursuant to Section 7-1-6.4 NMSA 1978, except that credit shall be allowed for such taxable transactions, and related distributions, reported from business locations on Santa Clara pueblo land annexed by the municipality after January 1, 1997. The amount of the credit shall be equal to the lesser of seventy-five percent of the tax imposed by the pueblo on the receipts from the transaction or seventy-five percent of the tax revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of local option gross receipts taxes imposed on the receipts from the same transaction. Notwithstanding any other provision of law to the contrary, the amount of credit taken and allowed shall be applied proportionately against the amount of the gross receipts tax and local option gross receipts taxes and against the amount of distributions of those taxes pursuant to Section 7-1-6.1 NMSA 1978.

B. A qualifying gross receipts, sales or similar tax levied by Santa Clara pueblo shall be limited to a tax that:

(1) is substantially similar to the gross receipts tax imposed by the Gross Receipts and Compensating Tax Act;

(2) does not unlawfully discriminate among persons or transactions based on membership in the pueblo;

(3) is levied on the taxable transaction at a rate not greater than the total of the gross receipts tax rate and local option gross receipts tax rates imposed by this state and its political subdivisions located within the exterior boundaries of Santa Clara pueblo;

(4) provides a credit against the pueblo tax equal to the lesser of twenty-five percent of the tax imposed by the pueblo on the receipts from the transaction or twenty-five percent of the tax revenue produced by the sum of the rate of tax imposed under the Gross Receipts and Compensating Tax Act and the total of the rates of the local option gross receipts taxes imposed on the receipts from the same transaction; and

(5) is subject to a cooperative agreement between the pueblo and the secretary entered into pursuant to Section 9-11-12.1 NMSA 1978 and in effect at the time of the taxable transaction."

HOUSE BILL 141, AS AMENDED

CHAPTER 65

RELATING TO TELECOMMUNICATIONS; AMENDING SECTION 63-9F-3 NMSA 1978 (BEING LAWS 1993, CHAPTER 54, SECTION 3, AS AMENDED) TO CLARIFY INTRASTATE TELEPHONE SERVICES FOR PURPOSES OF THE TELECOMMUNICATIONS ACCESS ACT.

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

Section 1

Section 1. Section 63-9F-3 NMSA 1978 (being Laws 1993, Chapter 54, Section 3, as amended) is amended to read:

"63-9F-3. DEFINITIONS.--As used in the Telecommunications Access Act:

A. "commission" means the commission for deaf and hard-of-hearing persons;

B. "communications assistant" means an individual who translates conversation from text to voice and from voice to text between two end users of a telecommunications service;

C. "department" means the general services department;

D. "impaired" means having an impairment of or deficit in the ability to hear or speak, or both;

E. "intrastate telephone services" means all charges for access lines, special services and intrastate toll services, including all calls originating and terminating in the state;

F. "specialized telecommunications equipment" means devices that when connected to a telephone enable or assist an impaired individual to communicate with another individual using the telephone network;

G. "telecommunications company" means an individual, corporation, partnership, joint venture, company, firm, association, proprietorship or other entity that provides public telecommunications services, and includes cellular service companies as defined in Subsection B of Section 63-9B-3 NMSA 1978; and

H. "telecommunications relay system" means a statewide telecommunications system through which an impaired individual using specialized telecommunications equipment is able to send or receive messages to and from an individual who is not impaired and whose telephone is not equipped with specialized telecommunications equipment and through which the unimpaired individual is able, by using voice communications, to send and receive messages to and from an impaired person."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 32

CHAPTER 66

RELATING TO WATER; AMENDING A SECTION OF THE NMSA TO EXTEND AUTHORITY OF THE STATE ENGINEER TO REGULATE CERTAIN DAMS.

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

Section 1

Section 1. Section 72-5-32 NMSA 1978 (being Laws 1941, Chapter 126, Section 25, as amended) is amended to read:

"72-5-32. CONSTRUCTION OF DAMS EXCEEDING TEN FEET IN HEIGHT.--Any person, association or corporation, public or private, the state or the United States hereafter intending to construct a dam shall meet the requirements of filing applications for appropriations and use of water pursuant to Section 72-5-1, 72-5-22, 72-5-23 or 72-5-24 NMSA 1978. Any person, association or corporation, public or private, the state or the United States intending to construct a dam that exceeds ten feet in height from the lowest natural ground surface elevation to the crest of the dam or impounds more than ten acre-feet of water shall submit on a form prescribed by the state engineer detailed plans to the state engineer for approval before construction. If the state engineer finds that the dam design is safe, he shall approve the plans; provided that this section shall not apply to stock dams or erosion control structures whose maximum storage capacity does not exceed ten acre-feet or any dam constructed for the sole purpose of sediment and flood control under the supervision of the United States army corps of engineers."

HOUSE BILL 36, AS AMENDED

CHAPTER 67

RELATING TO TAXATION; CHANGING CERTAIN PROVISIONS OF THE TAX ADMINISTRATION ACT.

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

Section 1

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

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

Administration Act these words and phrases appear, the singular includes the plural and the plural includes the singular:

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

B. "division" or "oil and gas accounting division" means the department;

C. "director" means the secretary;

D. "director or his delegate" means the secretary or the secretary's delegate;

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

F. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended;

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

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

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

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

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

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

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

N. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate, other association or gas, water or electric utility owned or operated by a county or municipality; "person" also means, to the extent permitted by law, any federal, state or other governmental unit or subdivision, or an agency, department or instrumentality thereof; "person", as used in Sections 7-1-72 through 7-1-74 NMSA 1978, also includes an officer or employee of a corporation, a member or employee of a partnership or any individual who, as such, is under a duty to perform any act in respect of which a violation occurs;

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

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

Q. "secretary" means the secretary of taxation and revenue and, except for purposes of Subsection B of Section 7-1-4 and Subsection E of Section 7-1-24 NMSA 1978, also includes the deputy secretary or a division director or deputy division director delegated by the secretary;

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

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

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

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

V. "taxpayer" means a person liable for payment of any tax, a person responsible for withholding and payment or for collection and payment of any tax or a person to whom an assessment has been made, if the assessment remains unabated or the amount thereof has not been paid; and

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

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

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

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

Section 2

Section 2. Section 7-1-9 NMSA 1978 (being Laws 1965, Chapter 248, Section 14, as amended) is amended to read:

"7-1-9. ADDRESS OF NOTICES AND PAYMENTS--TIMELY MAILING CONSTITUTES TIMELY FILING OR MAKING.--

A. Any notice required or authorized by the Tax Administration Act to be given by mail is effective if mailed or served by the secretary or the secretary's delegate to the taxpayer or person at the last address shown on his registration certificate or other record of the department. Any notice, return, application or payment required or authorized to be delivered to the secretary or the department by mail shall be addressed to the secretary of taxation and revenue, taxation and revenue department, Santa Fe, New Mexico or in any other manner which the secretary by regulation or instruction may direct.

B. Except as provided otherwise in Section 7-1-13.1 NMSA 1978, all notices, returns, applications or payments authorized or required to be made or given by mail are timely if mailed on or before the date on which they are required. The secretary by regulation may provide that delivery to a private delivery or courier service on or before the date on which mailing is required constitutes timely mailing and may specify standards under which the service's time stamps or other indication of date of delivery to the service are adequate to determine actual time of delivery to the service."

Section 3

Section 3. Section 7-1-26 NMSA 1978 (being Laws 1965, Chapter 248, Section 28, as amended) is amended to read:

"7-1-26. CLAIM FOR REFUND.--

A. Any person who believes that an amount of tax has been paid by or withheld from that person in excess of that for which the person was liable, who has been denied any credit or rebate claimed or who claims a prior right to property in the possession of the department pursuant to a levy made under authority of Sections 7-1-31 through 7-1-34 NMSA 1978 may claim a refund by directing to the secretary, within the time limited by the provisions of Subsections C, D and E of this section, a written claim for refund. Except as provided in Subsection H of this section, a refund claim shall include the taxpayer's name, address and identification number, the type of tax for which a refund is being claimed, the sum of money being claimed, the period for which overpayment was made and the basis for the refund.

B. The secretary or the secretary's delegate may allow the claim in whole or in part or may deny the claim. If the claim is denied in whole or in part in writing, the claim may not be refiled. If the claim is not

granted in full, the person, within ninety days after either the mailing or delivery of the denial of all or any part of the claim, may elect to pursue one, but not more than one, of the remedies in Paragraphs (1) and (2) of this subsection. If the department has neither granted nor denied any portion of a claim for refund within one hundred twenty days of the date the claim was mailed or delivered to the department, the department may not approve or deny the claim but the person may refile it within the time limits set forth in Subsection C of this section or may within ninety days elect to pursue one, but only one, of the remedies in Paragraphs (1) and (2) of this subsection. In any case, if a person does timely pursue more than one remedy, the person shall be deemed to have elected the first remedy invoked. The remedies are as follows:

(1) the person may direct to the secretary a written protest against the denial of, or failure to either allow or deny, the claim, which shall be set for hearing by a hearing officer designated by the secretary promptly after the receipt of the protest in accordance with the provisions of Section 7-1-24 NMSA 1978, and pursue the remedies of appeal from decisions adverse to the protestant as provided in Section 7-1-25 NMSA 1978; or

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

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

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

(a) the payment was originally due or the overpayment resulted from an assessment by the department pursuant to Section 7-1-17 NMSA 1978, whichever is later;

(b) the final determination of value occurs with respect to any overpayment that resulted from a disapproval by any agency of the United States or the state of New Mexico or any court of increase in value of a product subject to taxation under the Oil and Gas

Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act or the Natural Gas Processors Tax Act; or

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

(2) within one year of the date:

(a) of the denial of the claim for credit under the provisions of the Investment Credit Act or Filmmakers Credit Act;

(b) an assessment of tax is made; or

(c) a proceeding begun in court by the department with respect to any period that is covered by a waiver signed on or after July 1, 1993 by the taxpayer pursuant to Subsection F of Section 7-1-18 NMSA 1978; or

(3) for assessments made on or after July 1, 1993, within one year of the date of an assessment of tax made under Subsection B, C or D of Section 7-1-18 NMSA 1978 when the assessment applies to a period ending at least three years prior to the beginning of the year in which the assessment was made, but the claim for refund shall not be made with respect to any period not covered by the assessment.

D. No credit or refund shall be allowed or made to any person claiming a refund of gasoline tax under Section 7-13-11 NMSA 1978 unless notice of the destruction of the gasoline was given the department within thirty days of the actual destruction and the claim for refund is made within six months of the date of destruction. No credit or refund shall be allowed or made to any person claiming a refund of gasoline tax under Section 7-13-14 NMSA 1978 unless the refund is claimed within six months of the date of purchase of the gasoline and the gasoline has been used at the time the claim for refund is made.

E. If, as a result of an audit by the internal revenue service or the filing of an amended federal return changing a prior election or making any other change for which federal approval is required by the Internal Revenue Code, any adjustment of federal tax is made with the result that there would have been an overpayment of tax if the adjustment to federal tax had been applied to the taxable period to which it relates, claim for credit or refund of only that amount based on the adjustment may be made as provided in this section within one year of the date of the internal revenue service audit adjustment or payment

of the federal refund or within the period limited by Subsection C of this section, whichever expires later. Interest, computed at the rate specified in Subsection B of Section 7-1-68 NMSA 1978, shall be allowed on any such claim for refund from the date one hundred twenty days after the claim is made until the date the final decision to grant the credit or refund is made.

F. Any refund of tax paid under any tax or tax act administered under Subsection B of Section 7-1-2 NMSA 1978 may be made, at the discretion of the department, in the form of credit against future tax payments if future tax liabilities in an amount at least equal to the credit amount reasonably may be expected to become due.

G. For the purposes of this section, the term "oil and gas tax return" means a return reporting tax due with respect to oil, natural gas, liquid hydrocarbons or carbon dioxide pursuant to the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas Production Equipment Ad Valorem Tax Act.

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

Section 4

Section 4. Section 7-1-39 NMSA 1978 (being Laws 1965, Chapter 248, Section 41, as amended) is amended to read:

"7-1-39. RELEASE OR EXTINGUISHMENT OF LIEN--LIMITATION ON ACTIONS TO ENFORCE LIEN.--

A. When any substantial part of the amount of tax due from a taxpayer is paid, the department shall immediately file, in the same county in which a notice of lien was filed, and in the same records, a document completely or partially releasing the lien. The county clerk to whom such a document is presented shall record it without charge.

B. The department may file, in the same county as the notice of lien was filed, a document releasing or partially releasing any lien filed in accordance with Section 7-1-38 NMSA 1978 when the filing of the lien was premature or did not follow requirements of law or when release or partial release would facilitate collection of taxes due. The county clerk to whom the document is presented shall record it without charge.

C. In all cases when a notice of lien for taxes, penalties and interest has been filed under Section 7-1-38 NMSA 1978 and a period of ten years has passed from the date the lien was filed, as shown on the notice of lien, the taxes, penalties and interest for which the lien is claimed shall be conclusively presumed to have been paid. The county clerk shall enter in his records a notice including the words "canceled by act of legislature" and the lien is thereby extinguished. No action shall be brought to enforce any lien extinguished in accordance with this subsection."

Section 5

Section 5. Section 7-1-61 NMSA 1978 (being Laws 1965, Chapter 248, Section 62, as amended) is amended to read:

"7-1-61. DUTY OF SUCCESSOR IN BUSINESS.--

A. As used in Sections 7-1-61 through 7-1-64 NMSA 1978, "tax" means the amount of tax due imposed by provisions of the taxes or tax acts set forth in Subsections A and B of Section 7-1-2 NMSA 1978, except the Income Tax Act.

B. The tangible and intangible property used in any business remains subject to liability for payment of the tax due on account of that business to the extent stated herein, even though the business changes hands.

C. If any person liable for any amount of tax from operating a business transfers that business to a successor the successor shall place in a trust account sufficient money from the purchase price or other source to cover such amount of tax until the secretary or secretary's delegate issues a certificate stating that no amount is due, or the successor shall pay over the amount due to the department upon proper demand for, or assessment of, that amount due by the secretary."

Section 6

Section 6. Section 7-1-62 NMSA 1978 (being Laws 1965, Chapter 248, Section 63, as amended) is amended to read:

"7-1-62. DUTY OF SECRETARY--RELEASE OF SUCCESSOR.--

A. Within thirty days after receiving from the successor a written request for a certificate, or within thirty days from the date the former owner's records are made available for audit, whichever period expires the later, but in any event not later than sixty days after receiving the request, the secretary or secretary's delegate shall either issue the certificate or mail a notice to the successor of the amount of tax due from operating the business for which the former owner is liable and which must be paid as a condition of issuing the certificate.

B. Failure of the department to mail or deliver the notice of tax due within the required time releases the successor from any obligation as a successor under Section 7-1-61 NMSA 1978."

Section 7

Section 7. Section 7-1-63 NMSA 1978 (being Laws 1965, Chapter 248, Section 64, as amended) is amended to read:

"7-1-63. ASSESSMENT OF TAX DUE--APPLICATION OF PAYMENT.--

A. If, after any business is transferred to a successor, any tax from operating the business for which the former owner is liable remains due, the successor shall pay the amount due within thirty days. If the successor fails to pay within thirty days of the date notice provided for in Section 7-1-62 NMSA 1978 was mailed or if a certificate was not requested, the department shall assess the successor the amount due.

B. Upon the payment of the amount due from the amount placed in a trust account as provided by Subsection C of Section 7-1-61 NMSA 1978, the balance, if any, remaining may be released to the former owner or otherwise lawfully disposed of. The former owner shall be credited with the payment of tax.

C. A successor may discharge an assessment made pursuant to this section by paying to the department the full value of the transferred tangible and intangible property. The successor shall remain liable for the amount assessed, however, until the amount is paid if:

(1) the business has been transferred to evade or defeat any tax;

(2) the transfer of the business amounts to a de facto merger, consolidation or mere continuation of the transferor's business; or

(3) the successor has assumed the liability."

Section 8

Section 8. Section 7-1-69 NMSA 1978 (being Laws 1965, Chapter 248, Section 70, as amended) is amended to read:

"7-1-69. CIVIL PENALTY FOR FAILURE TO PAY TAX OR FILE A RETURN.--

A. Except as provided in Subsection B of this section, in the case of failure due to negligence or disregard of rules and regulations, but without intent to evade or defeat any tax, to pay when due any amount of tax required to be paid, to pay in accordance with the provisions of Section 7-1-13.1 NMSA 1978 when required to do so or to file by the date required a return regardless of whether any tax is due, there shall be added to the amount as penalty the greater of:

(1) two percent per month or any fraction of a month from the date the tax was due multiplied by the amount of tax due but not paid, not to exceed ten percent of the tax due but not paid;

(2) two percent per month or any fraction of a month from the date the return was required to be filed multiplied by the tax liability established in the late return, not to exceed ten percent of the tax liability established in the late return; or

(3) a minimum of five dollars ($5.00), but the five-dollar ($5.00) minimum penalty shall not apply to taxes levied under the Income Tax Act or taxes administered by the department pursuant to Subsection B of Section 7-1-2 NMSA 1978.

B. If a different penalty is specified in a compact or other interstate agreement to which New Mexico is a party, the penalty provided in the compact or other interstate agreement shall be applied to amounts due under the compact or other interstate agreement at the rate and in the manner prescribed by the compact or other interstate agreement.

C. In the case of failure, with willful intent to evade or defeat any tax, to pay when due any amount of tax required to be paid, there

shall be added to the amount fifty percent of the tax or a minimum of twenty-five dollars ($25.00), whichever is greater, as penalty.

D. If demand is made for payment of any tax, including penalty imposed pursuant to this section, and if such tax is paid within ten days after the date of such demand, no penalty shall be imposed for the period after the date of the demand with respect to the amount paid."

Section 9

Section 9. A new section of the Tax Administration Act is enacted to read:

"CIVIL PENALTY--WILLFUL ATTEMPT TO CAUSE EVASION OF ANOTHER'S TAX.--Any person other than the taxpayer who willfully causes or attempts to cause the evasion of a taxpayer's obligation to report and pay tax may be assessed a civil penalty in an amount equal to the amount of the tax, penalty and interest attempted to be evaded."

Section 10

Section 10. REPEAL.--Sections 7-1-26.1 and 7-1-64 NMSA 1978 (being Laws 1991, Chapter 9, Section 23 and Laws 1965, Chapter 248, Section 65, as amended) are repealed.

Section 11

Section 11. APPLICABILITY.--The provisions of Subsection B of Section 7-1-26 NMSA 1978 as set forth in Section 3 of this act apply to claims for refund filed on or after July 1, 1997. Claims for refund filed before July 1, 1997 shall be administered in accordance with those provisions of Section 7-1-26 NMSA 1978 in effect on June 30, 1997.

Section 12

Section 12. EFFECTIVE DATE.--The effective date of the provisions of Sections 1 through 10 of this act is July 1, 1997.

HOUSE BILL 37, AS AMENDED

CHAPTER 68

RELATING TO TAXATION; PROVIDING FOR VALUATION OF CONSTRUCTION CONTRACTORS' TANGIBLE PERSONAL PROPERTY LOCATED IN NEW MEXICO; PROVIDING PENALTIES.

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

Section 1

Section 1. A new section of the Property Tax Code is enacted to read:

"VALUATION DATE--TANGIBLE PERSONAL PROPERTY--

CONSTRUCTION CONTRACTORS.--

A. All tangible personal property of construction contractors located in the state shall be valued for property taxation purposes as of January 1, except as provided in Subsection B of this section.

B. All tangible personal property of construction contractors not located in the state on January 1 but brought into the state and located there for more than twenty days subsequent to January 1 shall be valued for property taxation purposes as of the first day of the month following the month in which they have remained in the state for more than twenty days.

C. The construction contractor whose tangible personal property is subject to valuation for property taxation purposes shall report the property for valuation to the entity having responsibility for valuation of the property in accordance with Section 7-36-2 NMSA 1978 on the valuation date specified in Subsection A or B of this section and shall include in the report the actual or estimated time period during which the property has been and will be located in the state. The contractor's report shall be in a form and contain the information required by the department regulations and shall be made no later than:

(1) the last day of February for tangible personal property required to be valued as of the first day of January of the tax year; or

(2) ten days after the valuation date determined under Subsection B of this section for tangible personal property required to be valued as of a date other than that in Paragraph (1) of this subsection.

D. The department shall adopt regulations for the allocation of the value of tangible personal property of construction contractors, which regulations shall provide for:

(1) a basic allocation formula that prorates value on the basis of the amount of time that the tangible personal property is in the state and subject to valuation for property taxation purposes;

(2) determining proration of value under Paragraph (1) of this subsection using estimates of the amount of time that the tangible personal property will be in the state to cover those situations in which tangible personal property is imported for an indeterminate time during a tax year; and

(3) a method of allocating the value of the tangible personal property among different governmental units when the tangible personal property is located in more than one governmental unit.

E. Any person who intentionally refuses to make a report required of him under this section or who knowingly makes a false statement in a report required under this section is guilty of a misdemeanor and shall be punished by imposition of a fine of not more than one thousand dollars ($1,000).

F. Any person who fails to make a report required of him under this section is liable for a civil penalty in an amount equal to five percent of the property taxes ultimately determined to be due on the property for the tax year or years for which he failed to make the required report.

G. Any person who intentionally refuses to make a report required of him under this section with the intent to evade any tax or who fails to make a report required of him under this section with the intent to evade any tax is liable for a civil penalty in an amount equal to twenty-five percent of the property taxes ultimately determined to be due on the property for the tax year or years for which he refused or failed to make the required report.

H. The civil penalties authorized under Subsections F and G of this section shall be imposed and collected at the time and in the manner that the tax is imposed and collected. In order to assist in the imposition and collection of the penalties, the person having responsibility for determining the value of the property shall make an entry in the valuation records indicating the liability for any penalties due under this section."

Section 2

Section 2. Section 7-38-7 NMSA 1978 (being Laws 1973, Chapter 258, Section 47) is amended to read:

"7-38-7. VALUATION DATE.--All property subject to valuation for property taxation purposes shall be valued as of January 1 of each tax year, except that livestock shall be valued as of the date and in the manner prescribed under Section 7-36-21 NMSA 1978 and tangible personal property of construction contractors shall be valued as of the date and in the manner prescribed under Section 1 of this act."

Section 3

Section 3. APPLICABILITY.--The provisions of this act apply to the 1998 and subsequent property tax years.

HOUSE BILL 38, AS AMENDED

CHAPTER 69

RELATING TO PUBLIC PURCHASES; AMENDING THE PROCUREMENT CODE TO INCREASE THE DOLLAR LIMIT FOR CERTAIN SMALL PURCHASE PROCUREMENTS.

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 a central purchasing office shall procure services, construction or items of tangible personal property having a value not exceeding ten thousand dollars ($10,000) 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 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.

D. Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section."

HOUSE BILL 45

CHAPTER 70

RELATING TO TAXATION; INCREASING THE AMOUNT OF THE SEVERANCE TAX PERMANENT FUND THAT MAY BE INVESTED IN A NEW MEXICO VENTURE CAPITAL FUND; AMENDING A SECTION OF THE SEVERANCE TAX BONDING ACT.

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

Section 1

Section 1. Section 7-27-5.15 NMSA 1978 (being Laws 1990, Chapter 126, Section 5, as amended) is amended to read:

"7-27-5.15. NEW MEXICO VENTURE CAPITAL FUND INVESTMENTS.--

A. No more than one percent of the market value of the severance tax permanent fund may be invested in New Mexico venture capital funds under this section.

B. If an investment is made under this section, not more than seven million five hundred thousand dollars ($7,500,000) of the amount authorized for investment pursuant to Subsection A of this section shall be invested in any one New Mexico venture capital fund. The amount invested in any one New Mexico venture capital fund shall not exceed fifty percent of the committed capital of that fund.

C. In making investments pursuant to this section, the council shall give consideration to investments in New Mexico venture

capital funds whose investments enhance the economic development objectives of the state.

D. The state investment officer shall make investments pursuant to this section only upon approval of the council and upon review of the recommendation of the venture capital investment advisory committee. The state investment officer is authorized to make investments pursuant to this section contingent upon a New Mexico venture capital fund securing paid-in investments from other accredited investors for the balance of the minimum committed capital of the fund.

E. As used in this section:

(1) "committed capital" means the sum of the fixed amounts of money which accredited investors have obligated for investment in a New Mexico venture capital fund and which fixed amounts may be invested in that fund on one or more payments over time; and

(2) "New Mexico venture capital fund" means any limited partnership, limited liability company or corporation organized and operating in the United States and maintaining an office staffed by a full-time investment officer in New Mexico that:

(a) has as its primary business activity the investment of funds in return for equity in businesses for the purpose of providing capital for start-up, expansion, product or market development or similar business purposes;

(b) holds out the prospects for capital appreciation from such investments;

(c) has a minimum committed capital of five million dollars ($5,000,000);

(d) has at least one full-time manager with at least three years of professional experience in assessing the growth prospects of businesses or evaluating business plans and who has established permanent residency in the state;

(e) is committed to investing or helps secure investing by others in an amount at least equal to the total investment made by the state investment officer in that fund pursuant to this section, in businesses with a principal place of business in the state and that hold promise for attracting additional capital from individual or institutional investors nationwide for businesses in the state; and

(f) accepts investments only from accredited investors as that term is defined in Section 2 of the federal Securities Act of 1933, as amended, (15 U.S.C. Section 77(b)) and rules and regulations promulgated pursuant to that section."

HOUSE BILL 205, AS AMENDED

WITH CERTIFICATE OF CORRECTIONS

CHAPTER 71

RELATING TO DEVELOPMENT TRAINING; MAKING THE ECONOMIC DEVELOPMENT DIVISION OF THE ECONOMIC DEVELOPMENT DEPARTMENT RESPONSIBLE FOR THE DEVELOPMENT TRAINING PROGRAM; PROVIDING FOR TECHNICAL ASSISTANCE; CHANGING ELIGIBILITY FOR TRAINING APPLICANTS; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 21-19-7 NMSA 1978 (being Laws 1983, Chapter 299, Section 1, as amended) is amended to read:

"21-19-7. DEVELOPMENT TRAINING.--

A. The economic development department shall establish a development training program that provides quick-response classroom and in-plant training to furnish qualified manpower resources for new or expanding industries and non-retail service sector businesses in New Mexico that have business or production procedures that require skills unique to those industries. Training shall be custom-designed for the particular company and shall be based on the special requirements of each company. The program shall be operated on a statewide basis and shall be designed to assist any area in becoming more competitive economically.

B. There is created the "industrial training board" composed of:

(1) the director of the economic development division of the economic development department;

(2) the director of the vocational education division of the state department of public education;

(3) the director of the job training division of the labor department;

(4) the executive director of the commission on higher education;

(5) one member from organized labor appointed by the governor; and

(6) one public member from the business community appointed by the governor.

C. The industrial training board shall establish policies and promulgate rules and regulations for the administration of appropriated funds and shall provide review and oversight to assure that funds expended from the development training fund will generate business activity and give measurable growth to the economic base of New Mexico within the legal limits preserving the ecological state of New Mexico and its people.

D. Subject to the approval of the industrial training board, the economic development division of the economic development department shall:

(1) administer all funds allocated or appropriated for industrial development training purposes;

(2) provide designated training services;

(3) regulate, control and abandon any training program established under the provisions of this section;

(4) assist companies requesting training in the development of a training proposal to meet the companies' manpower needs;

(5) contract for the implementation of all training programs;

(6) provide for training by educational institutions or by the company through in-plant training, at the company's request; and

(7) evaluate training efforts on a basis of performance standards set forth by the industrial training board.

E. The vocational education division of the state department of public education shall provide technical assistance to the economic development department concerning the development of agreements, the determination of the most appropriate instructional training to provide and the review of training program implementation.

F. The state shall contract with a company or an educational institution to provide training or instructional services in accordance with the approved training proposal and within the following limitations:

(1) no payment shall be made for training in excess of one thousand forty hours of training per trainee for the total duration of training;

(2) training applicants shall have resided within the state for a minimum of one year immediately prior to the commencement of the training program and be of legal status for employment;

(3) payment for institutional classroom training shall be made under any accepted training contract for a qualified training program;

(4) no payment shall be made under any accepted training contract for rental of facilities unless facilities are not available on site or at the educational institution;

(5) all applicants shall be eligible under the federal Fair Labor Standards Act and shall not have terminated a public school program within the past three months except by graduation;

(6) trainees shall be guaranteed full-time employment with the contracted company upon successful completion of the training;

(7) persons employed to provide the instructional services shall be exempt from the minimum requirements established in the state plan for other state vocational programs; and

(8) no payment shall be made for training programs or production of Indian jewelry or imitation Indian jewelry unless a

majority of those involved in the training program or production are of Indian descent."

Section 2

Section 2. Section 21-19-11 NMSA 1978 (being Laws 1983, Chapter 299, Section 5, as amended) is amended to read:

"21-19-11. FUNDS CREATED.--

A. There is created in the state treasury the "development training fund". Money appropriated to the fund or accruing to it through gifts, grants, repayments or bequests shall not be transferred to any other fund or be encumbered or disbursed in any manner except as provided in Section 21-19-7 NMSA 1978. Money in the fund shall not revert at the end of any fiscal year. Money in the fund is appropriated to the economic development department. Money in the fund shall be expended upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of economic development or his authorized representative to carry out the purposes specified in Section 21-19-7 NMSA 1978.

B. There is created in the state treasury the "development fund". Money appropriated to the fund or accruing to it through gifts, grants, repayments or bequests shall not be transferred to any other fund or be encumbered or disbursed in any manner except as provided in this subsection. Money in the fund shall not revert at the end of any fiscal year. Money in the fund shall be administered by the economic development department or its successor for the purpose of making low-interest loans to political subdivisions of the state so that they can construct or implement projects necessary to provide services that will encourage the location of industry in the political subdivisions. The economic development department shall coordinate these loans with the local government division of the department of finance and administration pursuant to the New Mexico Community Assistance Act. Money in the fund shall be expended as provided in Section 21-19-10 NMSA 1978."

Section 3

Section 3. TEMPORARY PROVISION--APPROPRIATION OF FUND BALANCES.--The economic development department may expend money in the development training fund in the 1997 and subsequent fiscal years that was appropriated in prior fiscal years to carry out the purposes of Section 21-9-7 NMSA 1978.

Section 4

Section 4. APPROPRIATION.--Six million dollars ($6,000,000) is appropriated from the general fund to the development training fund for expenditure in fiscal year 1998 and subsequent fiscal years for a development training program providing classroom and in-plant training to furnish qualified manpower resources for certain new or expanding industries and businesses in the state. Included in the appropriation is seventy thousand dollars ($70,000) that may be used by the economic development department for program administration of the development training fund.

Section 5

Section 5. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 512, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 8, 1997

CHAPTER 72

RELATING TO TAXATION; AMENDING THE GROSS RECEIPTS AND COMPENSATING TAX ACT TO ALLOW SELLERS A SIXTY-DAY GRACE PERIOD TO OBTAIN REQUIRED NONTAXABLE TRANSACTION CERTIFICATES.

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

Section 1

Section 1. Section 7-9-43 NMSA 1978 (being Laws 1966, Chapter 47, Section 13, as amended by Laws 1994, Chapter 94, Section 1 and also by Laws 1994, Chapter 98, Section 1) is amended to read:

"7-9-43. NONTAXABLE TRANSACTION CERTIFICATES AND OTHER EVIDENCE REQUIRED TO ENTITLE PERSONS TO DEDUCTIONS--

RENEWAL.--

A. All nontaxable transaction certificates of the appropriate series executed by buyers or lessees should be in the possession of the seller or lessor for nontaxable transactions at the time the return is due for receipts from the transactions. If the seller or lessor is not in possession of the required nontaxable transaction certificates within sixty days from the date that the notice requiring possession of these nontaxable transaction certificates is given the seller or lessor by the department, deductions claimed by the seller or lessor that require delivery of these nontaxable transaction certificates shall be disallowed. The nontaxable transaction certificates shall contain the information and be in a form prescribed by the department. Only buyers or lessees who have a registration number or have applied for a registration number and have not been refused one under Subsection C of Section 7-1-12 NMSA 1978 shall execute nontaxable transaction certificates. If the seller or lessor has been given an identification number for tax purposes by the department, the seller or lessor shall disclose that identification number to the buyer or lessee prior to or upon acceptance of a nontaxable transaction certificate. When the seller or lessor accepts a nontaxable transaction certificate within the required time and in good faith that the buyer or lessee will employ the property or service transferred in a nontaxable manner, the properly executed nontaxable transaction certificate shall be conclusive evidence, and the only material evidence, that the proceeds from the transaction are deductible from the seller's or lessor's gross receipts.

B. Properly executed documents required to support the deductions provided in Sections 7-9-57, 7-9-58 and 7-9-74 NMSA 1978 should be in the possession of the seller at the time the return is due for receipts from the transactions. If the seller is not in possession of these documents within sixty days from the date that the notice requiring possession of these documents is given to the seller by the department, deductions claimed by the seller or lessor that require delivery of these documents shall be disallowed. These documents shall contain the information and be in a form prescribed by the department. When the seller accepts these documents within the required time and in good faith that the buyer will employ the property or service transferred in a nontaxable manner, the properly executed documents shall be conclusive evidence, and the only material evidence, that the proceeds from the transaction are deductible from the seller's gross receipts.

C. Notice, as used in this section, is sufficient if the notice is mailed or served as provided in Subsection A of Section 7-1-9 NMSA 1978. Notice by the department under this section shall not be given prior to the commencement of an audit of the seller required to be in possession of the documents.

D. On January 1, 1992, every nontaxable transaction certificate, except for nontaxable transaction certificates of the series applicable to the ten-year period beginning January 1, 1992 and issued by the department prior to that date, is void with respect to transactions after December 31, 1991. The department shall issue separate series of nontaxable transaction certificates for the ten-year period beginning January 1, 1992 and for each ten-year period beginning on January 1 of every tenth year succeeding calendar year 1992. A series of nontaxable transaction certificates issued by the department for any ten-year period may be executed by buyers or lessees for transactions occurring within that ten-year period but are not valid for transactions occurring after that ten-year period. For administrative convenience, the department may accept and approve qualifying applications for the privilege of executing nontaxable transaction certificates and pre-issue certificates of any series within the six-month period immediately preceding the beginning of the ten-year period to which the series of nontaxable transaction certificates applies.

E. To exercise the privilege of executing appropriate nontaxable transaction certificates, a buyer or lessee shall apply to the department for permission to execute nontaxable transaction certificates. If a person is shown on the department's records to be a delinquent taxpayer, the department may refuse to approve the application of the person until the person is no longer shown to be a delinquent taxpayer, and the taxpayer may protest that refusal pursuant to Section 7-1-24 NMSA 1978. Upon the department's approval of the application, the buyer or lessee may request appropriate nontaxable transaction certificates for execution by the buyer or lessee; provided that if a person is shown on the department's records to be a delinquent taxpayer, the department may refuse to issue nontaxable transaction certificates to the person until the person is no longer shown to be a delinquent taxpayer, and the taxpayer may protest that refusal pursuant to Section 7-1-24 NMSA 1978. The department may require any buyer or lessee requesting and receiving nontaxable transaction certificates for execution by that buyer or lessee to report to the department annually the names, addresses and identification numbers assigned by the department of the sellers and lessors to whom they have delivered nontaxable transaction certificates. The department may require any seller or lessor engaged in business in New Mexico to report to the department annually the names, addresses and federal employer identification numbers or state identification numbers for tax purposes issued by the department of the buyers or lessees from whom the seller or lessor has accepted nontaxable transaction certificates."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 1201, AS AMENDED

CHAPTER 73

RELATING TO TAXATION; BROADENING THE APPLICATION OF THE GROSS RECEIPTS TAX DEDUCTION FOR SPACE-RELATED RECEIPTS; PROVIDING FOR A DELAYED REPEAL.

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

Section 1

Section 1. Section 7-9-54.2 NMSA 1978 (being Laws 1995, Chapter 183, Section 2) is amended to read:

"7-9-54.2. GROSS RECEIPTS--DEDUCTION--SPACEPORT OPERATION--LAUNCHING AND RECOVERY OF SPACE LAUNCH VEHICLES-- PAYLOAD SERVICES.--

A. Receipts from launching or recovering space launch vehicles or payloads in New Mexico may be deducted from gross receipts.

B. Receipts from preparing a payload for launching in New Mexico are deductible from gross receipts.

C. Receipts from operating a spaceport in New Mexico are deductible from gross receipts.

D. As used in this section:

(1) "payload" includes systems, subsystems and mechanical structures required to perform or conduct research and development on or to conduct operations of space functions, such as reconnaissance, communications, navigation and target simulations, but does not include weapons;

(2) "space" means any location beyond altitudes of sixty thousand feet above the earth's mean sea level; and

(3) "spaceport" means an installation and related facilities used for the launching, landing, recovery, servicing and monitoring of vehicles capable of entering or returning from space.

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 2

Section 2. DELAYED REPEAL.--Section 7-9-54.2 NMSA 1978 (beingLaws 1995, Chapter 183, Section 2) is repealed effective June 30, 2001.

HOUSE BILL 1300, AS AMENDED

CHAPTER 74

RELATING TO PUBLICLY FUNDED HEALTH CARE PROGRAMS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978 TO PROVIDE FOR CONSOLIDATION OF NEGOTIATION AND PURCHASING OF INSURANCE.

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

Section 1

Section 1. SHORT TITLE.--Sections 1 through 4 of this act may be cited as the "Health Care Purchasing Act".

Section 2

Section 2. PURPOSE OF ACT.--The purpose of the Health Care Purchasing Act is to ensure public employees, public school employees and retirees of public employment and the public schools access to more affordable and enhanced quality of health insurance through cost containment and savings effected by procedures for consolidating the purchasing of publicly financed health insurance.

Section 3

Section 3. DEFINITIONS.--As used in the Health Care Purchasing Act:

A. "consolidated purchasing" means a single process for the procurement of all health care benefits by the publicly funded

insurance agencies in compliance with the Procurement Code and includes associated activities related to the procurement such as actuarial, cost containment, benefits consultation and analysis; and

B. "publicly funded health care agency" means the:

(1) risk management division and the group benefits committee of the general services department;

(2) retiree health care authority;

(3) public school insurance authority; and

(4) publicly funded health care program of any public school district with a student enrollment in excess of sixty thousand students.

Section 4. MANDATORY CONSOLIDATED PURCHASING.--

A. The agencies shall enter into a cooperative consolidated purchasing effort to provide plans of health care benefits for the benefit of eligible participants of the respective agencies. The request for proposal shall set forth one or more plans of health care benefits and shall include accommodation of fully funded arrangements as well as varying degrees of self-funded pool options.

B. A consolidated purchasing request for proposals for all health care benefits by the publicly funded health care agencies shall be issued on or before July 1, 1999 and any contracts for health care benefits renewed or issued on or after July 1, 2000 shall be the result of consolidated purchasing.

C. All requests for proposals issued as part of the consolidated purchasing shall include at least one distinct service area consisting of the Albuquerque metropolitan area. Proposals on a distinct service area shall be evaluated separately.

Section 5. Section 10-7C-7 NMSA 1978 (being Laws 1990, Chapter 6, Section 7) is amended to read:

"10-7C-7. BOARD--DUTIES.--In order to achieve the purposes of the Retiree Health Care Act, the board may take all actions reasonably necessary to implement that act, including but not limited to the following:

A. employ or contract for the services of the state fiscal agent or select its own fiscal agent in accordance with the Procurement Code;

B. employ or contract for persons to assist it in carrying out the Retiree Health Care Act and determine the duties and compensation of these employees;

C. collect and disburse funds;

D. collect all current and historical claims and financial information necessary for effective procurement of lines of insurance coverage;

E. promulgate and adopt necessary rules, regulations and procedures for implementation of the Retiree Health Care Act;

F. negotiate insurance policies covering additional or lesser benefits as determined appropriate by the board, but the board shall maintain all coverage as required by federal or state law for each eligible retiree. In the event it is practical to wholly self-insure part or all of the retiree health care coverages, the board may do so;

G. procure group health care and other coverages authorized by the Retiree Health Care Act in accordance with the Procurement Code and the Health Care Purchasing Act;

H. establish the procedures for contributions and deductions;

I. determine methods and procedures for claims administration;

J. administer the fund;

K. contract for and make available to all eligible retirees and eligible dependents basic and optional group health insurance plans. The optional coverage may include a lower deductible, lower coinsurance or additional categories of benefits permitted under this section and all other applicable sections of the Retiree Health Care Act to provide additional levels of coverages and benefits. Any additional contributions for these optional plans shall be paid for by the eligible retiree or eligible dependent. The coverage provided by the plans shall be secondary to all other benefit coverages to which the eligible retiree or eligible dependent is entitled. In the event a covered eligible retiree becomes employed by an employer offering its employees a basic plan

of benefits, the coverage provided by the plan under the Retiree Health Care Act shall be secondary to such coverage regardless of whether the employee enrolls in that employer's plan. In the event the eligible retiree or eligible dependent is entitled to receive medicare hospital insurance benefits at no charge, then the coverage provided by the plan under the Retiree Health Care Act shall be secondary to medicare hospital and medical insurance to the extent permitted by federal law;

L. provide, at its discretion, different plans for eligible retirees and eligible dependents covered by medicare than the plans provided for eligible retirees and eligible dependents who are not covered by medicare; and

M. promulgate and adopt rules and regulations governing eligibility, participation, enrollment, length of service and any other conditions or requirements for providing substantially equal treatment to participating employers who are independent public employers and their retirees and participating employees."

Section 6

Section 6. 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 any proposal or contract for the procurement of any group health care benefits shall be subject to the provisions of the Health Care Purchasing Act; and provided further that reinsurance or excess coverage insurance may be placed by private negotiation, notwithstanding the provisions of the Procurement Code, if the insurance or reinsurance has a restricted number of interested carriers, the board determines that the 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 the 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 7

Section 7. Section 22-2-6.7 NMSA 1978 (being Laws 1986, Chapter 94, Section 7, as amended) is amended to read:

"22-2-6.7. AUTHORITY--DUTIES.--In order to effectuate the purposes of the Public School Insurance Authority Act, the authority has the power to:

A. employ the services of the state fiscal agent or select its own fiscal agent pursuant to regulations adopted by the board; provided that for the purposes of disbursing all money other than that in the fund, the secretary of finance and administration shall be the fiscal agent for the authority;

B. enter into professional services and consulting contracts or agreements as necessary;

C. collect, provide for the investment of and disburse money in the fund;

D. collect all current and historical claims and financial information necessary for effective procurement of lines of insurance coverage;

E. promulgate necessary rules, regulations and procedures for implementation of the Public School Insurance Authority Act;

F. negotiate new insurance policies covering additional or lesser benefits as determined appropriate by the authority, but the authority shall maintain all coverage levels required by federal and state law for each participating member. In the event it is practical to wholly self-insure a particular line of coverage, the authority may do so;

G. procure lines of insurance coverage in compliance with the provisions of the Health Care Purchasing Act and the

competitive sealed proposal process of the Procurement Code; provided that any group medical insurance plan offered pursuant to this section shall include effective cost-containment measures to control the growth of health care costs. The board shall report annually by September 1 to appropriate interim legislative committees on the effectiveness of the cost-containment measures required by this subsection;

H. purchase, renovate, equip and furnish a building for the board."

Section 8

Section 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 358, AS AMENDED

CHAPTER 75

RELATING TO COMMERCIAL TRANSACTIONS; REVISING PROVISIONS OF THE UNIFORM COMMERCIAL CODE REGARDING LETTERS OF CREDIT; AMENDING, REPEALING AND ENACTING SECTIONS OF THE UNIFORM COMMERCIAL CODE.

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

Section 1

Section 1. Section 55-1-105 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-105, as amended) is amended to read:

"55-1-105. TERRITORIAL APPLICATION OF THE ACT--PARTIES' POWER TO CHOOSE APPLICABLE LAW.--

(1) Except as provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or such other state or nation shall govern their rights and duties. Failing such agreement, the Uniform Commercial Code applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of the Uniform Commercial Code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

rights of creditors against sold goods. Section 55-2-402 NMSA 1978;

applicability of the article on leases. Sections 55-2A-105 and 55-2A-106 NMSA 1978;

applicability of the article on bank deposits and collections. Section 55-4-102 NMSA 1978;

governing law in the article on fund transfers. Section 55-4A-507 NMSA 1978;

letters of credit. Section 55-5-116 NMSA 1978;

applicability of the article on investment securities. Section 55-8-110 NMSA 1978; and

perfection provisions of the article on secured transactions. Section 55-9-103 NMSA 1978."

Section 2

Section 2. Section 55-2-512 NMSA 1978 (being Laws 1961, Chapter 96, Section 2-512) is amended to read:

"55-2-512. PAYMENT BY BUYER BEFORE INSPECTION.--

(1) Where the contract requires payment before inspection non-conformity of the goods does not excuse the buyer from so making payment unless:

(a) the non-conformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of the Uniform Commercial Code (Section 55-5-109 NMSA 1978).

(2) Payment pursuant to Subsection (1) of this section does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies."

Section 3

Section 3. Section 55-5-101 NMSA 1978 (being Laws 1961, Chapter 96, Section 5-101) is repealed and a new section of the Uniform Commercial Code, Section 55-5-101 NMSA 1978, is enacted to read:

"55-5-101. SHORT TITLE**.**--Chapter 55, Article 5 NMSA 1978 may be cited as "Uniform Commercial Code--Letters of Credit"."

Section 4

Section 4. Section 55-5-102 NMSA 1978 (being Laws 1961, Chapter 96, Section 5-102) is repealed and a new section of the Uniform Commercial Code, Section 55-5-102 NMSA 1978, is enacted to read:

"55-5-102. DEFINITIONS**.--**

(a) In this article:

(1) "adviser" means a person who, at the request of the issuer, a confirmer or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed or amended;

(2) "applicant" means a person at whose request or for whose account a letter of credit is issued. The term includes a

person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer;

(3) "beneficiary" means a person who under the terms of a letter of credit is entitled to have its complying presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit;

(4) "confirmer" means a nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another;

(5) "dishonor" of a letter of credit means failure timely to honor or to take an interim action, such as acceptance of a draft, that may be required by the letter of credit;

(6) "document" means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right or opinion (i) which is presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in Section 55-5-108(e) NMSA 1978 and (ii) which is capable of being examined for compliance with the terms and conditions of the letter of credit. A document may not be oral;

(7) "good faith" means honesty in fact in the conduct or transaction concerned;

(8) "honor" of a letter of credit means performance of the issuer's undertaking in the letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise provides, "honor" occurs:

(i) upon payment;

(ii) if the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment, or;

(iii) if the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance;

(9) "issuer" means a bank or other person that issues a letter of credit, but does not include an individual who makes an engagement for personal, family or household purposes;

(10) "letter of credit" means a definite undertaking that satisfies the requirements of Section 55-5-104 NMSA 1978 by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value;

(11) "nominated person" means a person whom the issuer (i) designates or authorizes to pay, accept, negotiate or otherwise give value under a letter of credit and (ii) undertakes by agreement or custom and practice to reimburse;

(12) "presentation" means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit;

(13) "presenter" means a person making a presentation as or on behalf of a beneficiary or nominated person;

(14) "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(15) "successor of a beneficiary" means a person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor in possession, liquidator and receiver.

(b) Definitions in other articles applying to this article and the sections in which they appear are:

acceptance" Section 55-3-409 NMSA 1978

"value" Sections 55-3-303 and 55-4-211 NMSA 1978.

(c) Article 1 contains certain additional general definitions and principles of construction and interpretation applicable throughout this article."

Section 5

Section 5. Section 55-5-103 NMSA 1978 (being Laws 1961, Chapter 96, Section 5-103, as amended) is repealed and a new section of the Uniform Commercial Code, Section 55-5-103 NMSA 1978, is enacted to read:

"55-5-103. SCOPE.--

(a) This article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(b) The statement of a rule in this article does not by itself require, imply or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this article.

(c) With the exception of this subsection, Subsections (a) and (d) of this section, Sections 55-5-102(a)(9) and (10) NMSA 1978, Section 55-5-106(d) NMSA 1978 and Section 55-5-114(d) NMSA 1978, and except to the extent prohibited in Section 55-1-102(3) NMSA 1978 and Section 55-5-117(d) NMSA 1978, the effect of this article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this article.

(d) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary."

Section 6

Section 6. Section 55-5-104 NMSA 1978 (being Laws 1961, Chapter 96, Section 5-104) is repealed and a new section of the Uniform Commercial Code, Section 55-5-104 NMSA 1978, is enacted to read:

"55-5-104. FORMAL REQUIREMENTS.--A letter of credit, confirmation, advice, transfer, amendment or cancellation may be issued in any form that is a record and is authenticated (i) by a signature or (ii) in accordance with the agreement of the parties or the standard practice referred to in Section 55-5-108(e) NMSA 1978."

Section 7

Section 7. Section 55-5-105 NMSA 1978 (being Laws 1961, Chapter 96, Section 5-105) is repealed and a new section of the Uniform Commercial Code, Section 55-5-105 NMSA 1978, is enacted to read:

"55-5-105. CONSIDERATION.--Consideration is not required to issue, amend, transfer or cancel a letter of credit, advice or confirmation."

Section 8

Section 8. Section 55-5-106 NMSA 1978 (being Laws 1961, Chapter 96, Section 5-106) is repealed and a new section of the Uniform Commercial Code, Section 55-5-106 NMSA 1978, is enacted to read:

"55-5-106. ISSUANCE, AMENDMENT, CANCELLATION AND DURATION.--

(a) A letter of credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it so provides.

(b) After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer and issuer are not affected by an amendment or cancellation to which that person has not consented except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent.

(c) If there is no stated expiration date or other provision that determines its duration, a letter of credit expires one year after its stated date of issuance or, if none is stated, after the date on which it is issued.

(d) A letter of credit that states that it is perpetual expires five years after its stated date of issuance, or if none is stated, after the date on which it is issued."

Section 9

Section 9. Section 55-5-107 NMSA 1978 (being Laws 1961, Chapter 96, Section 5-107) is repealed and a new section of the Uniform Commercial Code, Section 55-5-107 NMSA 1978, is enacted to read:

"55-5-107. CONFIRMER, NOMINATED PERSON AND ADVISER.--

(a) A confirmer is directly obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an applicant and the confirmer had issued the letter of credit at the request and for the account of the issuer.

(b) A nominated person who is not a confirmer is not obligated to honor or otherwise give value for a presentation.

(c) A person requested to advise may decline to act as an adviser. An adviser that is not a confirmer is not obligated to honor or give value for a presentation. An adviser undertakes to the issuer and to the beneficiary accurately to advise the terms of the letter of credit, confirmation, amendment or advice received by that person and undertakes to the beneficiary to check the apparent authenticity of the request to advise. Even if the advice is inaccurate, the letter of credit, confirmation or amendment is enforceable as issued.

(d) A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation, amendment or advice has the rights and obligations of an adviser under Subsection (c) of this section. The terms in the notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to the extent permitted by the letter of credit, confirmation, amendment or advice received by the person who so notifies."

Section 10

Section 10. Section 55-5-108 NMSA 1978 (being Laws 1961, Chapter 96, Section 5-108) is repealed and a new section of the Uniform Commercial Code, Section 55-5-108 NMSA 1978, is enacted to read:

"55-5-108. ISSUER'S RIGHTS AND OBLIGATIONS.--

(a) Except as otherwise provided in Section

55-5-109 NMSA 1978, an issuer shall honor a presentation that, as determined by the standard practice referred to in Subsection (e) of this section, appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in Section 55-5-113 NMSA 1978 and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.

(b) An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the day of its receipt of documents:

(1) to honor;

(2) if the letter of credit provides for honor to be completed more than seven business days after presentation, to accept a draft or incur a deferred obligation; or

(3) to give notice to the presenter of discrepancies in the presentation.

(c) Except as otherwise provided in Subsection (d) of this section, an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given or any discrepancy not stated in the notice if timely notice is given.

(d) Failure to give the notice specified in Subsection (b) of this section or to mention fraud, forgery or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor, fraud or forgery as described in Section 55-5-109(a) NMSA 1978, or expiration of the letter of credit before presentation.

(e) An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

(f) An issuer is not responsible for:

(1) the performance or nonperformance of the underlying contract, arrangement or transaction;

(2) an act or omission of others; or

(3) observance or knowledge of the usage of a particular trade other than the standard practice referred to in Subsection (e) of this section.

(g) If an undertaking constituting a letter of credit under Section 55-5-102(a)(10) NMSA 1978 contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.

(h) An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.

(i) An issuer that has honored a presentation as permitted or required by this article:

(1) is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds;

(2) takes the documents free of claims of the beneficiary or presenter;

(3) is precluded from asserting a right of recourse on a draft under Sections 55-3-414 and 55-3-415 NMSA 1978;

(4) except as otherwise provided in Sections

55-5-110 and 55-5-117 NMSA 1978, is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender which are apparent on the face of the presentation; and

(5) is discharged to the extent of its performance under the letter of credit unless the issuer honored a presentation in which a required signature of a beneficiary was forged."

Section 11

Section 11. Section 55-5-109 NMSA 1978 (being Laws 1961, Chapter 96, Section 5-109) is repealed and a new section of the Uniform Commercial Code, Section 55-5-109 NMSA 1978, is enacted to read:

"55-5-109. FRAUD AND FORGERY.--

(a) If a presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant:

(1) the issuer shall honor the presentation, if honor is demanded by (i) a nominated person who has given value in good faith and without notice of forgery or material fraud, (ii) a confirmer who has honored its confirmation in good faith, (iii) a holder in due course of a

draft drawn under the letter of credit which was taken after acceptance by the issuer or nominated person, or (iv) an assignee of the issuer's or nominated person's deferred obligation that was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person; and

(2) the issuer, acting in good faith, may honor or dishonor the presentation in any other case.

(b) If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:

(1) the relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer;

(2) a beneficiary, issuer or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;

(3) all of the conditions to entitle a person to the relief under the law of this state have been met; and

(4) on the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for protection under Subsection (a)(1) of this section."

Section 12

Section 12. Section 55-5-110 NMSA 1978 (being Laws 1961, Chapter 96, Section 5-110) is repealed and a new section of the Uniform Commercial Code, Section 55-5-110 NMSA 1978, is enacted to read:

"55-5-110. WARRANTIES.--

(a) If its presentation is honored, the beneficiary warrants:

(1) to the issuer, any other person to whom presentation is made and the applicant that there is no fraud or forgery of the kind described in Section 55-5-109(a) NMSA 1978; and

(2) to the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit.

(b) The warranties in Subsection (a) of this section are in addition to warranties arising under Articles 3, 4, 7 and 8 because of the presentation or transfer of documents covered by any of those articles."

Section 13

Section 13. Section 55-5-111 NMSA 1978 (being Laws 1961, Chapter 96, Section 5-111) is repealed and a new section of the Uniform Commercial Code, Section 55-5-111 NMSA 1978, is enacted to read:

"55-5-111. REMEDIES.--

(a) If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor or nominated person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer has the burden of proving the amount of damages avoided. In the case of repudiation, the claimant need not present any document.

(b) If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach.

(c) If an adviser or nominated person other than a confirmer breaches an obligation under this article or an issuer breaches an obligation not covered in Subsection (a) or (b) of this section, a person to whom the obligation is owed may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach. To the extent of the confirmation, a confirmer has the liability of an issuer specified in this subsection and Subsections (a) and (b) of this section.

(d) An issuer, nominated person or adviser who is found liable under Subsection (a), (b) or (c) of this section shall pay interest on the amount owed thereunder from the date of wrongful dishonor or other appropriate date.

(e) Reasonable attorney's fees and other expenses of litigation must be awarded to the prevailing party in an action in which a remedy is sought under this article.

(f) Damages that would otherwise be payable by a party for breach of an obligation under this article may be liquidated by agreement or undertaking, but only in an amount or by a formula that is reasonable in light of the harm anticipated."

Section 14

Section 14. Section 55-5-112 NMSA 1978 (being Laws 1961, Chapter 96, Section 5-112) is repealed and a new section of the Uniform Commercial Code, Section 55-5-112 NMSA 1978, is enacted to read:

"55-5-112. TRANSFER OF LETTER OF CREDIT.--

(a) Except as otherwise provided in Section 55-5-113 NMSA 1978, unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or otherwise demand performance under a letter of credit may not be transferred.

(b) Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or carry out a transfer if:

(1) the transfer would violate applicable law; or

(2) the transferor or transferee has failed to comply with any requirement stated in the letter of credit or any other requirement relating to transfer imposed by the issuer which is within the standard practice referred to in Section 55-5-108(e) NMSA 1978 or is otherwise reasonable under the circumstances."

Section 15

Section 15. Section 55-5-113 NMSA 1978 (being Laws 1961, Chapter 96, Section 5-113) is repealed and a new section of the Uniform Commercial Code, Section 55-5-113 NMSA 1978, is enacted to read:

"55-5-113. TRANSFER BY OPERATION OF LAW.--

(a) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.

(b) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in Subsection (e) of this section, an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice referred to in Section 55-5-108(e) NMSA 1978 or, in the absence of such a practice, compliance with other reasonable procedures sufficient to protect the issuer.

(c) An issuer is not obliged to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.

(d) Honor of a purported successor's apparently complying presentation under Subsection (a) or (b) of this section has the consequences specified in Section 55-5-108(i) NMSA 1978 even if the purported successor is not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes of Section 55-5-109 NMSA 1978.

(e) An issuer whose rights of reimbursement are not covered by Subsection (d) of this section or substantially similar law and any confirmer or nominated person may decline to recognize a presentation under Subsection (b) of this section.

(f) A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obligations as a successor of a beneficiary under this section."

Section 16

Section 16. Section 55-5-114 NMSA 1978 (being Laws 1961, Chapter 96, Section 5-114, as amended) is repealed and a new section of the Uniform Commercial Code, Section 55-5-114 NMSA 1978, is enacted to read:

"55-5-114. ASSIGNMENT OF PROCEEDS.--

(a) In this section, "proceeds of a letter of credit" means the cash, check, accepted draft or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit. The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.

(b) A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The beneficiary may do so before presentation as a present assignment of its right to receive proceeds contingent upon its compliance with the terms and conditions of the letter of credit.

(c) An issuer or nominated person need not recognize an assignment of proceeds of a letter of credit until it consents to the assignment.

(d) An issuer or nominated person has no obligation to give or withhold its consent to an assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the assignee possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.

(e) Rights of a transferee beneficiary or nominated person are independent of the beneficiary's assignment of the proceeds of a letter of credit and are superior to the assignee's right to the proceeds.

(f) Neither the rights recognized by this section between an assignee and an issuer, transferee beneficiary or nominated person nor the issuer's or nominated person's payment of proceeds to an assignee or a third person affect the rights between the assignee and any person other than the issuer, transferee beneficiary or nominated person. The mode of creating and perfecting a security interest in or granting an assignment of a beneficiary's rights to proceeds is governed by Article 9 or other law. Against persons other than the issuer, transferee beneficiary or nominated person, the rights and obligations arising upon the creation of a security interest or other assignment of a beneficiary's right to proceeds and its perfection are governed by Article 9 or other law."

Section 17

Section 17. Section 55-5-115 NMSA 1978 (being Laws 1961, Chapter 96, Section 5-115) is repealed and a new section of the Uniform Commercial Code, Section 55-5-115 NMSA 1978, is enacted to read:

"55-5-115. STATUTE OF LIMITATIONS.--An action to enforce a right or obligation arising under this article must be commenced within one year after the expiration date of the relevant letter of credit or one year after the cause of action accrues, whichever occurs later. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach."

Section 18

Section 18. Section 55-5-116 NMSA 1978 (being Laws 1961, Chapter 96, Section 5-116, as amended) is repealed and a new section of the Uniform Commercial Code, Section 55-5-116 NMSA 1978, is enacted to read:

"55-5-116. CHOICE OF LAW AND FORUM.--

(a) The liability of an issuer, nominated person or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in Section 55-5-104 NMSA 1978 or by a provision in the person's letter of credit, confirmation or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

(b) Unless Subsection (a) of this section applies, the liability of an issuer, nominated person or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction, choice of law and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities, and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.

(c) Except as otherwise provided in this subsection, the liability of an issuer, nominated person or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation or other undertaking is expressly made subject. If (i) this article would govern the liability of an issuer, nominated person, or adviser under Subsection (a) or (b) of this section, (ii) the relevant undertaking incorporates rules of custom or practice, and (iii) there is conflict between this article and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in Section 55-5-

103(c) NMSA 1978.

(d) If there is conflict between this article and Article 3, 4, 4A or 9, this article governs.

(e) The forum for settling disputes arising out of an undertaking within this article may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with Subsection (a) of this section."

Section 19

Section 19. Section 55-5-117 NMSA 1978 (being Laws 1961, Chapter 96, Section 5-117) is repealed and a new section of the Uniform Commercial Code, Section 55-5-117 NMSA 1978, is enacted to read:

"55-5-117. SUBROGATION OF ISSUER, APPLICANT AND NOMINATED PERSON.--

(a) An issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary and of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.

(b) An applicant that reimburses an issuer is subrogated to the rights of the issuer against any beneficiary, presenter or nominated person to the same extent as if the applicant were the secondary obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights of the beneficiary stated in Subsection (a) of this section.

(c) A nominated person who pays or gives value against a draft or demand presented under a letter of credit is subrogated to the rights of:

(1) the issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant;

(2) the beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary; and

(3) the applicant to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.

(d) Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in Subsections (a) and (b) of this section do not arise until the issuer honors the letter of credit or otherwise pays, and the rights in Subsection (c) of this section do not arise until the nominated person pays or otherwise gives value. Until then, the issuer, nominated person and the applicant do not derive under this section present or prospective rights forming the basis of a claim, defense or excuse."

Section 20

Section 20. Section 55-9-103 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-103, as amended) is amended to read:

"55-9-103. PERFECTION OF SECURITY INTERESTS IN MULTIPLE STATE TRANSACTIONS.--

(1) Documents, instruments and ordinary goods.

(a) This subsection applies to documents, instruments, rights to proceeds of written letters of credit and goods other than those covered by a certificate of title described in Subsection (2) of this section, mobile goods described in Subsection (3) of this section and minerals described in Subsection (5) of this section.

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or non-perfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or non-perfection of the security interest from the time it attaches until thirty days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the thirty-day period.

(d) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the

jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by Sections 55-9-301 through 55-9-318 NMSA 1978 to perfect the security interest:

(i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

(ii) if the action is taken before the expiration of the period specified in Subparagraph (i) of this paragraph, the security interest continues perfected thereafter; or

(iii) for the purpose of priority over a buyer of consumer goods (Subsection (2) of Section 55-9-307 NMSA 1978), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in Subparagraphs (i) and (ii) of this paragraph.

(2) Certificate of title.

(a) This subsection applies to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or non-perfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(c) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in Paragraph (d) of Subsection (1) of this section.

(d) If goods are brought into this state while a security interest therein is perfected in any manner under the law of the

jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(3) Accounts, general intangibles and mobile goods.

(a) This subsection applies to accounts (other than an account described in Subsection (5) of this section on minerals) and general intangibles (other than uncertificated securities) and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in Subsection (2) of this section.

(b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or non-perfection of the security interest.

(c) If, however, the debtor is located in a jurisdiction which is not a part of the United States and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or non-

perfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the accounts debtor. As used in this paragraph, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(d) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, as amended, it shall be deemed located at the designated office of the

agent upon whom service of process may be made on behalf of the foreign air carrier.

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four months after a change of the debtor's location to another jurisdiction or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

(4) Chattel paper.

The rules stated for goods in Subsection (1) of this section apply to a possessory security interest in chattel paper. The rules stated for accounts in Subsection (3) of this section apply to a nonpossessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) Minerals.

Perfection and the effect of perfection or non-perfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

(6) Investment property.

(a) This subsection applies to investment property.

(b) Except as otherwise provided in Paragraph (f) of this subsection, during the time that a security certificate is located in a jurisdiction, perfection of a security interest, the effect of perfection or non-perfection and the priority of a security interest in the certified security represented thereby are governed by the local law of that jurisdiction.

(c) Except as otherwise provided in Paragraph (f) of this subsection, perfection of a security interest, the effect of perfection or non-

perfection and the priority of a security interest in an uncertificated security are governed by the local law of the issuer's jurisdiction as specified in Section 55-8-

110(d) NMSA 1978.

(d) Except as otherwise provided in Paragraph (f) of this subsection, perfection of a security interest, the effect of perfection or non-

perfection and the priority of a security interest in a security entitlement or securities account are governed by the local law of the securities intermediary's jurisdiction as specified in Section 55-8-110(e) NMSA 1978.

(e) Except as otherwise provided in Paragraph (f) of this subsection, perfection of a security interest, the effect of perfection or non-

perfection and the priority of a security interest in a commodity contract or commodity account are governed by the local law of the commodity intermediary's jurisdiction. The following rules determine a "commodity intermediary's jurisdiction" for purposes of this paragraph:

(i) if an agreement between the commodity intermediary and commodity customer specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction;

(ii) if an agreement between the commodity intermediary and commodity customer does not specify the governing law as provided in Subparagraph (i) of this paragraph, but expressly specifies that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction;

(iii) if an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in Subparagraph (i) or (ii) of this paragraph, the commodity intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the commodity customer's account; and

(iv) if an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in Subparagraph (i) or (ii) of this paragraph and an account

statement does not identify an office serving the commodity customer's account as provided in Subparagraph (iii) of this paragraph, the commodity intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the commodity intermediary.

(f) Perfection of a security interest by filing, automatic perfection of a security interest in investment property granted by a broker or securities intermediary and automatic perfection of a security interest in a commodity contract or commodity account granted by a commodity intermediary are governed by the local law of the jurisdiction in which the debtor is located. The rules in Paragraphs (c), (d) and (e) of Subsection (3) of this section apply to security interests to which this paragraph applies."

Section 21

Section 21. Section 55-9-104 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-104, as amended) is amended to read:

"55-9-104. TRANSACTIONS EXCLUDED FROM ARTICLE.--Chapter 55, Article 9 NMSA 1978 does not apply:

(a) to a security interest subject to any statute of the United States to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or

(b) to a landlord's lien; or

(c) to a lien given by statute or other rule of law for services or materials except as provided in Section 55-9-310 NMSA 1978 on priority of such liens; or

(d) to a transfer of a claim for wages, salary or other compensation of an employee; or

(e) to a transfer by government or a governmental subdivision or agency; or

(f) to a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper that is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness; or

(g) to a transfer of an interest in or claim in or under any policy of insurance, except as provided with respect to proceeds (Section 55-9-306 NMSA 1978) and priorities in proceeds (Section 55-9-312 NMSA 1978); or

(h) to a right represented by a judgment (other than a judgment taken on a right to payment that was collateral); or

(i) to any right of set-off; or

(j) except to the extent that provision is made for fixtures in Section 55-9-313 NMSA 1978, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or

(k) to a transfer in whole or in part of any claim arising out of tort; or

(l) to a transfer of an interest in any deposit account (Subsection (1) of Section 55-9-105 NMSA 1978), except as provided with respect to proceeds (Section 55-9-306 NMSA 1978) and priorities in proceeds (Section 55-9-312 NMSA 1978); or

(m) to a transfer of an interest in a letter of credit other than the rights to proceeds of written letters of credit."

Section 22

Section 22. Section 55-9-105 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-105, as amended) is amended to read:

"55-9-105. DEFINITIONS AND INDEX OF DEFINITIONS.--

(1) In Chapter 55, Article 9 NMSA 1978, unless the context otherwise requires:

(a) "account debtor" means the person who is obligated on an account, chattel paper or general intangible;

(b) "chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) "collateral" means the property subject to a security interest and includes accounts and chattel paper which have been sold;

(d) "debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the article dealing with the collateral, the obligor in any provision dealing with the obligation and may include both where the context so requires;

(e) "deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit;

(f) "document" means document of title as defined in the general definitions of Article 1 (Section 55-1-201 NMSA 1978) and a receipt of the kind described in Subsection (2) of Section 55-7-201 NMSA 1978;

(g) "encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;

(h) "goods" includes all things which are movable at the time the security interest attaches or which are fixtures (Section 55-9-313 NMSA 1978), but does not include money, documents, instruments, investment property, commodity contracts, accounts, chattel paper, general intangibles or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals and growing crops;

(i) "instrument" means a negotiable instrument (defined in Section 55-3-104 NMSA 1978) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment. The term does not include investment property;

(j) "mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate or the like;

(k) an advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation;

(l) "security agreement" means an agreement which creates or provides for a security interest;

(m) "secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party; and

(n) "transmitting utility" means any person primarily engaged in the railroad, street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline or the transmission or the production and transmission of electricity, steam, gas or water or the provision of sewer service.

(2) Other definitions applying to Chapter 55, Article 9 NMSA 1978 and the sections in which they appear are:

"account". Section 55-9-106 NMSA 1978;

"attach". Section 55-9-203 NMSA 1978;

"commodity contract". Section 55-9-115 NMSA 1978;

"commodity customer". Section 55-9-115 NMSA 1978;

"commodity intermediary". Section 55-9-115 NMSA 1978;

"construction mortgage". Subsection (1) of Section 55-9-313 NMSA 1978;

"consumer goods". Subsection (1) of Section 55-9-109 NMSA 1978;

"control". Section 55-9-115 NMSA 1978;

"equipment". Subsection (2) of Section 55-9-109 NMSA 1978;

"farm products". Subsection (3) of Section 55-9-109 NMSA 1978;

"fixture". Section 55-9-313 NMSA 1978;

"fixture filing". Section 55-9-313 NMSA 1978;

"general intangibles". Section 55-9-106 NMSA 1978;

"inventory". Subsection (4) of Section 55-9-109 NMSA 1978;

"investment property". Section 55-9-115 NMSA 1978;

"lien creditor". Subsection (3) of Section 55-9-301 NMSA 1978;

"proceeds". Subsection (1) of Section 55-9-306 NMSA 1978;

"purchase money security interest". Section 55-9-107 NMSA 1978; and

"United States". Section 55-9-103 NMSA 1978.

(3) The following definitions in other articles apply to Chapter 55, Article 9 NMSA 1978:

"broker". Section 55-8-102 NMSA 1978;

"certificated security". Section 55-8-102 NMSA 1978;

"check". Section 55-3-104 NMSA 1978;

"clearing corporation". Section 55-8-102 NMSA 1978;

"contract for sale". Section 55-2-106 NMSA 1978;

"control". Section 55-8-106 NMSA 1978;

"delivery". Section 55-8-301 NMSA 1978;

"entitlement holder". Section 55-8-102 NMSA 1978;

"financial asset". Section 55-8-102 NMSA 1978;

"holder in due course". Section 55-3-302 NMSA 1978;

"letter of credit". Section 55-5-102 NMSA 1978;

"note". Section 55-3-104 NMSA 1978;

"proceeds of a letter of credit". Section 55-5-114 NMSA 1978;

"sale". Section 55-2-106 NMSA 1978;

"securities intermediary". Section 55-8-102 NMSA 1978;

"security". Section 55-8-102 NMSA 1978;

"security certificate". Section 55-8-102 NMSA 1978; and

"security entitlement". Section 55-8-102 NMSA 1978.

(4) In addition, Chapter 55, Article 1 NMSA 1978 contains general definitions and principles of construction and interpretation applicable throughout Chapter 55, Article 9 NMSA 1978."

Section 23

Section 23. Section 55-9-106 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-106, as amended) is amended to read:

"55-9-106. DEFINITIONS--"ACCOUNT"--"GENERAL INTANGIBLES".-

-"Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. "General intangibles" means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, investment property, rights to proceeds of written letters of credit and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts."

Section 24

Section 24. Section 55-9-304 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-304, as amended) is amended to read:

"55-9-304. PERFECTION OF SECURITY INTEREST IN INSTRUMENTS, DOCUMENTS, PROCEEDS OF A WRITTEN LETTER OF CREDIT AND GOODS COVERED BY DOCUMENTS--PERFECTION BY PERMISSIVE FILING--TEMPORARY PERFECTION WITHOUT FILING OR TRANSFER OF POSSESSION.--

(1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in the rights to proceeds of a written letter of credit may be perfected by the secured party's taking possession of the letter of credit. A security interest in money or instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in Subsections (4) and (5) of this section and Subsections (2) and (3) of Section 55-9-306 NMSA 1978 on proceeds.

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments, certificated securities or negotiable documents is perfected without filing or the taking of possession for a period of twenty-one days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of twenty-one days without filing where a secured party having a perfected security interest in an instrument, a certificated security, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor:

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping,

transhipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to Subsection (3) of Section 55-9-312 NMSA 1978; or

(b) delivers the instrument or certificated security to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the twenty-one-day period in Subsections (4) and (5) of this section, perfection depends upon compliance with applicable provisions of Chapter 55, Article 9 NMSA 1978."

Section 25

Section 25. Section 55-9-305 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-305, as amended) is amended to read:

"55-9-305. WHEN POSSESSION BY SECURED PARTY PERFECTS SECURITY INTEREST WITHOUT FILING.--A security interest in goods, instruments, money, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. A security interest in the rights to proceeds of a written letter of credit may be perfected by the secured party's taking possession of the letter of credit. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in Chapter 55, Article 9 NMSA 1978. The security interest may be otherwise perfected as provided in that article before or after the period of possession by the secured party."

Section 26

Section 26. SAVING CLAUSE.-- A transaction arising out of or associated with a letter of credit that was issued before the effective date of this act and the rights, obligations and interests flowing from that transaction are governed by any statute or other law amended or repealed by this act as if repeal or amendment had not occurred and may be terminated, completed, consummated or enforced under that statute or other law.

Section 27

Section 27. APPLICABILITY.--This act applies to a letter of credit that is issued on or after the effective date of this act. This act does not apply to a transaction, event, obligation or duty arising out of or associated with a letter of credit that was issued before the effective date of this act.

Section 28

Section 28. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 104

WITH CERTIFICATE OF CORRECTION

CHAPTER 76

RELATING TO PARTNERSHIPS; ADDING PROVISIONS REGARDING LIMITED LIABILITY PARTNERSHIPS TO THE UNIFORM PARTNERSHIP ACT (1994); AMENDING, REPEALING, ENACTING AND RECOMPILING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 54-1A-101 NMSA 1978 (being Laws 1996, Chapter 53, Section 101) is amended to read:

"54-1A-101. DEFINITIONS.--As used in the Uniform Partnership Act (1994):

(1) "business" includes every trade, occupation and profession;

(2) "debtor in bankruptcy" means a person who is the subject of:

(i) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(ii) a comparable order under federal, state or foreign law governing insolvency;

(3) "distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee;

(4) "foreign limited liability partnership" means a partnership that is formed under laws other than the laws of this state and has the status of a limited liability partnership under those laws;

(5) "limited liability partnership" means a partnership that has filed a statement of qualification under Section 54-1A-1001 NMSA 1978 and does not have a similar statement in effect in any other jurisdiction;

(6) "partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under Section 54-1A-202 NMSA 1978, predecessor law, or comparable law of another jurisdiction, and includes a registered limited liability partnership;

(7) "partnership agreement" means the agreement, whether written, oral or implied, among the partners concerning the partnership, including amendments to the partnership agreement;

(8) "partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking;

(9) "partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights;

(10) "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality or any other legal or commercial entity;

(11) "property" means all property, real, personal or mixed, tangible or intangible, or any interest therein;

(12) "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;

(13) "statement" means a statement of partnership authority under Section 54-1A-303 NMSA 1978, a statement of denial under

Section 54-1A-304 NMSA 1978, a statement of dissociation under Section 54-1A-704 NMSA 1978, a statement of dissolution under Section 54-1A-805 NMSA 1978, a statement of merger under Section 54-1A-907 NMSA 1978, a statement of qualification under Section 54-1A-1001 NMSA 1978, a statement of foreign qualification under Section 54-1A-1102 NMSA 1978 or an amendment or cancellation of any of the foregoing; and

(14) "transfer" includes an assignment, conveyance, lease, mortgage, deed and encumbrance."

Section 2

Section 2. Section 54-1A-103 NMSA 1978 (being Laws 1996, Chapter 53, Section 103) is amended to read:

"54-1A-103. EFFECT OF PARTNERSHIP AGREEMENT--

NONWAIVABLE PROVISIONS.--

(a) Except as otherwise provided in Subsection (b) of this section, relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, the Uniform Partnership Act (1994) governs relations among the partners and between the partners and the partnership.

(b) The partnership agreement may not:

(1) vary the rights and duties under Section 54-1A-105 NMSA 1978, except to eliminate the duty to provide copies of statements to all of the partners;

(2) unreasonably restrict the right of access to books and records under Section 54-1A-403(b) NMSA 1978;

(3) eliminate the duty of loyalty under Section 54-1A-

404(b) or 54-1A-603(b)(3) NMSA 1978, but:

(i) the partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; or

(ii) all of the partners or a number or percentage specified in the partnership agreement may authorize or

ratify, after full disclosure of all material facts, a specific act or transaction that would violate the duty of loyalty;

(4) unreasonably reduce the duty of care under Section 54-

1A-404(c) or 54-1A-603(b)(3) NMSA 1978;

(5) eliminate the obligation of good faith and fair dealing under Section 54-1A-404(d) NMSA 1978, but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(6) vary the power to dissociate as a partner under Section 54-1A-602(a) NMSA 1978, except to require the notice under Section 54-1A-

601(1) NMSA 1978 to be in writing;

(7) vary the right of a court to expel a partner in the events specified in Section 54-1A-601(5) NMSA 1978;

(8) vary the requirement to wind up the partnership business in cases specified in Section 54-1A-801(4), (5) or (6) NMSA 1978;

(9) vary the law applicable to a limited liability partnership under Section 54-1A-106 (b) NMSA 1978; or

(10) restrict rights of third parties under the Uniform Partnership Act (1994)."

Section 3

Section 3. Section 54-1A-106 NMSA 1978 (being Laws 1996, Chapter 53, Section 106) is amended to read:

"54-1A-106. GOVERNING LAW.--

(a) Except as otherwise provided in Subsection (b) of this section, the law of the jurisdiction in which a partnership has its chief executive office governs the relations among the partners and the partnership.

(b) The law of this state governs relations among the partners and between the partners and the partnership and the liability of partners for an obligation of a limited liability partnership."

Section 4

Section 4. Section 54-1A-201 NMSA 1978 (being Laws 1996, Chapter 53, Section 201) is amended to read:

"54-1A-201. PARTNERSHIP AS ENTITY.--

(a) A partnership is an entity distinct from its partners.

(b) A limited liability partnership continues to be the same entity that existed before the filing of a statement of qualification under Section 54-1A-

1001 NMSA 1978."

Section 5

Section 5. Section 54-1A-306 NMSA 1978 (being Laws 1996, Chapter 53, Section 306) is amended to read:

"54-1A-306. PARTNER'S LIABILITY.--

(a) Except as otherwise provided in Subsections (b) and (c) of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(b) A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.

(c) An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution, indemnification or otherwise, for such an obligation solely by reason of being or so acting as a partner. This subsection applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership under Section 54-1A-1001(b) NMSA 1978.

(d) Subsection (c) of this section shall not affect the liability of a partner in a registered limited liability partnership for the partner's own tort, including any omission, negligence, wrongful act, misconduct or malpractice, or that of any person under the partner's direct supervision and control.

(e) 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 any tort, including omissions, negligence, wrongful acts, misconduct or malpractice, of the type described in Subsection (c) of this section unless such partner is personally liable under Subsection (d) of this section."

Section 6

Section 6. Section 54-1A-307 NMSA 1978 (being Laws 1996, Chapter 53, Section 307) is amended to read:

"54-1A-307. ACTIONS BY AND AGAINST PARTNERSHIP AND PARTNERS.--

(a) A partnership may sue and be sued in the name of the partnership.

(b) An action may be brought against the partnership and, to the extent not inconsistent with Section 54-1A-306 NMSA 1978, any or all of the partners in the same action or in separate actions.

(c) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.

(d) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under Section 54-1A-306 NMSA 1978 and:

(1) a judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(2) the partnership is a debtor in bankruptcy;

(3) the partner has agreed that the creditor need not exhaust partnership assets;

(4) a court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(5) liability is imposed on the partner by law or contract independent of the existence of the partnership.

(e) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under Section 54-

1A-308 NMSA 1978."

Section 7

Section 7. Section 54-1A-703 NMSA 1978 (being Laws 1996, Chapter 53, Section 703) is amended to read:

"54-1A-703. DISSOCIATED PARTNER'S LIABILITY TO OTHER PERSONS.--

(a) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in Subsection (b) of this section.

(b) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under Article 9 of the Uniform Partnership Act (1994), within two years after the partner's dissociation, only if the partner is liable for the obligation under Section 54-1A-306 NMSA 1978 and at the time of entering into the transaction the other party:

(1) reasonably believed that the dissociated partner was then a partner;

(2) did not have notice of the partner's dissociation; and

(3) is not deemed to have had knowledge under Section 54-1A-303(e) NMSA 1978 or notice under Section 54-1A-704(c) NMSA 1978.

(c) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(d) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation."

Section 8

Section 8. Section 54-1A-806 NMSA 1978 (being Laws 1996, Chapter 53, Section 806) is amended to read:

"54-1A-806. PARTNER'S LIABILITY TO OTHER PARTNERS AFTER DISSOLUTION.--

(a) Except as otherwise provided in Subsection (b) of this section and Section 54-1A-306 NMSA 1978, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under Section 54-1A-804 NMSA 1978.

(b) A partner who, with knowledge of the dissolution, incurs a partnership liability under Section 54-1A-804(2) NMSA 1978 by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability."

Section 9

Section 9. Section 54-1A-807 NMSA 1978 (being Laws 1996, Chapter 53, Section 807) is amended to read:

"54-1A-807. SETTLEMENT OF ACCOUNTS AND CONTRIBUTIONS AMONG PARTNERS.--

(a) In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this

section, must be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under Subsection (b) of this section.

(b) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, the profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partner's accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. Except as otherwise provided in Section 54-1A-306 NMSA 1978, a partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under Section 54-1A-306 NMSA 1978.

(c) If a partner fails to contribute the full amount required under Subsection (b) of this section, all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable under Section 54-1A-306 NMSA 1978. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under Section 54-1A-306 NMSA 1978.

(d) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under Section 54-1A-306 NMSA 1978.

(e) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(f) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership."

Section 10

Section 10. Section 54-1A-903 NMSA 1978 (being Laws 1996, Chapter 53, Section 903) is amended to read:

"54-1A-903. CONVERSION OF LIMITED PARTNERSHIP TO PARTNERSHIP.--

(a) A limited partnership may be converted to a partnership pursuant to this section.

(b) Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all of the partners.

(c) After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership.

(d) The conversion takes effect when the certificate of limited partnership is canceled.

(e) A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. Except as otherwise provided in Section 54-1A-306 NMSA 1978, the partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect."

Section 11

Section 11. Section 54-1A-906 NMSA 1978 (being Laws 1996, Chapter 53, Section 906) is amended to read:

"54-1A-906. EFFECT OF MERGER.--

(a) When a merger takes effect:

(1) the separate existence of every partnership or limited partnership that is a party to the merger, other than the surviving entity, ceases;

(2) all property owned by each of the merged partnerships or limited partnerships vests in the surviving entity;

(3) all obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity; and

(4) an action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding.

(b) The secretary of state of this state is the agent for service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the secretary of state of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the secretary of state shall mail a copy of the process to the surviving foreign partnership or limited partnership.

(c) A partner of the surviving partnership or limited partnership is liable for:

(1) all obligations of a party to the merger for which the partner was personally liable before the merger;

(2) all other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the entity; and

(3) except as otherwise provided in Section 54-1A-306 NMSA 1978, all obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the entity if the partner is a limited partner.

(d) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, the general partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in Section 54-1A-807 NMSA 1978 or in the limited partnership act of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.

(e) A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under Section 54-1A-701 NMSA 1978 or another statute specifically applicable to that party's interest with respect to a merger. The surviving entity is bound under Section 54-1A-702 NMSA 1978 by an act of a general partner dissociated under

this subsection, and the partner is liable under Section 54-1A-703 NMSA 1978 for transactions entered into by the surviving entity after the merger takes effect."

Section 12

Section 12. TEMPORARY PROVISION--RECOMPILATION.--Sections 54-1A-1001 through 54-1A-1004 NMSA 1978 (being Laws 1996, Chapter 53, Sections 1001 through 1003 and Section 1005) are recompiled as Sections 54-1A-1201 through 54-1A-1204 NMSA 1978.

Section 13

Section 13. Section 54-1A-1005 NMSA 1978 (being Laws 1996, Chapter 53, Section 1006) is recompiled as Section 54-1A-1205 NMSA 1978 and is amended to read:

"54-1A-1205. APPLICABILITY.--

(a) The Uniform Partnership Act (1994) governs only a partnership formed under the laws of this state:

(1) after the effective date of that act, unless that partnership is continuing the business of a dissolved partnership under Section 54-

1-41 NMSA 1978, a part of the prior Uniform Partnership Act; and

(2) before the effective date of that act, that elects, as provided by Subsection (b) of this section, to be governed by that act.

(b) A partnership formed under the laws of this state before the effective date of the Uniform Partnership Act voluntarily may elect, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be governed by the Uniform Partnership Act (1994). Except as otherwise provided in Section 54-1A-306 NMSA 1978, the provisions of that act relating to the liability of the partnership's partners to third parties apply to limit those partners' liability to a third party who had done business with the partnership within one year preceding the partnership's election to be governed by that act, only if the third party knows or has received a notification of the partnership's election to be governed by that act.

(c) Until a partnership formed under the laws of this state before the effective date of the Uniform Partnership Act (1994) elects

voluntarily to be governed by that act, the partnership shall continue to be governed by the provisions of the prior Uniform Partnership Act.

(d) Subsections (a) and (b) of this section shall not relieve a partnership formed under the laws of this state that elects to be governed by the Uniform Partnership Act (1994) from filing any statement of qualification required by Section 54-1A-1001 NMSA 1978.

(e) The Uniform Partnership Act (1994) governs any partnership formed at any time under laws other than the laws of this state which shall file any statement of foreign qualification required by Section 54-1A-1102."

Section 14

Section 14. A new section of the Uniform Partnership Act (1994), Section 54-1A-1001 NMSA 1978, is enacted to read:

"54-1A-1001. STATEMENT OF QUALIFICATION.--

(a) A partnership may become a limited liability partnership pursuant to this section.

(b) The terms and conditions on which a partnership becomes a limited liability partnership shall be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions.

(c) After the approval required by Subsection (b) of this section, a partnership may become a limited liability partnership by filing a statement of qualification. The statement shall contain:

(1) the name of the partnership;

(2) the street address of the partnership's chief executive office and, if different, the street address of an office in this state, if any;

(3) if the partnership does not have an office in this state, the name and street address of the partnership's agent for service of process;

(4) a statement that the partnership elects to be a limited liability partnership; and

(5) a deferred effective date, if any.

(d) The agent of a limited liability partnership for service of process must be an individual who is a resident of this state or other person authorized to do business in this state.

(e) The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to Section 54-1A-105(d) NMSA 1978 or revoked pursuant to Section 54-1A-1003 NMSA 1978.

(f) The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under Subsection (c) of this section.

(g) The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.

(h) An amendment or cancellation of a statement of qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation."

Section 15

Section 15. A new section of the Uniform Partnership Act (1994), Section 54-1A-1002 NMSA 1978, is enacted to read:

"54-1A-1002. STATEMENT OF QUALIFICATION--NAME.--The name of a limited liability partnership must end with "Registered Limited Liability Partnership", "Limited Liability Partnership", "R.L.L.P.", "L.L.P.", "RLLP" or "LLP"."

Section 16

Section 16. A new section of the Uniform Partnership Act (1994), Section 54-1A-1003 NMSA 1978, is enacted to read:

"54-1A-1003. ANNUAL REPORT.--

(a) A limited liability partnership, and a foreign limited liability partnership authorized to transact business in this state, shall file an annual report in the office of the secretary of state which contains:

(1) the name of the limited liability partnership and the state or other jurisdiction under whose laws the foreign limited liability partnership is formed;

(2) the street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this state, if any; and

(3) if the partnership does not have an office in this state, the name and street address of the partnership's current agent for service of process.

(b) An annual report must be filed between January 1 and April 1 of each year following the calendar year in which a partnership files a statement of qualification or a foreign partnership becomes authorized to transact business in this state.

(c) The secretary of state may revoke the statement of qualification of a partnership that fails to file an annual report when due or pay the required filing fee. To do so, the secretary of state shall provide the partnership at least 60 days' written notice of intent to revoke the statement. The notice must be mailed to the partnership at its chief executive office set forth in the last statement of qualification or annual report. The notice must specify the annual report that has not been filed, the fee that has not been paid and the effective date of the revocation. The revocation is not effective if the annual report is filed and the fee is paid before the effective date of the revocation.

(d) A revocation under Subsection (c) of this section only affects a partnership's status as a limited liability partnership and is not an event of dissolution of the partnership.

(e) A partnership whose statement of qualification has been revoked may apply to the secretary of state for reinstatement within two years after the effective date of the revocation. The application must state:

(1) the name of the partnership and the effective date of the revocation; and

(2) that the ground for revocation either did not exist or has been corrected.

(f) A reinstatement under Subsection (e) of this section relates back to and takes effect as of the effective date of the

revocation, and the partnership's status as a limited liability partnership continues as if the revocation had never occurred."

Section 17

Section 17. A new section of the Uniform Partnership Act (1994), Section 54-1A-1101 NMSA 1978, is enacted to read:

"54-1A-1101. LAW GOVERNING FOREIGN LIMITED LIABILITY PARTNERSHIP.--

(a) The law under which a foreign limited liability partnership is formed governs relations among the partners and between the partners and the partnership and the liability of partners for obligations of the partnership.

(b) A foreign limited liability partnership may not be denied a statement of foreign qualification by reason of any difference between the law under which the partnership was formed and the law of this state.

(c) A statement of foreign qualification does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a partnership may not engage in or exercise in this state as a limited liability partnership."

Section 18

Section 18. A new section of the Uniform Partnership Act (1994), Section 54-1A-1102 NMSA 1978, is enacted to read:

"54-1A-1102. STATEMENT OF FOREIGN QUALIFICATION.--

(a) Before transacting business in this state, a foreign limited liability partnership must file a statement of foreign qualification. The statement must contain:

(1) the name of the foreign limited liability partnership which satisfies the requirements of the state or other jurisdiction under whose law it is formed and ends with "Registered Limited Liability Partnership", "Limited Liability Partnership", "R.L.L.P.", "L.L.P.", "RLLP" or "LLP";

(2) the street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this state, if any;

(3) if there is no office of the partnership in this state, the name and street address of the partnership's agent for service of process; and

(4) a deferred effective date, if any.

(b) The agent of a foreign limited liability company for service of process must be an individual who is a resident of this state or other person authorized to do business in this state.

(c) The status of a partnership as a foreign limited liability partnership is effective on the later of the filing of the statement of foreign qualification or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to Section 54-1A 105(d) NMSA 1978 or revoked pursuant to Section 54-1A 1003 NMSA 1978.

(d) An amendment or cancellation of a statement of foreign qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation."

Section 19

Section 19. A new section of the Uniform Partnership Act (1994), Section 54-1A-1103 NMSA 1978, is enacted to read:

"54-1A-1103. EFFECT OF FAILURE TO QUALIFY.--

(a) A foreign limited liability partnership transacting business in this state may not maintain an action or proceeding in this state unless it has in effect a statement of foreign qualification.

(b) The failure of a foreign limited liability partnership to have in effect a statement of foreign qualification does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this state.

(c) A limitation on personal liability of a partner is not waived solely by transacting business in this state without a statement of foreign qualification.

(d) If a foreign limited liability partnership transacts business in this state without a statement of foreign qualification, the secretary of state is its agent for service of process with respect to a right of action arising out of the transaction of business in this state."

Section 20

Section 20. A new section of the Uniform Partnership Act (1994), Section 54-1A-1104 NMSA 1978, is enacted to read:

"54-1A-1104. ACTIVITIES NOT CONSTITUTING TRANSACTING BUSINESS.--

(a) Activities of a foreign limited liability partnership, which do not constitute transacting business for the purpose of the Uniform Partnership Act (1994), include:

(1) maintaining, defending or settling an action or proceeding whether judicial, administrative, arbitration or mediation;

(2) holding meetings of its partners or carrying on any other activity concerning its internal affairs;

(3) maintaining bank accounts;

(4) maintaining offices or agencies for the transfer, exchange and registration of the partnership's own securities or appointing and maintaining trustees or depositories with respect to those securities;

(5) selling through independent contractors;

(6) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(7) creating as borrower or lender or acquiring indebtedness, with or without a mortgage or other security interest in real or personal property;

(8) securing or collecting debts or foreclosure mortgages or other security interests in property securing the debts, and holding, protecting and maintaining property so acquired;

(9) investing in or acquiring, in transactions outside New Mexico, royalties and other non-operating mineral interests; executing division orders, contracts of sale and other instruments incidental to the ownership of such non-operating mineral interests;

(10) owning or controlling an interest in a corporation that transacts business in this state or is organized under the laws of this state;

(11) being a partner in a partnership, including a limited liability partnership, that transacts business in this state or is organized under the laws of this state;

(12) being a member or manager of a limited liability company that transacts business in this state or is organized under the laws of this state;

(13) conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions; and

(14) transacting business in interstate commerce.

(b) For purposes of the Uniform Partnership Act (1994), the ownership in this state of income-producing real property or tangible personal property, other than property excluded under Subsection (a) of this section constitutes transacting business in this state.

(c) This section does not apply in determining the contracts or activities that may subject a foreign limited liability partnership to service of process, taxation or regulation under any other law of this state."

Section 21

Section 21. A new section of the Uniform Partnership Act (1994), Section 54-1A-1105 NMSA 1978, is enacted to read:

"54-1A-1105. ACTION BY ATTORNEY GENERAL.--The attorney general may maintain an action to restrain a foreign limited partnership from transacting business in this state in violation of the Uniform Limited Partnership Act."

Section 22

Section 22. A new section of the Uniform Partnership Act (1994), Section 54-1A-1206 NMSA 1978, is enacted to read:

"54-1A-1206. FILING FEES.--The filing fee for any statement, annual report or other document filed with the secretary of state under the Uniform Partnership Act (1994) is fifty dollars ($50.00)."

Section 23

Section 23. REPEAL.--Sections 54-1-44 through 54-1-46 and 54-1-48 NMSA 1978 (being Laws 1995, Chapter 185, Sections 9 through 11 and 13) are repealed.

Section 24

Section 24. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 105, AS AMENDED

CHAPTER 77

RELATING TO PUBLIC HOLIDAYS; ESTABLISHING A GUADALUPE-

HIDALGO TREATY DAY.

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

Section 1

Section 1. February 2 of each year shall be set apart and known as "Guadalupe Hidalgo treaty day" in recognition and commemoration of the day in 1848 on which the Treaty of Peace, Friendship, Limits and Settlement, commonly known as the Treaty of Guadalupe Hidalgo, was executed between the United States and the Mexican Republic.

HB 464

CHAPTER 78

RELATING TO FOOD PRODUCTS; PROVIDING FOR DONATION OF GAME MEAT.

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

Section 1

Section 1. DONATED GAME MEAT PRODUCTS.--

A. Wild game meat products may be donated by hunters, taken to a commercial meat processor for preparation and delivery to charitable, religious or other nonprofit organizations and served for human consumption at no charge if transported, stored and processed according to procedures established by the department of environment.

B. For purposes of this section, "wild game" means deer, elk, antelope, caribou, ibex, oryx and Barbary sheep.

HOUSE AGRIGULTURE AND WATER

RESOURCES COMMITTEE SUBSTITUTE FOR

HOUSE BILL 468

CHAPTER 79

RELATING TO COUNTY FLOOD CONTROL; AUTHORIZING A BOARD OF COUNTY COMMISSIONERS TO BORROW MONEY FROM THE NEW MEXICO FINANCE AUTHORITY FOR FLOOD CONTROL PURPOSES.

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

Section 1

Section 1. Section 4-50-2 NMSA 1978 (being Laws 1921, Chapter 163, Section 2, as amended) is amended to read:

"4-50-2. TAX LEVY--COUNTY FLOOD FUND--AUTHORITY TO BORROW.--A board of county commissioners, upon certification of the need and estimated cost by the county flood commissioner, may contract to borrow funds through state or federal agencies or through the New Mexico finance authority for flood control purposes and may levy an annual tax at a rate not to exceed one dollar fifty cents ($1.50), or any lower maximum amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon a tax imposed under this section, on each one thousand dollars ($1,000) of net taxable value, as that term is defined in the Property Tax Code, of all the taxable property located within five miles of both sides of any river or stream which contributes to or is subject to flood conditions destructive to property or dangerous to human life. Such taxes shall be levied and collected for the purpose of creating a fund which shall be used to construct and maintain dikes, dams, embankments, ditches or such other structures or excavations necessary to prevent flood waters

from damaging property or human life within such counties or to repay, according to their terms, any state or federal loans obtained for flood control purposes. Such tax shall be assessed, levied and collected as other taxes are collected and when so collected shall be known as the "county flood fund", and such fund shall be maintained in such a manner as to keep separate records of all flood control taxes collected from each stream or river drainage area. The taxes collected shall only be used and disbursed for flood control projects in the drainage area for which they were assessed in accordance with the provisions of Sections 4-50-1 through 4-50-9 NMSA 1978 and shall not be transferred to any other fund or purpose."

Section 2

Section 2. Section 4-50-6 NMSA 1978 (being Laws 1921, Chapter 163, Section 6, as amended) is amended to read:

"4-50-6. LIMIT ON INDEBTEDNESS--PAYMENT OF EXPENSES.--

A. No expense or indebtedness shall be incurred by any county flood commissioner in excess of the amount of any annual levy, excepting where there may be remaining on hand funds arising from previous similar levies; provided, however, that where a board of county commissioners, upon the recommendation of the county flood commissioner, contracts to borrow funds from a state or federal agency or from the New Mexico finance authority for flood control projects and pledges the proceeds of the annual levies for their repayment, the amount which may be borrowed shall be limited by the terms of repayment so that no annual installment of principal and interest shall exceed eighty percent of the amount produced by the annual levy in the year preceding the signing of the loan agreement.

B. All expenses and indebtedness incurred by any county flood commissioner under the provisions of Sections 4-50-1 through 4-50-9 NMSA 1978 shall be subject to the approval of the board of county commissioners. Upon the approval of the board, the expenses and indebtedness incurred shall be paid upon warrant drawn by the board of county commissioners, upon the filing by the county flood commissioner of vouchers for the expenditures and indebtedness with the board of county commissioners. The warrants shall be paid by the county treasurer out of the appropriate separate account within the county flood fund. The county clerk shall file and keep a record of all vouchers filed with the board of county commissioners by the county flood commissioner."

HOUSE BILL 496

CHAPTER 80

RELATING TO LAND SURVEYING; AMENDING SECTION 61-23-28.1 NMSA 1978 (BEING LAWS 1993, CHAPTER 218, SECTION 36) TO PROVIDE FOR FILING AND RECORDING A BOUNDARY SURVEY PLAT WITH A RESTRICTED CERTIFICATE BY THE SURVEYOR.

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

Section 1

Section 1. Section 61-23-28.1 NMSA 1978 (being Laws 1993, Chapter 218, Section 36) is amended to read:

"61-23-28.1. SURVEYING--RECORD OF SURVEY.--

A. Except as provided in Subsection C of this section, after the completion of a boundary survey in conformity with the practice of surveying as defined in the Engineering and Surveying Practice Act and in compliance with the minimum standards for surveying as published by the board, a professional surveyor shall file with the county clerk in the county in which the survey was made a record of survey relating to land boundaries and property lines. The county clerk shall accept and record the record of survey. Filing procedures shall be prescribed in the board's minimum standards. The record of survey required to be filed and recorded pursuant to this section shall be filed within thirty calendar days after the completion of the survey or approval by the governing authority.

B. Fees for recording a record of survey will be in conformance with Sections 14-8-12 through 14-8-16 NMSA 1978. The county clerk shall keep a proper index of the record of survey by the name of the owner and by section, township and range or projected section, township and range if the subject tract is in a land grant and with references with other legal subdivisions. These records shall be kept in conformance with Sections 14-8-12 through 14-8-16 NMSA 1978.

C. For those surveys that do not create a division of land but only show existing tracts of record, a professional surveyor shall file and the county clerk shall accept and record a plat of survey entitled "boundary survey plat" that shall:

(1) have on it a printed certification by the professional surveyor stating that "this is a boundary survey plat of an existing tract", or existing tracts if appropriate, and that "it is not a land division or subdivision as defined in the New Mexico Subdivision Act";

(2) identify all tracts shown by the uniform parcel code designation established by the county assessor;

(3) meet the minimum standards for surveying in New Mexico as established by the board;

(4) not exceed a size of eighteen inches by twenty-four inches and be at least eight and one-half inches by eleven inches; and

(5) consist of two black-line copies made by the surveyor from a mylar original, which he shall maintain in his files; one shall be filed and recorded by the county clerk and the other with the recording information on it shall be delivered by the county clerk to the county assessor."

HOUSE BILL 516

CHAPTER 81

RELATING TO CAPITAL EXPENDITURES; CHANGING THE PURPOSE OF A SEVERANCE TAX BOND APPROPRIATION TO THE DEPARTMENT OF ENVIRONMENT; MAKING AN APPROPRIATION TO THE STATE ENGINEER FOR ACEQUIA DE LA CIENEGA IMPROVEMENTS IN SANTA FE COUNTY; DECLARING AN EMERGENCY.

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

Section 1

Section 1. SEVERANCE TAX BONDS--CHANGE OF AGENCY--

CHANGE IN PURPOSE--APPROPRIATION.--The balance of the proceeds from severance tax bonds appropriated to the department of environment pursuant to Subsection X of Section 6 of Chapter 4 of Laws 1996 (

1st S.S.) for the purpose of installing a water system extension, including necessary improvements, to the village of La

Cienega water system located in Santa Fe county shall not be expended for that purpose but is

reauthorized and appropriated to the state engineer for the purpose of installing a supplemental well and pipeline for the

acequia de La

Cienega in Santa Fe county.

Section 2

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

HOUSE BILL 538

WITH EMERGENCY CLAUSE

SIGNED APRIL 8, 1997

CHAPTER 82

RELATING TO THE WATER QUALITY CONTROL COMMISSION; AMENDING SECTION 74-6-3 NMSA 1978 (BEING LAWS 1967, CHAPTER 190, SECTION 3, AS AMENDED).

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

Section 1

Section 1. Section 74-6-3 NMSA 1978 (being Laws 1967, Chapter 190, Section 3, as amended) is amended to read:

"74-6-3. WATER QUALITY CONTROL COMMISSION CREATED.--

A. There is created the "water quality control commission" consisting of:

(1) the secretary of environment or a member of his staff designated by him;

(2) the director of the department of game and fish or a member of his staff designated by him;

(3) the state engineer or a member of his staff designated by him;

(4) the chairman of the oil conservation commission or a member of his staff designated by him;

(5) the director of the state park and recreation division of the energy, minerals and natural resources department or a member of his staff designated by him;

(6) the director of the New Mexico department of agriculture or a member of his staff designated by him;

(7) the chairman of the soil and water conservation commission or a soil and water conservation district supervisor designated by him;

(8) the director of the bureau of mines and mineral resources at the New Mexico institute of mining and technology or a member of his staff designated by him; and

(9) three representatives of the public to be appointed by the governor for terms of four years and who shall be compensated from the budgeted funds of the department of environment in accordance with the provisions of the Per Diem and Mileage Act.

B. No member of the commission shall receive or shall have received, during the previous two years, a significant portion of his income directly or indirectly from permit holders or applicants for a permit and shall, upon the acceptance of his appointment and prior to the performance of any of his duties, file a statement of disclosure with the secretary of state disclosing any amount of money or other valuable consideration, and its source, the value of which is in excess of ten percent of his gross personal income in each of the preceding two years, that he received directly or indirectly from permit holders or applicants for permits required under the Water Quality Act.

C. The commission shall elect a chairman and other necessary officers and shall keep a record of its proceedings.

D. A majority of the commission constitutes a quorum for the transaction of business, but no action of the commission is valid unless concurred in by six or more members present at a meeting.

E. The commission is the state water pollution control agency for this state for all purposes of the federal act and the wellhead protection and sole source aquifer programs of the federal Safe Drinking Water Act and may take all action necessary and appropriate to secure to this state, its political subdivisions or interstate agencies the benefits of that act and those programs.

F. The commission is administratively attached, as defined in the Executive Reorganization Act, to the department of environment."

HOUSE BILL 559, AS AMENDED

CHAPTER 83

REPEALING THE PRODUCER'S LIEN ACT, SECTIONS 48-5B-1 THROUGH 48-5B-3, 48-5B-5 THROUGH 48-5B-6.1, 48-5B-7, 48-5B-9 and 48-5B-14 NMSA 1978 (BEING LAWS 1995, CHAPTER 157, SECTIONS 1 THROUGH 3, LAWS 1996, CHAPTER 56, SECTION 4, LAWS 1995, CHAPTER 157, SECTION 6, LAWS 1996, CHAPTER 56, SECTION 9 AND LAWS 1995, CHAPTER 157, SECTIONS 7, 9 AND 14, AS AMENDED).

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

Section 1

Section 1. REPEAL.--Sections 48-5B-1 through 48-5B-3, 48-5B-5 through 48-5B-6.1, 48-5B-7, 48-5B-9 and 48-5B-14 NMSA 1978 (being Laws 1995, Chapter 157, Sections 1 though 3, Laws 1996, Chapter 56, Section 4, Laws 1995, Chapter 157, Section 6, Laws 1996, Chapter 56, Section 9 and Laws 1995, Chapter 157, Sections 7, 9 and 14, as amended) are repealed.

HOUSE BILL 802

CHAPTER 84

RELATING TO INSURANCE; AUTHORIZING PAYMENT TO DOCTORS OF ORIENTAL MEDICINE BY INSURERS OFFERING MEDICAL PAYMENTS AS PART OF VEHICLE COVERAGE; ENACTING A NEW SECTION OF THE NMSA 1978.

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

Section 1

Section 1. A new section of Article 32 of the New Mexico Insurance Code is enacted to read:

"FREEDOM OF CHOICE--DOCTOR OF ORIENTAL MEDICINE.--

A. Within the area and limits of coverage offered an insured and selected by him in the application for insurance, for vehicle insurance medical payments as defined in Subsection D of Section 59A-7-7 NMSA 1978, the right of any person to exercise full freedom of choice in the selection of any licensed doctor of oriental medicine for treatment within his scope of practice shall not be restricted under any new policy of vehicle insurance issued after July 1, 1997 in this state or in the processing of any claim made pursuant to that policy. Any person insured or claiming benefits under the medical payments portion of such vehicle insurance policy providing within its coverage for payment of benefits or indemnity for any condition or circumstance described in Subsection D of Section 59A-7-7 NMSA 1978 shall be deemed to have complied with the requirements of the policy as to submission of proof of loss upon submitting written proof supported by any doctor of oriental medicine.

B. As used in this section, "doctor of oriental medicine" means a person licensed as a doctor of oriental medicine pursuant to the Acupuncture and Oriental Medicine Practice Act."

HOUSE BILL 856

CHAPTER 85

RELATING TO ELECTIONS; REQUIRING ADJUSTMENT OF PRECINCT BOUNDARY LINES IN PREPARATION FOR THE UPCOMING FEDERAL DECENNIAL CENSUS; AMENDING SECTIONS OF THE ELECTION CODE.

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

Section 1

Section 1. 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. Before each federal decennial census, every precinct boundary shall be adjusted to 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 designated census block boundary on the federal PL 94-171 2000 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,

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:

(1) all state and federal highways;

(2) all numbered and named county roads that have been certified to the state highway and transportation department;

(3) all military installation boundaries and federal and state prison boundaries;

(4) all major railroad lines; and

(5) other major terrain features such as flowing rivers and streams, arroyos, powerlines, pipelines and ridgelines and other acceptable census block

boundaries.

C. The board of county commissioners and the county clerks, upon receipt of the standard base maps from the secretary of state, shall:

(1) adjust all urban precinct boundaries to coincide with numbered or named street boundaries;

(2) adjust all nonurban precinct boundaries to coincide with suitable visible terrain features shown on the standard base map; provided that in order to make an adjustment, two or more existing precincts may be consolidated without consolidating existing polling places; and provided further that the precincts shall be composed of contiguous and compact areas, and state, county and municipal boundary lines may serve as precinct boundaries; and

(3) 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.

D. The precincts shown upon the standard base maps submitted pursuant to the provisions 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 for the 2001 redistricting. For the 2002 and subsequent primary and general elections, changes in precincts shall be made in accordance with the provisions of Chapter 1, Article 3 NMSA 1978."

Section 2

Section 2. Section 1-3-13 NMSA 1978 (being Laws 1983, Chapter 223, Section 4, as amended) is amended to read:

"1-3-13. SECRETARY OF STATE POWERS AND DUTIES.--

A. The secretary of state shall review all county precinct maps submitted pursuant to Section 1-3-12 NMSA 1978 for compliance with the provisions of the Precinct Boundary Adjustment Act. Those county precinct maps determined not to be in compliance with the precinct boundary criteria set forth in Subsection A of Section 1-13-12 NMSA 1978 shall be rejected and returned to the appropriate county clerk with a written statement setting forth those instances where the map does not comply. The county clerk and the board of county commissioners shall make the required adjustments and resubmit one copy of the corrected county precinct map within thirty days after receiving notice of noncompliance.

B. Prior to January 1, 2002, if any precinct boundary adjustments are necessary to meet the legal and constitutional requirements of legislative reapportionment, the secretary of state shall

notify any county of those boundary adjustments that are necessary in that county. Upon review and certification of the adjusted precinct boundaries, the county shall submit the certified precinct changes to the secretary of state for final approval of the precincts for the 2002 primary and general elections."

HOUSE BILL 864, AS AMENDED

CHAPTER 86

AMENDING SECTION 24-10-3 NMSA 1978 (BEING LAWS 1963, CHAPTER 59, SECTION 1) COMMONLY REFERRED TO AS THE "GOOD SAMARITAN" LAW, TO CLARIFY THE SCOPE OF THE IMMUNITY FROM LIABILITY GRANTED.

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

Section 1

Section 1. Section 24-10-3 NMSA 1978 (being Laws 1963, Chapter 59, Section 1) is amended to read:

"24-10-3. PERSONS COMING TO AID OR RESCUE OF ANOTHER RENDERING EMERGENCY CARE--RELEASE FROM LIABILITY.--No person who comes to the aid or rescue of another person by providing care or assistance in good faith at or near the scene of an emergency, as defined in Section 24-10-4 NMSA 1978, shall be held liable for any civil damages as a result of any action or omission by that person in providing that care or assistance,

except when liable for an act of gross negligence; but nothing in this section applies to the provision of

emergency care or assistance when it is rendered for remuneration or with the expectation of remuneration or is rendered by a person or agent of a principal who was at the scene of the accident or emergency because he or his principal was soliciting business or performing or seeking to perform some services for remuneration."

HOUSE BILL 929, AS AMENDED

CHAPTER 87

RELATING TO ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL; AMENDING A CERTAIN SECTION OF THE NMSA 1978 TO INCREASE DEBT AUTHORIZATION.

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

Section 1

Section 1. Section 72-16-44 NMSA 1978 (being Laws 1963, Chapter 311, Section 44, as amended) is amended to read:

"72-16-44. ISSUANCE OF BONDS AND INCURRENCE OF DEBT.--

The authority is authorized to borrow money in anticipation of taxes or other revenues, or both, and to issue bonds to evidence the amount so borrowed. No bonded indebtedness or any other indebtedness not payable in full within one year, except for interim debentures as provided in Sections 72-16-46 and 72-16-89 through 72-16-91 NMSA 1978, shall be created by the authority without first submitting a proposition of issuing such bonds to the qualified electors of the authority and being approved by a majority of such electors voting thereon at an election held for that purpose in accordance with Sections 72-16-28 through 72-16-34 NMSA 1978 and all laws amendatory thereof and supplemental thereto. Bonds so authorized may be issued in one series or more and may mature at such time or times not exceeding forty years from their issuance as the board may determine. The total of all outstanding indebtedness at any one time shall not exceed forty million dollars ($40,000,000) without prior approval of the state legislature."

HOUSE BILL 1018, AS AMENDED

CHAPTER 88

RELATING TO MINING; AMENDING SECTIONS OF THE NEW MEXICO MINING ACT TO CHANGE THE MEMBERSHIP OF THE MINING COMMISSION, TO AMEND THE NUMBER OF REQUIRED INSPECTIONS, TO ALLOW FOR A CHANGE OF VENUE FOR CITIZEN SUITS AND TO INCREASE PUBLIC NOTICE AND OPPORTUNITY FOR HEARINGS REGARDING PERMITS.

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

Section 1

Section 1. Section 69-36-6 NMSA 1978 (being Laws 1993, Chapter 315, Section 6) is amended to read:

"69-36-6. MINING COMMISSION--CREATED--MEMBERS.--

A. The "mining commission" is created. The commission shall consist of seven voting members, including:

(1) the director of the bureau of mines and mineral resources of the New Mexico institute of mining and technology or his designee;

(2) the secretary of environment or his designee;

(3) the state engineer or his designee;

(4) the commissioner of public lands or his designee;

(5) the director of the department of game and fish or his designee; and

(6) two members of the public and an alternate for each, all to be appointed by the governor with the advice and consent of the senate. The public members shall be chosen to represent and to balance environmental and mining interests while minimizing conflicts of interest. No more than one of the public members and one of the alternates appointed may belong to the same political party. When the initial appointments are made, one of the public members and his alternate will be designated to serve for two-year terms, after which all public members shall serve for four years. An alternate member may vote only in the absence of the public member for whom he is the alternate.

B. The chairman of the soil and water conservation commission and the director of the agricultural experiment station of New Mexico state university or their designees shall be nonvoting members of the commission.

C. The commission shall elect a chairman and other necessary officers and keep records of its proceedings.

D. The commission shall convene upon the call of the chairman or a majority of its members.

E. A majority of the voting members of the commission shall be a quorum for the transaction of business. However, no action of the commission shall be valid unless concurred upon by at least four of the members present.

F. No member of the commission, with the exception of one of the public members and his alternate, shall receive, or shall have received during the previous two years, more than ten percent of his income directly or indirectly from permit holders or applicants for permits. Each member of the commission shall, upon acceptance of his appointment and prior to the performance of any of his duties, file a statement of disclosure with the secretary of state stating:

(1) the amount of money or other valuable consideration received, whether provided directly or indirectly, from persons subject to or who appear before the commission;

(2) the identity of the source of money or other valuable consideration; and

(3) whether the money or other valuable consideration was in excess of ten percent of his gross personal income in either of the preceding two years.

G. No commissioner with any financial interest affected or potentially affected by a permit action may participate in proceedings related to that permit action."

Section 2

Section 2. Section 69-36-7 NMSA 1978 (being Laws 1993, Chapter 315, Section 7) is amended to read:

"69-36-7. COMMISSION--DUTIES.--The commission shall:

A. before June 18, 1994, adopt and file reasonable regulations consistent with the purposes and intent of the New Mexico Mining Act necessary to implement the provisions of the New Mexico Mining Act, including regulations that:

(1) consider the economic and environmental effects of their implementation;

(2) require permitting of all new and existing mining operations and exploration; and

(3) require annual reporting of production information to the commission, which shall be kept confidential if otherwise required by law;

B. adopt regulations for new mining operations that allow the director to select a qualified expert who may:

(1) review and comment to the director on the adequacy of baseline data gathered prior to submission of the permit application for use in the permit application process;

(2) recommend to the director additional baseline data that may be necessary in the review of the proposed mining activity;

(3) recommend to the director methodology guidelines to be followed in the collection of all baseline data; and

(4) review and comment on the permit application;

C. adopt regulations that require and provide for the issuance and renewal of permits for new and existing mining operations and exploration and that establish schedules to bring existing mining operations into compliance with the requirements of the New Mexico Mining Act; provided the term of a permit for a new mining operation shall not exceed twenty years and the term of renewals of permits for new mining operations shall not exceed ten years;

D. adopt regulations that provide for permit modifications. The commission shall establish criteria to determine which permit modifications may have significant environmental impact. Modifications that the director determines will have significant environmental impact shall require public notice and an opportunity for public hearing pursuant to Subsection K of this section. A permit modification to the permit for an existing mining operation shall be obtained for each new discrete processing, leaching, excavation, storage or stockpile unit located within the permit area of an existing mining operation and not identified in the permit of an existing mining operation and for each expansion of such a unit identified in the permit for an existing mining operation that exceeds the design limits specified in the permit. The regulations shall require that permit modifications for such units be approved if the director determines that the unit will:

(1) comply with the regulations regarding permit modifications;

(2) incorporate the requirements of Paragraphs (1), (2), (4), (5) and (6) of Subsection H of this section; and

(3) be sited and constructed in a manner that facilitates, to the maximum extent practicable, contemporaneous reclamation consistent with the closeout plan;

E. adopt regulations that require new and existing mining operations to obtain and maintain permits for standby status. A permit for standby status shall be issued for a maximum term of five years; provided that upon application the director may renew a permit for standby status for no more than three additional five-year terms. The regulations shall require that before a permit for standby status is issued or renewed an owner or operator shall:

(1) identify the projected term of standby status for each unit of the new or existing mining operation;

(2) take measures that reduce, to the extent practicable, the formation of acid and other toxic drainage to prevent releases that cause federal or state environmental standards to be exceeded;

(3) meet applicable federal and state environmental standards and regulations during the period of standby status;

(4) stabilize waste and storage units, leach piles, impoundments and pits during the term of standby status;

(5) comply with applicable requirements of the New Mexico Mining Act and the regulations adopted pursuant to that act; and

(6) provide an analysis of the economic viability of each unit proposed for standby status;

F. establish by regulation closeout plan requirements for existing mining operations that incorporate site-specific characteristics, including consideration of disturbances from previous mining operations, and that take into account the mining method utilized;

G. establish by regulation a procedure for the issuance of a permit for an existing mining operation and for modifications of that permit to incorporate approved closeout plans or portions of closeout plans and financial assurance requirements for performance of the closeout plans. The permit shall describe the permit area of the existing mining operation and the design limits of units of the existing mining

operation based upon the site assessment submitted by the operator. The permit shall contain a schedule for completion of a closeout plan. The permit shall thereafter be modified to incorporate the approved closeout plan or portions of the closeout plan once financial assurance has been provided for completion of the closeout plan or the approved portions of the closeout plan. The permit may be modified for new mining units, expansions beyond the design limits of a unit at an existing mining operation or standby status;

H. establish by regulation permit and reclamation requirements for new mining operations that incorporate site-specific characteristics. These requirements shall, at a minimum:

(1) require that new mining operations be designed and operated using the most appropriate technology and the best management practices;

(2) assure protection of human health and safety, the environment, wildlife and domestic animals;

(3) include backfilling or partial backfilling only when necessary to achieve reclamation objectives that cannot be accomplished through other mitigation measures;

(4) require approval by the director that the permit area will achieve a self-sustaining ecosystem appropriate for the life zone of the surrounding areas following closure unless conflicting with the approved post-

mining land use;

(5) require that new mining operations be designed in a manner that incorporates measures to reduce, to the extent practicable, the formation of acid and other toxic drainage that may otherwise occur following closure to prevent releases that cause federal or state standards to be exceeded;

(6) require that

nonpoint source surface releases of acid or other toxic substances shall be contained within the permit area;

(7) require that all waste, waste management units, pits, heaps, pads and any other storage piles are designed, sited and constructed in a manner that facilitates, to the maximum extent

practicable, contemporaneous reclamation and are consistent with the new mining operation's approved reclamation plan; and

(8) where sufficient topsoil is present, take measures to preserve it from erosion or contamination and assure that it is in a usable condition for sustaining vegetation when needed;

I. adopt regulations that establish a permit application process for new mining operations that includes:

(1) disclosure of ownership and controlling interests in the new mining operation or submission of the applicant's most recent form

10K required by the federal securities exchange commission;

(2) a statement of all mining operations within the United States owned, operated or directly controlled by the applicant, owner or operator and by persons or entities that directly control the applicant and the names and the addresses of regulatory agencies with jurisdiction over the environmental aspects of those operations and that could provide a compliance history for those operations and over the preceding ten years. The operator shall assist the applicant in obtaining compliance history information;

(3) a description of the type and method of mining and the engineering techniques proposed;

(4) the anticipated starting and termination dates of each phase of the new mining operation and the number of acres of land to be affected;

(5) the names of all affected watersheds, the location of any perennial, ephemeral or intermittent surface stream or tributary into which surface or pit drainage will be discharged or may possibly be expected to reach and the location of any spring within the permit area and the affected area;

(6) a determination of the probable hydrologic consequences of the new mining operation and reclamation, both on and off the permit area, with respect to the hydrologic regime, quantity and quality of surface and ground water systems, including the dissolved and suspended solids under seasonal flow conditions;

(7) cross-sections or plans of the permit area depicting:

(a) the nature and depth of the various formations of overburden;

(b) the location of subsurface water, if encountered, and its quality;

(c) the nature and location of any ore body to be mined;

(d) the location of aquifers and springs;

(e) the estimated position and flow of the water table;

(f) the proposed location of waste rock, tailings, stockpiles, heaps, pads and topsoil preservation areas; and

(g)

premining vegetation and wildlife habitat features present at the site;

(8) the potential for geochemical alteration of overburden, the ore body and other materials present within the permit area;

(9) a reclamation plan that includes a detailed description of the proposed post-mining land use and how that use is to be achieved; and

(10)

premining baseline data as required by regulations adopted by the commission;

J. adopt regulations to coordinate the roles of permitting agencies involved in regulating activities related to new and existing mining operations and exploration, including regulatory requirements, to avoid duplicative and conflicting administration of the permitting process and other requirements;

K. except for regulations enacted pursuant to Subsection L of this section, adopt regulations that ensure that the public and permitting agencies receive notice of each application for issuance, renewal or revision of a permit for a new or existing mining operation, for standby status, or exploration, a variance or an application for release of financial assurance and any inspection prior to the release of financial

assurance, including a provision that no action shall be taken on any application until an opportunity for a public hearing, held in the locality of the operation, is provided and that all interested persons shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. An additional opportunity for a public hearing may be provided if the applicant makes substantial changes in the proposed action, if there are significant new circumstances or information bearing on the proposed action or if the applicant proposes to substantially increase the scale or substantially change the nature of the proposed action and there is public interest and a request for a public hearing. These regulations shall require at a minimum that the applicant for issuance, renewal or revisions of a permit or a variance or an application for release of financial assurance and any inspection prior to release of financial assurance shall provide to the director at the time of filing the application with the director proof that notice of the application and of the procedure for requesting a public hearing has been:

(1) provided by certified mail to the owners of record, as shown by the most recent property tax schedule, of all properties within one-half mile of the property on which the mining operation is located or is proposed to be located;

(2) provided by certified mail to all municipalities and counties within a ten-mile radius of the property on which the mining operation is or will be located;

(3) published once in a newspaper of general circulation in each county in which the property on which the mining operation is or will be located; provided that this notice shall appear in either the classified or legal advertisements section of the newspaper and at one other place in the newspaper calculated to give the general public the most effective notice and, when appropriate, shall be printed in both English and Spanish;

(4) posted in at least four publicly accessible and conspicuous places, including the entrance to the new or existing mining operation if that entrance is publicly accessible and conspicuous;

(5) mailed to all persons who have made a written request to the director for notice of this application; and

(6) mailed by certified mail to all persons on a list maintained by the director of individuals and organizations who have requested notice of applications under this act. If the application is determined to be administratively complete by the director, the applicant

shall provide to the director timely proof that notice of that determination has been provided by first class mail to everyone who has indicated to the applicant in writing that they desire information regarding the application and to a list maintained by the director of individuals and organizations who have requested notice of applications under this act;

L. adopt regulations to provide for permits, without notice and hearing, to address mining operations that have minimal impact on the environment; provided that such permits shall require general plans and shall otherwise reduce the permitting requirements of the New Mexico Mining Act;

M. establish by regulation a schedule of annual administrative and permit fees, which shall equal and not exceed the estimated costs of administration, implementation, enforcement, investigation and permitting pursuant to the provisions of the New Mexico Mining Act. The size of the operation, anticipated inspection frequency and other factors deemed relevant by the commission shall be considered in the determination of the fees. The fees established pursuant to this subsection shall be deposited in the mining act fund;

N. establish by regulation a continuing process of review of mining and reclamation practices in New Mexico that provides for periodic review and amendment of regulations and procedures to provide for the protection of the environment and consider the economic effects of the regulations;

O. adopt regulations governing the provision of variances issued by the director, stating the procedures for seeking a variance, including provisions for public notice and an opportunity for a hearing in the locality where the variance will be operative, the limitations on provision of variances, requiring the petitioner to present sufficient evidence to prove that failure to grant a variance will impose an undue economic burden and that granting the variance will not result in a significant threat to human health, safety or the environment;

P. provide by regulation that, prior to the issuance of any permit for a new mining operation pursuant to the provisions of the New Mexico Mining Act, the permit applicant or operator:

(1) shall provide evidence to the director that other applicable state and federal permits required to be obtained by the new or existing mining operation either have been or will be issued before the activities subject to those permits begin; and

(2) shall provide to the director a written determination from the secretary of environment stating that the permit applicant has demonstrated that the activities to be permitted or authorized will be expected to achieve compliance with all applicable air, water quality and other environmental standards if carried out as described;

Q. require by regulation that the applicant file with the director, prior to the issuance of a permit, financial assurance. The amount of the financial assurance shall be sufficient to assure the completion of the performance requirements of the permit, including closure and reclamation, if the work had to be performed by the director or a third party contractor and shall include periodic review to account for any inflationary increases and anticipated changes in reclamation or closure costs. The regulations shall specify that financial requirements shall neither duplicate nor be less comprehensive than the federal financial requirements. The form and amount of the financial assurance shall be subject to the approval of the director as part of the permit application; provided, financial assurance does not include any type or variety of self-guarantee or self-

insurance;

R. require by regulation that the permittee may file an application with the director for the release of all or part of the permittee's financial assurance. The permittee shall not file an application for release of financial assurance more than once per year for each mining operation. The application shall describe the reclamation measures completed and shall contain an estimate of the costs of reclamation measures that have not been completed. Prior to release of any portion of the permittee's financial assurance, the director shall conduct an inspection and evaluation of the reclamation work involved. The director shall notify persons who have requested advance notice of the inspection. Interested members of the public shall be allowed to be present at the inspection of the reclamation work by the director.

(1) The director may release in whole or in part the financial assurance if the reclamation covered by the financial assurance has been accomplished as required by the New Mexico Mining Act; provided that the director shall retain financial assurance at least equal to the approved estimated costs of completing reclamation measures that have not been completed; and provided further that for revegetated areas, the director shall retain the amount of financial assurance necessary for a third party to reestablish vegetation for a period of twelve years after the last year of augmented seeding,

fertilizing, irrigation or other work, unless a post-mining land use is achieved that is inconsistent with the further need for revegetation. For new mining operations only, no part of the financial assurance necessary for a third party to reestablish vegetation shall be released so long as the lands to which the release would be applicable are contributing suspended solids above background levels to streamflow of intermittent and perennial streams.

(2) A person with an interest that is or will be adversely affected by release of the financial assurance may file, with the director within thirty days of the date of the inspection, written objections to the proposed release from financial assurance. If written objections are filed and a hearing is requested, the director shall inform all the interested parties of the time and place of the hearing at least thirty days in advance of the public hearing, and hold a public hearing in the locality of the new or existing mining operation or exploration operation proposed for release from financial assurance. The date, time and location of the public hearing shall be advertised by the director in a newspaper of general circulation in the locality for two consecutive weeks, and all persons who have submitted a written request in advance to the director to receive notices of hearings shall be provided notice at least thirty days prior to the hearing;

S. establish coordinated procedures that avoid duplication for the inspection, monitoring and sampling of air, soil and water and enforcement of applicable requirements of the New Mexico Mining Act, regulations adopted pursuant to that act and permit conditions for new and existing mining operations and exploration. The regulations shall require, at a minimum:

(1) inspections by the director occurring on an irregular basis according to the following schedule:

(a) at least one inspection per month when the mining operation is conducting significant reclamation activities;

(b) at least two inspections per year for active mining operations;

(c) at least one inspection per year on inactive sites;

(d) at least one inspection per year following completion of all significant reclamation activities, but prior to release of financial assurance; and

(e) mining operations having a minimal impact on the environment and exploration operations will be inspected on a schedule to be established by the commission;

(2) inspections shall occur without prior notice to the permittee or his agents or employees except for necessary on-site meetings with the permittee;

(3) when the director determines that a condition or practice exists that violates a requirement of the New Mexico Mining Act, a regulation adopted pursuant to that act or a permit issued under that act, which condition, practice or violation also creates an imminent danger to the health or safety of the public or will cause significant imminent environmental harm, the director shall immediately order a cessation of the new or existing mining operation or the exploration operation or the portion of that operation relevant to the condition, practice or violation. The cessation order shall remain in effect until the director determines that the condition, practice or violation has been abated or until modified, vacated or terminated by the director or the commission;

(4) when the director determines that an owner or operator is in violation of a requirement of the New Mexico Mining Act, a regulation adopted pursuant to that act or a permit issued pursuant to that act but the violation does not create an imminent danger to the health or safety of the public or will not cause significant imminent environmental harm, the director shall issue a notice to the owner or operator fixing a reasonable time, not to exceed sixty days, for the abatement of the violation. If, upon expiration of the period of time as originally fixed or subsequently extended for good cause shown, the director finds that the violation has not been abated, he shall immediately order a cessation of new or existing mining operations or exploration operations or the portion thereof relevant to the violation. The cessation order shall remain in effect until the director determines that the violation has been abated; and

(5) when the director determines that a pattern of violations of the requirements of the New Mexico Mining Act or of the regulations adopted pursuant to that act or the permit required by that act exists or has existed and, if the director also finds that such violations are caused by the unwarranted failure of the owner or operator to comply with the requirements of that act, regulation or permit or that such violations are willfully caused by the owner or operator, the director shall immediately issue an order to the owner or operator to show cause as to why the permit should not be suspended or revoked;

T. provide for the transfer of a permit to a successor operator, providing for release of the first operator from obligations under the permit, including financial assurance, following the approved assumption of such obligations and financial assurance by the successor operator;

U. adopt regulations providing that the owner or operator of an existing mining operation or a new mining operation who has completed some reclamation measures prior to the effective date of the regulations adopted pursuant to the New Mexico Mining Act may apply for an inspection of those reclamation measures and a release from further requirements pursuant to that act for the reclaimed areas if, after an inspection, the director determines that the reclamation measures satisfy the requirements of that act and the substantive requirements for reclamation pursuant to the applicable regulatory standards; and

V. develop and adopt other regulations necessary and appropriate to carry out the purposes and provisions of the New Mexico Mining Act."

Section 3

Section 3. Section 69-36-14 NMSA 1978 (being Laws 1993, Chapter 315, Section 14) is amended to read:

"69-36-14. CITIZENS SUITS.--

A. A person having an interest that is or may be adversely affected may commence a civil action on his own behalf to compel compliance with the New Mexico Mining Act. Such action may be brought against:

(1) the department of environment, the energy, minerals and natural resources department or the commission alleging a violation of the New Mexico Mining Act or of a rule, regulation, order or permit issued pursuant to that act;

(2) a person who is alleged to be in violation of a rule, regulation, order or permit issued pursuant to the New Mexico Mining Act; or

(3) the department of environment, the energy, minerals and natural resources department or the commission alleging a failure to perform any nondiscretionary act or duty required by the New Mexico Mining Act; provided, however, that no action pursuant to this section shall be commenced if the department of environment, the

energy, minerals and natural resources department or the commission has commenced and is diligently prosecuting a civil action in a court of this state or an administrative enforcement proceeding to require compliance with that act. In an administrative or court action commenced by the department of environment, the energy, minerals and natural resources department or the commission, a person whose interest may be adversely affected and who has provided notice pursuant to Subsection B of this section prior to the initiation of the action may intervene as a matter of right.

B. No action shall be commenced pursuant to this section prior to sixty days after the plaintiff has given written notice to the department of environment, the energy, minerals and natural resources department, the commission, the attorney general and the alleged violator of the New Mexico Mining Act; provided, however, when the violation or order complained of constitutes an immediate threat to the health or safety of the plaintiff or would immediately and irreversibly impair a legal interest of the plaintiff, an action pursuant to this section may be brought immediately after notification of the proper parties.

C. Except as otherwise provided herein, suits against the department of environment, the energy, minerals and natural resources department or the commission shall be brought in the district court of Santa Fe county. Suits only against one or more owners or operators of one or more mining operations shall be brought in the district court where one of the mining operations is located. If an action is brought against the department of environment, the energy, minerals and natural resources department or the commission and the owner or operator of a mining operation, such owner or operator may apply for a change of venue to the judicial district in which the mining operation is located. If not already a party, an owner or operator may intervene, upon a showing that the action relates primarily to a dispute regarding the single mining operation and apply for such a change of venue. The district court shall grant a change of venue upon a showing that the action relates primarily to a dispute regarding the subject single mining operation and a showing that a forum non conveniens analysis suggests that the location of the mining operation is a superior venue.

D. In an action brought pursuant to this section, the department of environment, the energy, minerals and natural resources department or the commission, if not a party, may intervene.

E. The court, in issuing a final order in an action brought pursuant to this section, may award costs of litigation, including attorney and expert witness fees, to a party whenever the court determines such award is appropriate. The court may, if a temporary injunction or

preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the rules of civil procedure."

HOUSE ENERGY AND NATURAL RESOURCES

COMMITTEE SUBSTIUTE FOR HOUSE BILL 1095

CHAPTER 89

RELATING TO LICENSURE; REPEALING THE PHYSICAL THERAPISTS' LICENSING ACT AND ENACTING THE PHYSICAL THERAPY ACT; CREATING A BOARD; PRESCRIBING POWERS AND DUTIES; PRESCRIBING FEES; DETERMINING LEVELS OF LICENSURE; PROVIDING QUALIFICATIONS AND RESTRICTIONS; PROVIDING GROUNDS FOR DENIAL, SUSPENSION OR REVOCATION OF LICENSES; CREATING A FUND; TRANSFERRING PROPERTY, OBLIGATIONS AND REFERENCES; PROVIDING FOR SUNSET; PRESCRIBING PENALTIES; 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 "Physical Therapy Act".

Section 2

Section 2. LEGISLATIVE PURPOSE.--The purpose of the Physical Therapy Act is to protect the public health, safety and welfare and provide for control, supervision, licensure and regulation of the practice of physical therapy. To carry out those purposes, only individuals who meet and maintain minimum standards of competence and conduct may engage in the practice of physical therapy. The practice of physical therapy is declared to affect the public interest and that act shall be liberally construed so as to accomplish the purpose stated in that act.

Section 3

Section 3. DEFINITIONS.--As used in the Physical Therapy Act:

A. "assistive personnel" means physical therapist assistants, physical therapy aides and other assistive personnel;

B. "board" means the physical therapy board;

C. "other assistive personnel" means trained or educated personnel other than physical therapist assistants or physical therapy aides who perform specific designated tasks related to physical therapy under the supervision of a physical therapist. At the discretion of the supervising physical therapist and if not prohibited by any other law, it may be appropriate for other assistive personnel to be identified by the title specific to their training or education;

D. "person" means an individual or other legal entity, excluding a governmental entity;

E. "physical therapist" means a person who is licensed in this state to practice physical therapy;

F. "physical therapist assistant" means a person who performs physical therapy procedures and related tasks pursuant to a plan of care written by the supervising physical therapist;

G. "physical therapy" means the care and services provided by or under the direction and supervision of a physical therapist;

H. "physical therapy aide" means a person trained under the direction of a physical therapist who performs designated and supervised routine physical therapy tasks;

I. "practice of physical therapy" means:

(1) examining and evaluating patients with mechanical, physiological and developmental impairments, functional limitations and disabilities or other health-related conditions in order to determine a physical therapy diagnosis, prognosis and planned therapeutic intervention;

(2) alleviating impairments and functional limitations by designing, implementing and modifying therapeutic interventions that include therapeutic exercise; functional training in self-care and community or work reintegration; manual therapy techniques, including soft tissue and joint mobilization and manipulation; therapeutic massage; assistive and adaptive devices and equipment; bronchopulmonary hygiene; debridement and wound care; physical agents; mechanical and electrotherapeutic modalities; and patient-related instruction;

(3) preventing injury, impairments, functional limitations and disability, including the promotion and maintenance of fitness, health and quality of life in all age populations; and

(4) engaging in consultation, testing, education and research; and

J. "restricted license" means a license to which restrictions or conditions as to scope of practice, place of practice, supervision of practice, duration of licensed status or type or condition of patient or client served are imposed by the board.

Section 4

Section 4. BOARD CREATED.--

A. The "physical therapy board" is created. The board shall consist of five members appointed by the governor. Three members shall be physical therapists who are residents of the state, who possess unrestricted licenses to practice physical therapy and who have been practicing in New Mexico for no less than five years. Two members shall be citizens appointed from the public at large who are not associated with, or financially interested in, any health care profession.

B. All appointments shall be made for staggered terms of three years with no more than two terms ending at any one time. No member shall serve for more than two successive three-year terms. Vacancies shall be filled for the unexpired term by appointment by the governor prior to the next scheduled board meeting. Board members shall continue to serve until a successor has been appointed and qualified.

C. The members shall elect a chairman and may elect other officers as they deem necessary.

D. The governor may remove any member of the board for misconduct, incompetence or neglect of duty.

E. Members may receive per diem and mileage pursuant to the Per Diem and Mileage Act, but shall receive no other compensation, perquisite or allowance.

F. There shall be no liability on the part of and no action for damages against any board member when the member is acting within the scope of his duties.

Section 5

Section 5. POWERS AND DUTIES.--The board:

A. shall examine all applicants for licensure to practice physical therapy and issue licenses or permits to those who are duly qualified;

B. shall regulate the practice of physical therapy by interpreting and enforcing the provisions of the Physical Therapy Act, including taking disciplinary action;

C. may adopt, file, amend or repeal rules and regulations in accordance with the Uniform Licensing Act to carry out the provisions of the Physical Therapy Act;

D. may meet as often as the board deems necessary. A majority of the members constitutes a quorum for the transaction of business. The board shall keep an official record of all its proceedings;

E. may establish requirements for assessing continuing competency;

F. may collect fees;

G. may elect such officers as it deems necessary for the operations and obligations of the board. Terms of office shall be one year;

H. shall provide for the timely orientation and training of new professional and public appointees to the board, including training in licensing and disciplinary procedures and orientation to all statutes, rules, policies and procedures of the board;

I. may employ a director and other personnel to carry out the administrative work of the board.

J. may hire an attorney to give advice and counsel in regard to any matter connected with the duties of the board, to represent the board in any legal proceedings and to aid in the enforcement of the Physical Therapy Act, and shall fix the compensation to be paid to such attorney;

K. may establish ad hoc committees and pay per diem and mileage to the members;

L. may enter into contracts;

M. shall report final disciplinary action taken against a physical therapist or physical therapist assistant to the national disciplinary data base;

N. shall publish at least annually final disciplinary action taken against any physical therapist or physical therapist assistant; and

O. may prescribe the forms of license certificates, application forms and such other documents as it deems necessary to carry out the provisions of the Physical Therapy Act.

Section 6

Section 6. BOARD FUND--CREATED.--The "physical therapy

fund" is created in the state treasury. The fund shall consist of deposits into the fund and income from investment of the fund. Money in the fund at the end of any fiscal year shall not revert to the general fund. Money in the fund is appropriated to the board to pay its necessary expenses pursuant to appropriation by the legislature and a budget approved by the state board of finance. Disbursements from the fund shall be made only on warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the director or his authorized representative.

Section 7

Section 7. FEES.--

A. The board, by regulation, may charge the following fees:

(1) application for licensure as a physical therapist, not to exceed three hundred dollars ($300); provided that an additional fee to cover the cost of any examinations provided by the board may be charged;

(2) application for licensure as a physical therapist assistant, not to exceed three hundred dollars ($300); provided that an additional fee to cover the cost of any examinations provided by the board may be charged;

(3) annual renewal of license as a physical therapist, not to exceed one hundred fifty dollars ($150);

(4) annual renewal of license as a physical therapist assistant, not to exceed one hundred dollars ($100); and

(5) late fee, not to exceed five hundred dollars ($500).

B. The board may charge reasonable administration and duplication fees.

Section 8

Section 8. PRACTICE OF PHYSICAL THERAPY--LICENSE REQUIRED.--

A. No person shall practice or hold himself out to be engaging in the practice of physical therapy or designate himself as a physical therapist unless he is licensed as a physical therapist or is exempt from licensure as provided in the Physical Therapy Act.

B. No person shall designate himself or act as a physical therapist assistant unless he is licensed as a physical therapist assistant or is exempt from licensure as provided in the Physical Therapy Act.

C. A physical therapist shall refer persons under his care to the appropriate health care practitioner if the physical therapist has reasonable cause to believe symptoms or conditions are present that require services beyond his scope of practice or when physical therapy is contraindicated.

D. Physical therapists or physical therapist assistants shall adhere to the recognized standards of ethics of the physical therapy profession.

Section 9

Section 9. USE OF TITLES--RESTRICTIONS.--

A. A physical therapist shall use the letters "PT" in connection with his name or place of business to denote licensure pursuant to the Physical Therapy Act.

B. It is unlawful for a person or his employees, agents or representatives to use in connection with his name or the name or activity of the business the words "physical therapy", "physical therapist", "physiotherapy", "physiotherapist", "registered physical therapist", the letters "PT", "LPT", "RPT", "MPT", "DPT" or any other words, abbreviations or insignia indicating or implying directly or indirectly that physical therapy is provided or supplied, including the billing of services labeled as physical therapy, unless the services are provided by or under the direction of a physical therapist.

C. A physical therapist assistant shall use the letters "PTA" in connection with his name to denote licensure.

D. No person shall use the title "physical therapist assistant" or use the letters "PTA" in connection with his name or any other words, abbreviations or insignia indicating or implying directly or indirectly that he is a physical therapist assistant unless he has graduated from an accredited physical therapist assistant education program approved by the board and has met the requirements of the Physical Therapy Act.

Section 10

Section 10. LICENSURE--QUALIFICATIONS.--

A. An applicant for licensure as a physical therapist shall submit a completed application and have the following minimum qualifications:

(1) be of good moral character;

(2) be a graduate of an accredited physical therapy program approved by the board;

(3) have successfully passed the national physical therapy examination approved by the board; and

(4) have successfully passed the state jurisprudence examination.

B. An applicant for licensure as a physical therapist who has been educated outside the United States shall submit a completed application and meet the following minimum qualifications in addition to those required in Paragraphs (1), (3) and (4) of Subsection A of this section:

(1) provide satisfactory evidence that his education is substantially equivalent to the requirements of physical therapists educated in accredited educational programs in the United States, as determined by the board. If the board determines that a foreign-educated applicant's education is not substantially equivalent, it may require completion of additional course work before proceeding with the application process;

(2) provide evidence that he is a graduate of a school of training that is recognized by the foreign country's own ministry of education or similar institution;

(3) provide written proof of authorization to practice as a physical therapist without limitations in the legal jurisdiction where the post-

secondary institution from which the applicant has graduated is located;

(4) provide proof of legal authorization to reside and seek employment in the United States or its territories;

(5) have his educational credentials evaluated by a board-

approved credential evaluation agency;

(6) pass all approved English proficiency examinations as may be prescribed by the board if English is not his primary language; and

(7) participate in an interim supervised clinical practice period as may be prescribed by the board.

C. The board may issue an interim permit to a foreign-trained applicant who satisfies the board's requirements. An interim permit shall be issued for the purpose of participating in a supervised clinical practice period.

D. If the foreign-educated physical therapist applicant is a graduate of a college accredited by the commission on accreditation in physical therapy education, the requirements of Paragraphs (1), (2), (5) and (7) of Subsection B of this section are waived.

E. An applicant for licensure as a physical therapist assistant shall submit a completed application and meet the following minimum requirements:

(1) be of good moral character;

(2) be a graduate of an accredited physical therapist assistant program approved by the board;

(3) have successfully passed the national physical therapy examination approved by the board; and

(4) have successfully passed the state jurisprudence examination.

F. An applicant for licensure as a physical therapist or physical therapist assistant shall file a written application on forms provided by the board. A nonrefundable application fee and the cost of the examination shall accompany the completed written application.

G. Applicants who fail to pass the examinations shall be subject to requirements determined by board regulations prior to being approved by the board for subsequent testing.

H. The board or its designee shall issue a license to a physical therapist or physical therapist assistant who has a valid unrestricted license from another United States jurisdiction and who meets all requirements for licensure in New Mexico.

I. Prior to licensure, if prescribed by the board, the board or its designee may issue a temporary nonrenewable license to a physical therapist or physical therapist assistant who has completed the education and experience requirements of the Physical Therapist Act. The temporary license shall allow the applicant to practice physical therapy under the supervision of a licensed physical therapist until a permanent license is approved that shall include passing the national physical therapy examination.

J. The board or its designee may issue a temporary license to a physical therapist or physical therapist assistant performing physical therapy while teaching an educational seminar who has met the requirements established by regulation of the board.

K. A physical therapist or physical therapist assistant licensed under the provisions of the Physical Therapy Act shall renew his license as specified in board rules. A person who fails to renew his license by the date of expiration shall not practice physical therapy as a physical therapist or physical therapist assistant in New Mexico.

L. Reinstatement of a lapsed license following a renewal deadline requires payment of a renewal fee and late fee.

M. Reinstatement of a physical therapist or physical therapist assistant license that has lapsed for more than three years, without evidence of continued practice in another state pursuant to a valid unrestricted license in that state, requires reapplication and payment of fees, as specified in board rules. The board shall

promulgate rules establishing the qualifications for reinstatement of a lapsed license.

N. The board may establish, by rule, activities to periodically assess continuing competence to practice physical therapy.

O. A physical therapist shall not accept a patient for treatment without an existing medical diagnosis for the specific medical or physical problem made by a licensed primary care provider, except for those children participating in special education programs in accordance with Section 22-13-5 NMSA 1978 and for acute care within the scope of practice of physical therapy. For the purposes of this subsection, "existing medical diagnosis" means substantive signs and symptoms consistent with the episode from a previous primary care provider diagnosis made or confirmed by that provider within the past twelve months.

Section 11

Section 11. EXEMPTIONS.--

A. The following persons are exempt from licensure as physical therapists under the Physical Therapy Act:

(1) a person who is pursuing a course of study leading to a degree as a physical therapist in an entry-level education program approved by the board and is satisfying supervised clinical education requirements related to his physical therapy education; and

(2) a physical therapist practicing in the United States armed services, United States public health service or veterans administration as based on requirements under federal regulations for state licensure of health care providers.

B. Nothing in the Physical Therapy Act shall be construed as restricting persons licensed under any other law of this state from engaging in the profession or practice for which they are licensed.

Section 12. SUPERVISION.--

A. A physical therapist is responsible for patient care given by assistive personnel under his supervision. A physical therapist may delegate to assistive personnel and supervise selected acts, tasks or procedures that fall within the scope of physical therapy practice but do not exceed the assistive personnel's education or training.

B. A physical therapist assistant shall function under the supervision of a physical therapist as prescribed by rules of the board.

C. Physical therapy aides and other assistive personnel shall perform patient care activities under on-site supervision of a physical therapist. "On-site supervision" means the supervising physical therapist shall:

(1) be continuously on-site and present in the department or facility where the assistive personnel are performing services;

(2) be immediately available to assist the person being supervised in the services being performed; and

(3) maintain continued involvement in appropriate aspects of each treatment session in which a component of treatment is delegated to assistive personnel.

Section 13

Section 13. GROUNDS FOR DISCIPLINARY ACTION.--The following conduct, acts or conditions constitute grounds for disciplinary action:

A. practicing physical therapy in violation of the provisions of the Physical Therapy Act or rules adopted by the board;

B. practicing or offering to practice beyond the scope of physical therapy practice as defined in the Physical Therapy Act;

C. obtaining or attempting to obtain a license by fraud or misrepresentation;

D. engaging in or permitting the performance of negligent care by a physical therapist or by assistive personnel working under the physical therapist's supervision, regardless of whether actual injury to the patient is established;

E. engaging in the performance of negligent care by a physical therapist assistant, regardless of whether actual injury to the patient is established. This includes exceeding the authority to perform tasks pursuant to the plan of care written by the supervising physical therapist;

F. having been convicted of a felony in the courts of this state or any other state, territory or country, subject to the Criminal

Offender Employment Act. Conviction includes a finding or verdict of guilt, an admission of guilt or a plea of nolo contendere. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence;

G. practicing as a physical therapist or working as a physical therapist assistant when physical or mental abilities are impaired by the habitual or excessive use of controlled substances, other habit-forming drugs, chemicals or alcohol;

H. having had a license revoked or suspended; other disciplinary action taken; or an application for licensure refused, revoked or suspended by the proper authorities of another state, territory or country based upon acts by the licensee similar to acts described in this section. A certified copy of the record of suspension, revocation or other disciplinary action taken by the state taking the disciplinary action is conclusive evidence;

I. failing to adequately supervise assistive personnel;

J. engaging in sexual misconduct, including engaging in or soliciting sexual relationships with a patient, whether consensual or nonconsensual, while a physical therapist- or physical therapist assistant-patient relationship exists; or sexual harassment of a patient that includes making sexual advances, requesting sexual favors and engaging in other verbal conduct or physical contact of a sexual nature while a physical therapist- or physical therapist assistant-patient relationship exists;

K. directly or indirectly requesting, receiving or participating in the dividing, transferring, assigning, rebating or refunding of an unearned fee; or profiting by means of a credit or other valuable consideration such as an unearned commission, discount or gratuity in connection with the furnishing of physical therapy services. Nothing in this subsection prohibits the members of any regularly and properly organized business entity recognized by law and comprised of physical therapists from dividing fees received for professional services among themselves as they determine by contract necessary to defray their joint operating expense;

L. failing to adhere to the recognized standards of ethics of the physical therapy profession;

M. charging unreasonable or fraudulent fees for services performed or not performed;

N. making misleading, deceptive, untrue or fraudulent representations in the practice of physical therapy;

O. having been adjudged mentally incompetent by a court of competent jurisdiction;

P. aiding or abetting an unlicensed person to perform activities requiring a license;

Q. failing to report to the board any act or omission of a licensee, applicant or other person that violates the provisions of the Physical Therapy Act;

R. interfering with or refusing to cooperate in an investigation or disciplinary proceeding of the board, including misrepresentation of facts or by the use of threats or harassment against any patient or witness to prevent them from providing evidence in a disciplinary proceeding;

S. failing to maintain patient confidentiality without prior written consent or unless otherwise provided by law;

T. impersonating another person licensed to practice physical therapy, permitting or allowing any person to use the physical therapist's or physical therapist assistant's license or practicing physical therapy under a false or assumed name;

U. failure to report to the board the surrendering of a license or other authorization to practice physical therapy in another state or jurisdiction or the surrendering of membership in any professional association following, in lieu of or while under disciplinary investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section; and

V. abandonment of patients.

Section 14

Section 14. CONSUMER PROTECTION.--

A. Any person, including a licensee; corporation; insurance company; health care organization; health care facility; and state, federal or local governmental agency, shall report to the board any conviction, determination or finding that a licensee has committed an act that constitutes a violation of the Physical Therapy Act. The person is

immune from civil liability for providing information in good faith to the board. Failure by a licensee to report a violation of the Physical Therapy Act shall constitute grounds for disciplinary action.

B. The board may permit an impaired physical therapist or assistive personnel to actively participate in a board-approved substance abuse treatment program under the following conditions:

(1) the board has evidence indicating that the licensee is an impaired professional;

(2) the licensee has not been convicted of a felony relating to a controlled substance in a court of law of the United States or any other territory or country;

(3) the impaired professional enters into a written agreement with the board and complies with all the terms of the agreement, including making satisfactory progress in the program and adhering to any limitations on his practice imposed by the board to protect the public. Failure to enter into such an agreement shall disqualify the professional from the voluntary substance abuse program; and

(4) as part of the agreement established between the licensee and the board, the licensee shall sign a waiver allowing the substance abuse program to release information to the board if the licensee does not comply with the requirements of this section or is unable to practice with reasonable skill or safety.

C. The public shall have access to information pursuant to the Inspection of Public Records Act.

D. The board shall conduct its meetings and disciplinary hearings in accordance with the Open Meetings Act.

E. Physical therapists and physical therapist assistants shall disclose in writing to patients if the referring health care practitioner is deriving direct or indirect compensation from the referral to physical therapy.

F. Physical therapists and physical therapist assistants shall disclose any financial interest in products they endorse and recommend to their patients.

G. The licensee has the responsibility to ensure that the patient has knowledge of freedom of choice in services and products.

H. The physical therapist or physical therapist assistant shall not promote an unnecessary device, treatment intervention or service for the financial gain of himself or another person.

I. The physical therapist or physical therapist assistant shall not provide treatment intervention unwarranted by the condition of the patient, nor shall he continue treatment beyond the point of reasonable benefit.

J. A person may submit a complaint regarding a physical therapist, physical therapist assistant or other person potentially in violation of the Physical Therapy Act. The board shall keep all information relating to the receiving and investigation of complaints filed against licensees confidential until the information becomes public record according to the Inspection of Public Records Act.

K. Each licensee shall display a copy of his license and current renewal verification in a location accessible to public view at his place of practice.

Section 15

Section 15. DISCIPLINARY ACTIONS--PENALTIES.--

A. The board, upon satisfactory proof that any ground enumerated in Section 13 of the Physical Therapy Act has been violated, may take the following disciplinary action singly or in combination:

(1) issue a letter of censure or reprimand;

(2) issue a restricted license, including requiring the licensee to report regularly to the board on matters related to the grounds for the restricted license;

(3) suspend a license for a period determined by the board;

(4) revoke a license;

(5) refuse to issue or renew a license;

(6) impose fines in accordance with the Physical Therapy Act; and

(7) accept a voluntary surrendering of a license.

B. Disciplinary actions of the board shall be taken in accordance with the Uniform Licensing Act.

C. The board may institute any legal proceedings necessary to effect compliance with the Physical Therapy Act, including:

(1) receiving and investigating complaints filed against licensees;

(2) conducting an investigation at any time and on its own initiative without receipt of a written complaint if the board has reason to believe that there may be a violation of the Physical Therapy Act;

(3) issuing subpoenas and compelling the attendance of witnesses or the production of documents relative to the case; and

(4) appointing hearing officers. Hearing officers shall prepare and submit to the board findings of fact, conclusions of law and an order that shall be reviewed and voted upon by the board.

Section 16

Section 16. UNLAWFUL PRACTICE--CRIMINAL AND CIVIL PENALTIES--INJUNCTIVE RELIEF.--

A. A person who engages in an activity requiring a license pursuant to the provisions of the Physical Therapy Act and who fails to obtain the required license; who violates any provision of the Physical Therapy Act; or who uses any word, title or representation to induce the false belief that the person is licensed to engage in the practice of physical therapy is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000) or by imprisonment of not more than one year, or both.

B. The board may apply for injunctive relief in any court of competent jurisdiction to enjoin a person from committing an act in violation of the Physical Therapy Act. Such injunction proceedings shall be in addition to and not in lieu of penalties and other remedies in the Physical Therapy Act.

C. The board may assess a civil penalty of up to one thousand dollars ($1,000) for a first offense and up to five thousand dollars ($5,000) for a second or subsequent offense against a licensee who aids or abets an unlicensed person to directly or indirectly evade

the Physical Therapy Act or the applicable licensing laws; or permits his license to be used by an unlicensed person with the intent to evade the Physical Therapy Act or the applicable licensing laws, pursuant to the notice of hearing and appeal procedures pursuant to the Uniform Licensing Act. The civil penalties provided in this subsection are in addition to other disciplinary measures provided in the Physical Therapy Act. Civil penalties shall be deposited with the state treasurer to the credit of the current school fund.

Section 17

Section 17. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The physical therapy board is terminated on July 1, 2003 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Physical Therapy Act until July 1, 2004. Effective July 1, 2004, the Physical Therapy Act is repealed.

Section 18

Section 18. TEMPORARY PROVISION--EXISTING REGULATIONS--

LICENSURE UNDER PRIOR LAW.--

A. Existing rules regarding physical therapy services shall remain in effect until new rules are adopted pursuant to the provisions of the Physical Therapy Act.

B. A person licensed to perform physical therapy

services pursuant to the provisions of prior law, whose license is valid on July 1, 1997, is entitled to renew his license pursuant to the provisions of the Physical Therapy Act.

Section 19. TEMPORARY PROVISION--TRANSFER OF MONEY, PERSONAL PROPERTY, STATUTORY REFERENCES AND OBLIGATIONS.--On the effective date of this act, the physical therapists' licensing board is abolished. On that date:

A. all appropriations, money, records, equipment and other personal property of the physical therapists' licensing board shall be transferred to the physical therapy board;

B. all references in the law to the physical therapists' licensing board shall be construed as a references to the physical therapy board; and

C. all contracts and other legal obligations of the physical therapists' licensing board shall be binding on the physical therapy board.

Section 20

Section 20. TEMPORARY PROVISION--BOARD MEMBERS TO CONTINUE.--On the effective date of this act, members serving on the physical therapists' licensing board shall continue to serve on the physical therapy board until their terms expire; thereafter, the governor shall appoint board members as provided in the Physical Therapy Act.

Section 21. REPEAL.--Sections 61-12-1 through 61-12-21 NMSA 1978 (being Laws 1953, Chapter 136, Section 1, Laws 1979, Chapter 369, Sections 2 and 3, Laws 1953, Chapter 136, Sections 3 through 11, Laws 1979, Chapter 369, Section 9, Laws 1953, Chapter 136, Sections 13 through 15, Laws 1974, Chapter 78, Section 18, Laws 1953, Chapter 136, Sections 16 through 20 and Laws 1979, Chapter 369, Section 12, as amended) are repealed.

Section 22

Section 22. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 1103, AS AMENDED

CHAPTER 90

RELATING TO PUBLIC FINANCES; AMENDING THE POWERS OF THE NEW MEXICO FINANCE AUTHORITY REGARDING LAND GRANT CORPORATIONS AND INTERCOMMUNITY WATER OR NATURAL GAS SUPPLY ASSOCIATIONS OR CORPORATIONS; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 6-21-3 NMSA 1978 (being Laws 1992, Chapter 61, Section 3, as amended) 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 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, land grant corporation, intercommunity water or natural gas supply associations or corporations, special district or community water association or an Indian nation, tribe or pueblo located wholly or partially in New Mexico, including a political subdivision or a wholly owned enterprise of an Indian nation, tribe or pueblo; 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 2

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

HOUSE JUDICIARY COMMITTEE SUBSTIUTE

FOR HOUSE BILL 1192

WITH EMERGENCY CLAUSE

SIGNED APRIL 8, 1997

CHAPTER 91

RELATING TO ECONOMIC DEVELOPMENT; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978 PERTAINING TO SPACE COMMERCIALIZATION; BROADENING THE SCOPE OF SPACE COMMERCIALIZATION PROJECTS.

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

Section 1

Section 1. Section 9-15-43 NMSA 1978 (being Laws 1994, Chapter 127, Section 2, as amended) is amended to read:

"9-15-43. DEFINITIONS.--As used in Sections 9-15-43 through 9-15-47 NMSA 1978:

A. "commission" means the space commission;

B. "director" means the director of the space commercialization division;

C. "division" means the space commercialization division;

D. "secretary" means the secretary of economic development;

E. "space" means any location beyond altitudes of sixty thousand feet above the earth's mean sea level; and

F. "spaceport" means an installation and related facilities used for the launching, landing, recovery, servicing and monitoring of vehicles capable of entering or returning from space."

Section 2

Section 2. Section 9-15-44 NMSA 1978 (being Laws 1994, Chapter 127, Section 3, as amended) is amended to read:

"9-15-44. SPACE COMMERCIALIZATION DIVISION CREATED--

DUTIES OF DIRECTOR.--

A. The "space commercialization division" is created as a division in the economic development department.

B. The duties of the division 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 division and the commission and the purposes of Sections 9-15-43 through 9-15-47 NMSA 1978;

(2) discharge the responsibilities of the division 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 and other space development-related activities in the state;

(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 3

Section 3. Section 9-15-45 NMSA 1978 (being Laws 1994, Chapter 127, Section 4, as amended) is amended to read:

"9-15-45. COMMISSION CREATED--MEMBERSHIP.--

A. The "space 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 all others shall be appointed by the governor. The ex-officio members are the secretary, the governor's science adviser and the lieutenant governor. In selecting the appointed members of the commission, the governor shall appoint at least three members knowledgeable of government and commercial space activities. One member shall be a resident of Sierra county, one member shall be a representative of a federal space development project in the state and one member shall be a representative of one of the state's national laboratories.

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 two 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. Meetings shall be conducted in different geographic locations in the state on an alternating basis.

F. Members of the commission appointed by the governor 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 4

Section 4. Section 9-15-46 NMSA 1978 (being Laws 1994, Chapter 127, Section 5, as amended) is amended to read:

"9-15-46. COMMISSION--POWERS--DUTIES.--The commission shall:

A. in cooperation with the division, promote the development of a spaceport and other space development-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 and other space development-related projects;

C. act in an advisory capacity to the secretary on matters that pertain to the development and operation of space development-related projects;

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 space development-related activities and projects undertaken by the commission."

Section 5

Section 5. REPEAL.--Section 9-15-42 NMSA 1978 (being Laws 1994, Chapter 127, Section 1) is repealed.

HOUSE BILL 1207

CHAPTER 92

RELATING TO TAXATION; CHANGING THE RATE OF TAX IMPOSED BY THE RAILROAD CAR COMPANY TAX ACT; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 7-11-3 NMSA 1978 (being Laws 1982, Chapter 18, Section 19, as amended) is amended to read:

"7-11-3. IMPOSITION OF TAX--TAX RATE--TAX IN LIEU OF PROPERTY TAXES.--

A. There is imposed on the gross earnings of each organization for the 1996 and subsequent calendar years a tax of one and one-half percent.

B. The tax imposed in Subsection A of this section is in lieu of all property taxes on railway cars owned by an organization."

Section 2

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

HOUSE BILL 1391

WITH EMERGENCY CLAUSE

SIGNED APRIL 8, 1997

CHAPTER 93

RELATING TO ELECTIONS; ENACTING A NEW SECTION OF THE ELECTION CODE; REQUIRING REMOVAL OF DECEASED CANDIDATE'S NAME FROM THE BALLOT.

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

Section 1

Section 1. BALLOTS--REMOVAL OF NAME OF DECEASED CANDIDATE.--The name of a candidate deceased after the filing of his declaration of candidacy and nominating petitions, after the designation by a pre-primary convention or after his nomination at a primary election, but prior to the printing of the primary or general election ballot, shall be removed from the primary or general election ballot.

SENATE BILL 36

CHAPTER 94

RELATING TO TRAFFIC LAWS; AMENDING A SECTION OF THE NMSA 1978 CONCERNING VEHICLE LOAD LIMITS; FURTHER CLARIFYING STANDARDS FOR SOLID WASTE COLLECTION VEHICLES.

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

Section 1

Section 1. Section 66-7-406 NMSA 1978 (being Laws 1978, Chapter 35, Section 477, as amended) is amended to read:

"66-7-406. SPECIAL LOAD LIMITS.--

A. Subject to the provisions of Sections 66-7-401 through 66-7-416 NMSA 1978 limiting the length of vehicles and loads, the load upon any vehicle operated alone or the load upon the front vehicle of a combination of vehicles shall not extend more than three feet beyond the foremost part of the vehicle, and the load upon any vehicle operated alone or the load upon the rear vehicle of a combination of vehicles shall not extend more than seven feet beyond the rear of the bed or body of the vehicle. For the purposes of this section, the foremost part of a front-end loading solid waste collection vehicle shall include the front-end loading equipment attached to the vehicle.

B. If a vehicle combination consists of a tractor, semitrailer and a trailer, the rear overhang is limited to a maximum of two feet on the trailer and semitrailer and no front overhang."

SENATE BILL 173

CHAPTER 95

RELATING TO PROBATE; PROVIDING THAT A DECEDENT'S SURVIVING SPOUSE IS ENTITLED TO A PERSONAL PROPERTY ALLOWANCE; AMENDING A SECTION OF THE UNIFORM PROBATE CODE; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 45-2-403 NMSA 1978 (being Laws 1993, Chapter 174, Section 21, as amended) is amended to read:

"45-2-403. PERSONAL PROPERTY ALLOWANCE.--In addition to the family allowance, the decedent's surviving spouse is entitled from the estate to a value, not exceeding fifteen thousand dollars ($15,000) 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 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 fifteen thousand dollars ($15,000) or if there is not fifteen thousand dollars ($15,000) 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 fifteen thousand dollar ($15,000) 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 2

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

SENATE BILL 177, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 8, 1997

CHAPTER 96

RELATING TO WATER; AMENDING SECTION 73-2-41 NMSA 1978 (BEING LAWS 1860-1861, P. 24, SECTION 2, AS AMENDED).

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

Section 1

Section 1. Section 73-2-41 NMSA 1978 (being Laws 1860-1861, p. 24, Section 2, as amended) is amended to read:

"73-2-41. INDIANS--RIGHTS AND DUTIES.--The different Indians residing within the state shall be subject to render the same services as non-Indians in working the acequias, within the limits of their respective reservations in which they may have a common interest with the non-Indians who live outside their respective reservations, and they shall enjoy at the same time the same benefit and rights of commercial traffic; provided that the Indians shall have no right to participate in the

nominations and election of acequia mayordomos or superintendents or acequia or water commissioners in any ditch, whether within or without their reservations, except in acequias constructed entirely by themselves, unless they have paid their proportionate share of the whole cost of the construction of such acequia and unless the lands sought to be voted by the Indians have been duly returned for taxation in accordance with law and state and county taxes paid thereon. In all cases in which non-Indians living outside the reservation have acquired water rights by purchase of land from the Indians, the distribution of the water between the Indians and the non-Indians shall be agreed upon, based upon the customs heretofore practiced and recognized between the Indians and the non-Indians, by and between the governor of the Indian community or pueblo and the commissioners of such acequias in which the non-Indians may have acquired any such rights and, the governors of such Indians and the acequia commissioners shall also regulate the amount and manner of work to be done by the Indians and non-Indians in all such acequias in which all have water rights in accordance with such customs."

SENATE CONSERVATION COMMITTEE

SUBSTITUTE FOR SENATE BILL 178

CHAPTER 97

REPEALING THE PEANUT ACT.

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

Section 1

Section 1. REPEAL.--Sections 76-17-1 through 76-17-9 NMSA 1978 (being Laws 1963, Chapter 167, Sections 1 through 4, Laws 1977, Chapter 256, Section 1 and Laws 1963, Chapter 167, Sections 5 through 8, as amended) are repealed.

SENATE BILL 204

CHAPTER 98

RELATING TO HEALTH CARE; AMENDING THE MEDICAID FRAUD ACT TO ADDRESS MANAGED CARE FRAUD; PROVIDING PENALTIES.

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

Section 1

Section 1. Section 30-44-1 NMSA 1978 (being Laws 1989, Chapter 286, Section 1) is amended to read:

"30-44-1. SHORT TITLE.--Chapter 30, Article 44 NMSA 1978 may be cited as the "Medicaid Fraud Act"."

Section 2

Section 2. Section 30-44-2 NMSA 1978 (being Laws 1989, Chapter 286, Section 2) is amended to read:

"30-44-2. DEFINITIONS.--As used in the Medicaid Fraud Act:

A. "benefit" means money, treatment, services, goods or anything of value authorized under the program;

B. "claim" means any communication, whether oral, written, electronic or magnetic, that identifies a treatment, good or service as reimbursable under the program;

C. "cost document" means any cost report or similar document that states income or expenses and is used to determine a cost reimbursement based rate of payment for a provider under the program;

D. "covered person" means an individual who is entitled to receive health care benefits from a managed health care plan;

E. "department" means the human services department;

F. "entity" means a person other than an individual and includes corporations, partnerships, associations, joint-stock companies, unions, trusts, pension funds, unincorporated organizations, governments and political subdivisions thereof and nonprofit organizations;

G. "great physical harm" means physical harm of a type that causes physical loss of a bodily member or organ or functional loss of a bodily member or organ for a prolonged period of time;

H. "great psychological harm" means psychological harm that causes mental or emotional incapacitation for a prolonged period of time or that causes extreme behavioral change or severe physical symptoms or that requires psychological or psychiatric care;

I. "health care official" means:

(1) an administrator, officer, trustee, fiduciary, custodian, counsel, agent or employee of a managed care health plan;

(2) an officer, counsel, agent or employee of an organization that provides, proposes to or contracts to provide services to a managed health care plan; or

(3) an official, employee or agent of a state or federal agency with regulatory or administrative authority over a managed health care plan;

J. "managed health care plan" means a government-sponsored health benefit plan that requires a covered person to use, or creates incentives, including financial incentives, for a covered person to use health care providers managed, owned, under contract with or employed by a health care insurer or provider service network. A "managed health care plan" includes the health care services offered by a health maintenance organization, preferred provider organization, health care insurer, provider service network, entity or person that contracts to provide or provides goods or services that are reimbursed by or are a required benefit of a state or federally funded health benefit program, or any person or entity who contracts to provide goods or services to the program;

K. "person" includes individuals, corporations, partnerships and other associations;

L. "physical harm" means an injury to the body that causes pain or incapacitation;

M. "program" means the medical assistance program authorized under Title XIX of the federal Social Security Act, 42 U.S.C. 1396, et seq. and implemented under Section 27-2-12 NMSA 1978;

N. "provider" means any person who has applied to participate or who participates in the program as a supplier of treatment, services or goods;

O. "psychological harm" means emotional or psychological damage of such a nature as to cause fear, humiliation or distress or to impair a person's ability to enjoy the normal process of his life;

P. "recipient" means any individual who receives or requests benefits under the program;

Q. "records" means any medical or business documentation, however recorded, relating to the treatment or care of any recipient, to services or goods provided to any recipient or to reimbursement for treatment, services or goods, including any documentation required to be retained by regulations of the program; and

R. "unit" means the medicaid fraud control unit or any other agency with power to investigate or prosecute fraud and abuse of the program."

Section 3

Section 3. Section 30-44-7 NMSA 1978 (being Laws 1989, Chapter 286, Section 7, as amended) is amended to read:

"30-44-7. MEDICAID FRAUD--DEFINED--PENALTIES.--

A. Medicaid fraud consists of:

(1) paying, soliciting, offering or receiving:

(a) a kickback or bribe in connection with the furnishing of treatment, services or goods for which payment is or may be made in whole or in part under the program, including an offer or promise to, or a solicitation or acceptance by, a health care official of anything of value with intent to influence a decision or commit a fraud affecting a state or federally funded or mandated managed health care plan;

(b) a rebate of a fee or charge made to a provider for referring a recipient to a provider;

(c) anything of value, intending to retain it and knowing it to be in excess of amounts authorized under the program, as a precondition of providing treatment, care, services or goods or as a requirement for continued provision of treatment, care, services or goods; or

(d) anything of value, intending to retain it and knowing it to be in excess of the rates established under the program for the provision of treatment, services or goods;

(2) providing with intent that a claim be relied upon for the expenditure of public money:

(a) treatment, services or goods that have not been ordered by a treating physician;

(b) treatment that is substantially inadequate when compared to generally recognized standards within the discipline or industry; or

(c) merchandise that has been adulterated, debased or mislabeled or is outdated;

(3) presenting or causing to be presented for allowance or payment with intent that a claim be relied upon for the expenditure of public money any false, fraudulent, excessive, multiple or incomplete claim for furnishing treatment, services or goods;

or

(4) executing or conspiring to execute a plan or action to:

(a) defraud a state or federally funded or mandated managed health care plan in connection with the delivery of or payment for health care benefits, including engaging in any intentionally deceptive marketing practice in connection with proposing, offering, selling, soliciting or providing any health care service in a state or federally funded or mandated managed health care plan; or

(b) obtain by means of false or fraudulent representation or promise anything of value in connection with the delivery of or payment for health care benefits that are in whole or in part paid for or reimbursed or subsidized by a state or federally funded or mandated managed health care plan. This includes representations or statements of financial information, enrollment claims, demographic statistics, encounter data, health services available or rendered and the qualifications of persons rendering health care or ancillary services.

B. Except as otherwise provided for in this section regarding the payment of fines by an entity, whoever commits medicaid fraud as described in Paragraph (1) or (3) 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.

C. Except as otherwise provided for in this section regarding the payment of fines by an entity, whoever commits medicaid fraud as described in Paragraph (2) or (4) of Subsection A of this section when the value of the benefit, treatment, services or goods improperly provided is:

(1) not more than one hundred dollars ($100) is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978;

(2) more than one hundred dollars ($100) but not more 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;

(3) more than two hundred fifty dollars ($250) but not more 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;

(4) more than two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000) shall be guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(5) more than twenty thousand dollars ($20,000) shall be guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

D. Except as otherwise provided for in this section regarding the payment of fines by an entity, whoever commits medicaid fraud when the fraud results in physical harm or psychological harm to a recipient is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

E. Except as otherwise provided for in this section regarding the payment of fines by an entity, whoever commits medicaid fraud when the fraud results in great physical harm or great psychological harm to a recipient is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

F. Except as otherwise provided for in this section regarding the payment of fines by an entity, whoever commits medicaid fraud when the fraud results in death to a recipient is guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

G. If the person who commits medicaid fraud is an entity rather than an individual, the entity shall be subject to a fine of not more than fifty thousand dollars ($50,000) for each misdemeanor and not more than two hundred fifty thousand dollars ($250,000) for each felony."

Section 4

Section 4. Section 30-44-8 NMSA 1978 (being Laws 1989, Chapter 286, Section 8) is amended to read:

"30-44-8. CIVIL PENALTIES--CREATED--ENUMERATED--

PRESUMPTION--LIMITATION OF ACTION.--

A. Any person who receives payment for furnishing treatment, services or goods under the program, which payment the person is not entitled to receive by reason of a violation of the Medicaid Fraud Act, shall, in addition to any other penalties or amounts provided by law, be liable for:

(1) payment of interest on the amount of the excess payments at the maximum legal rate in effect on the date the payment was made, for the period from the date payment was made to the date of repayment to the state;

(2) a civil penalty in an amount of up to three times the amount of excess payments;

(3) payment of a civil penalty of up to ten thousand dollars ($10,000) for each false or fraudulent claim submitted or representation made for providing treatment, services or goods; and

(4) payment of legal fees and costs of investigation and enforcement of civil remedies.

B. Penalties and interest amounts assessed under this section shall be remitted to the state treasurer for deposit in the general fund.

C. Any legal fees, costs of investigation and costs of enforcement of civil remedies recovered on behalf of the state shall be remitted to the state treasurer for deposit in the general fund.

D. A criminal action need not be brought against a person as a condition precedent to enforcement of civil liability under the Medicaid Fraud Act.

E. The remedies under this section are separate from and cumulative to any other administrative and civil remedies available under federal or state law or regulation.

F. The department may adopt regulations for the

administration of the civil penalties contained in this section.

G. No action under this section shall be brought after the expiration of five years from the date the action accrues."

SENATE BILL 267, AS AMENDED

CHAPTER 99

RELATING TO AGRICULTURE; CREATING THE NEW MEXICO SHEEP AND GOAT COUNCIL; ESTABLISHING MEMBERSHIP, POWERS AND DUTIES; AUTHORIZING AN ASSESSMENT; 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 "New Mexico Sheep and Goat Act".

Section 2

Section 2. DEFINITIONS.--As used in the New Mexico Sheep and Goat Act:

A. "board" means the New Mexico livestock board;

B. "council" means the New Mexico sheep and goat council;

C. "department" means the New Mexico department of agriculture;

D. "director" means the director of the New Mexico department of agriculture;

E. "handler" means any producer, processor, distributor or other person engaged in handling, marketing or dealing in sheep or haired goats or their products; and

F. "producer" means any person engaged in the business of raising, breeding, feeding or growing sheep or haired goats.

Section 3

Section 3. SHEEP AND GOAT COUNCIL CREATED--ELECTION--VACANCIES--EX-OFFICIO MEMBERS.--

A. There is created the "New Mexico sheep and goat council", consisting of seven members. Members shall be elected by producers from nominations made to the director by producers or producer organizations.

B. The initial members of the council shall be elected as follows:

(1) two members for one-year terms;

(2) two members for two-year terms; and

(3) three members for three-year terms.

C. Thereafter, each member shall be elected for a term ending three years from the date of expiration of the term for which his predecessor was elected, except in case of a vacancy, when the appointee shall serve the unexpired part of the term of the member whom he replaces. Vacancies shall be filled by appointment by the director from nominations made by producers and producer organizations. The director shall serve as an ex-officio, nonvoting member of the council.

Section 4

Section 4. COUNCIL MEMBER QUALIFICATIONS.--

A. Each member of the council shall have the following qualifications, which shall continue during his term of office:

(1) be actively engaged in sheep or goat production; or

(2) be in some branch of the sheep or haired goat business and during his entire term receive a substantial portion of his income from the sheep or haired goat business.

B. Members of the council shall be elected according to the following plan: two producers from northern New Mexico in areas north of interstate 40, four producers from southern New Mexico in areas

south of interstate 40 and one handler of sheep or haired goats or their products.

Section 5

Section 5. OFFICERS--MEETINGS--EXPENSES.--The council shall elect annually a chairman, vice chairman and such other officers as it deems necessary from among its members. The council shall meet at least once each six months and at such other times as it may be called by the chairman. The council may provide rules for reimbursement of members' expenses while on official business of the council, but such reimbursement shall in no case exceed the provisions of the Per Diem and Mileage Act. Council members shall receive no other compensation, perquisite or allowance.

Section 6

Section 6. DUTIES--POWERS.--

A. The council shall:

(1) conduct marketing programs, including promotion, education and research, promoting sheep and haired goat products;

(2) submit to the director a detailed annual budget for the council on a fiscal-year basis and provide a copy of the budget upon request to any person who has paid an assessment or made a contribution under the New Mexico Sheep and Goat Act;

(3) bond officers and employees of the council who receive and disburse council funds;

(4) keep detailed and accurate records for all receipts and disbursements, have those records audited annually and keep the audit available for inspection in the council office;

(5) establish procedures for the adoption of regulations that will provide for input from producers;

(6) determine and publish each year the assessment rates to be collected by the board; and

(7) employ staff not to exceed three persons.

B. The council may:

(1) contract for scientific research to discover and improve the commercial value of sheep and haired goats and products thereof;

(2) disseminate information showing the value of sheep and haired goats and products for any purpose for which they may be found useful and profitable;

(3) fund programs to enhance the efficiencies of sheep and haired goat production;

(4) make grants to research agencies for financing studies or for the purchase or acquisition of facilities necessary to carry out the purposes of the council as authorized by the New Mexico Sheep and Goat Act;

(5) cooperate with any local, state or national organizations or agencies, whether created by law or voluntary, engaged in

work or activities similar to that of the council, and enter into contracts with those organizations or agencies and expend funds in connection therewith for carrying on joint programs;

(6) study federal and state legislation with respect to tariffs, duties, reciprocal trade agreements, import quotas and other matters concerning the effect on the sheep and haired goat industry and represent and protect the interests of the industry with respect to any legislation or proposed legislation or executive action that may affect that industry;

(7) enter into contracts that it deems appropriate to the carrying out of the purposes of the council as authorized by the New Mexico Sheep and Goat Act;

(8) sue and be sued as a council without individual liability for acts of the council within the scope of the powers conferred upon it by the New Mexico Sheep and Goat Act;

(9) appoint subordinate officers and employees of the council and prescribe their duties and fix their compensation;

(10) adopt regulations for the exercise of its powers and duties. A copy of all council regulations shall be filed with the department; and

(11) cooperate with other state councils or agencies in the collection of assessments.

Section 7

Section 7. FUNDING.--In order to accomplish the purposes of the New Mexico Sheep and Goat Act, the council is empowered to:

A. receive any funds that may be returned to the New Mexico sheep and haired goat industry as its share of assessments collected by a national sheep promotion research and information board or any similar entity;

B. accept grants, donations, contributions or gifts from any source for expenditure for any purpose consistent with the powers and duties conferred on the council; and

C. receive any other funds that may be authorized by law.

Section 8

Section 8. ASSESSMENTS.--There is levied and imposed upon all sheep and haired goats involved in a transfer of ownership in the state an assessment to be called the "council assessment". The council assessment is to be fixed by the council at a rate not more than seventy-five cents ($.75) per head. The board shall collect this council assessment at the same time and in the same manner as the fee charged for the state inspection required upon the movement of those sheep and haired goats. The board shall not deliver the certificate of inspection or permit the sheep or haired goats to move until all fees have been paid. The proceeds of the council assessment shall be remitted by the board to the council at the end of each month along with information that will allow the council to make necessary refunds. At the request of the board, the council shall reimburse the board for the reasonable and necessary expenses incurred for such collections and information not to exceed four percent of collections on those sheep and haired goats involved in a transfer of ownership.

Section 9

Section 9. REFUNDS.--Any person who has paid a council assessment is entitled to a refund of the amount paid by making written application for the refund to the council. The application form shall be returned within thirty days after the inspection was made giving rise to the council assessment and shall contain enough detail to enable the council to find the record of payment. Refunds shall be made within thirty days of the date of the application unless the proceeds and the necessary information have not been received by the council, in which case the refund shall be made within fifteen days after receipt of the proceeds and necessary information. The form shall be provided by the board at the time of inspection.

Section 10

Section 10. DISPOSITION OF FUNDS.--

A. All funds received by the council shall be received and disbursed directly by the council. Such funds shall be audited in accordance with the provisions of the Audit Act. The council is not required to submit vouchers, purchase orders or contracts to the department of finance and administration as otherwise required by Section 6-5-3 NMSA 1978.

B. The council shall issue warrants against funds of the council in payment of its lawful obligations. The council shall provide its own warrants, purchase orders and contract forms as well as other supplies and equipment. All warrants shall be signed by a council member and one other person designated by the council.

C. The council shall designate banks where its funds are to be deposited, provided such banks have been qualified as depository banks for state funds.

Section 11

Section 11. PROCUREMENT CODE--PERSONNEL ACT--EXEMPTIONS--TORT CLAIMS ACT.--The council is exempt from the provisions of the Procurement Code and the Personnel Act. The council members and employees shall be subject to the Tort Claims Act and shall be provided all insurance and self-insurance coverage provided by the risk management division of the general services department.

SENATE BILL 271, AS AMENDED

WITH CERTIFICATE OF CORRECTION

CHAPTER 100

RELATING TO EDUCATION; PROVIDING FOR THE DISTRIBUTION OF INSTRUCTIONAL MATERIAL FUNDS DIRECTLY TO LOCAL SCHOOL BOARDS, STATE INSTITUTIONS AND ADULT BASIC EDUCATION CENTERS; AMENDING SECTIONS OF THE PUBLIC SCHOOL CODE.

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

Section 1

Section 1. Section 22-15-4 NMSA 1978 (being Laws 1967, Chapter 16, Section 208, as amended) is amended to read:

"22-15-4. BUREAU--DUTIES.--Subject to the policies and regulations of the state board, the bureau shall:

A. administer the provisions of the Instructional Material Law;

B. enforce regulations for the handling, safekeeping and distribution of instructional material and instructional material funds and for inventory and accounting procedures to be followed by school districts, state institutions, private schools and adult basic education centers pursuant to the Instructional Material Law;

C. withdraw or withhold the privilege of participating in the free use of instructional material in case of any violation of or noncompliance with the provisions of the Instructional Material Law or any regulations adopted pursuant thereto; and

D. enforce regulations relating to the use and operation of instructional material depositories in the instructional material distribution process."

Section 2

Section 2. Section 22-15-5 NMSA 1978 (being Laws 1967, Chapter 16, Section 209, as amended) is amended to read:

"22-15-5. INSTRUCTIONAL MATERIAL FUND.--

A. The state treasurer shall establish a fund to be known as the "instructional material fund".

B. The instructional material fund shall be used for the purpose of paying for the cost of purchasing instructional material pursuant to the Instructional Material Law. Transportation charges for the delivery of instructional material to a school district, a state institution, a private school as agent or an adult basic education center and emergency expenses incurred in providing instructional material to students may be included as a cost of purchasing instructional material. Charges for rebinding of used instructional materials that appear on the multiple list pursuant to Section 22-15-8 NMSA 1978 may also be included as a cost of purchasing instructional material."

Section 3

Section 3. Section 22-15-7 NMSA 1978 (being Laws 1967, Chapter 16, Section 211, as amended) is amended to read:

"22-15-7. STUDENTS ELIGIBLE--DISTRIBUTION.--

A. Any qualified student or person eligible to become a qualified student attending a public school, a state institution or a private school approved by the state board in any grade from first through the twelfth grade of instruction is entitled to the free use of instructional material. Any student enrolled in an early childhood education program as defined by Section 22-13-3 NMSA 1978 or person eligible to become an early childhood education student as defined by that section attending a private early childhood education program approved by the state board is entitled to the free use of instructional material. Any student in an adult basic education program approved by the state board is entitled to the free use of instructional material.

B. Instructional material shall be distributed to school districts, state institutions, private schools and adult basic education centers as agents for the benefit of students entitled to the free use of the instructional material.

C. Any school district, state institution, private school as agent or adult basic education center receiving instructional material pursuant to the Instructional Material Law is responsible for distribution of the instructional material for use by eligible students and for the safekeeping of the instructional material."

Section 4

Section 4. Section 22-15-8 NMSA 1978 (being Laws 1967, Chapter 16, Section 212, as amended) is amended to read:

"22-15-8. MULTIPLE LIST--SELECTION.--

A. The state board shall adopt a multiple list to be made available to students pursuant to the Instructional Material Law. The state board shall ensure that parents and other community members are involved in the adoption process at the state level.

B. Pursuant to the provisions of the Instructional Material Law, each school district, state institution, private school as agent or adult basic education center may select instructional material for the use of its students from the multiple list adopted by the state board. Local school boards shall give written notice to parents and other community members and shall invite parental involvement in the adoption process

at the district level. Local school boards shall also give public notice, which notice may include publication in a newspaper of general circulation in the school district."

Section 5

Section 5. Section 22-15-9 NMSA 1978 (being Laws 1967, Chapter 16, Section 213, as amended) is amended to read:

"22-15-9. DISTRIBUTION OF FUNDS FOR INSTRUCTIONAL MATERIAL.--

A. On or before July 1 of each year, the department of education shall allocate to each school district, state institution or private school not less than ninety percent of its estimated entitlement as determined from the estimated forty-day membership for the next school year. A school district's, state institution's or private school's entitlement is that portion of the total amount of the annual appropriation less a deduction for a reasonable reserve for emergency expenses that its forty-day membership bears to the forty-day membership of the entire state. The allocation for adult basic education shall be based on a full-time equivalency obtained by multiplying the total previous year's enrollment by .25. For the purpose of this allocation, additional pupils shall be counted as four pupils.

B. On or before January 15 of each year, the department of education shall recompute each entitlement using the forty-day membership for that year, except for adult basic education, and shall allocate the balance of the annual appropriation adjusting for any over- or under-estimation made in the first allocation.

C. An amount not to exceed thirty percent of the allocations attributed to each local school district, state institution or adult basic education center may be used for instructional material not included on the multiple list provided for in Section 22-15-8 NMSA 1978. Adult basic education centers may expend up to one hundred percent of their instructional material funds for items that are not on the multiple list.

D. The department of education shall establish procedures for the distribution of funds directly to local school districts, state institutions and adult basic education centers. The department of education shall distribute funds to private schools on a reimbursement basis for instructional material included on the multiple list provided for in Section 22-15-8 NMSA 1978.

E. A school district, state institution or adult basic education center that has funds remaining for the purchase of instructional material at the end of the fiscal year shall retain those funds for expenditure in subsequent years. Any balance remaining in an instructional material account of a private school at the end of the fiscal year shall remain available for reimbursement by the department of education for instructional material purchases in subsequent

years."

Section 6

Section 6. Section 22-15-10 NMSA 1978 (being Laws 1967, Chapter 16, Section 214, as amended) is amended to read:

"22-15-10. SALE OR LOSS OR RETURN OF INSTRUCTIONAL MATERIAL.--

A. With the approval of the chief, instructional material acquired by a school district, state institution, private school or adult basic education center pursuant to the Instructional Material Law may be sold at a price determined by officials of the school district, state institution, private school or adult basic education center. The selling price shall not exceed the cost of the instructional material to the state.

B. A school district, state institution, private school or adult basic education center may hold the parent, guardian or student responsible for the loss, damage or destruction of instructional material while the instructional material is in the possession of the student. A school district may withhold the grades, diploma and transcripts of the student responsible for damage or loss of instructional material until the parent, guardian or student has paid for the damage or loss. When a parent, guardian or student is unable to pay for damage or loss, the school district shall work with the parent, guardian or student to develop an alternative program in lieu of payment. Where a parent or guardian is determined to be indigent according to guidelines established by the state board, the local school district shall bear the cost.

C. A school district, state institution or adult basic education center that has funds remaining for the purchase of instructional material at the end of the fiscal year shall retain those funds for expenditure in subsequent years.

D. All money collected by a private school for the sale, loss, damage or destruction of instructional material received pursuant to the Instructional Material Law shall be sent to the department of education.

E. Upon order of the chief, a school district, state institution, private school or adult basic education center shall transfer to the department of education or its designee instructional material, purchased with instructional material funds, that is in usable condition and for which there is no use expected by the respective schools."

Section 7

Section 7. Section 22-15-11 NMSA 1978 (being Laws 1967, Chapter 16, Section 215, as amended) is amended to read:

"22-15-11. RECORD OF INSTRUCTIONAL MATERIAL.--Each school district, state institution, private school or adult basic education center shall keep accurate records of all instructional material, including cost records, on forms and by procedures prescribed by the division."

Section 8

Section 8. Section 22-15-12 NMSA 1978 (being Laws 1967, Chapter 16, Section 216, as amended) is amended to read:

"22-15-12. ANNUAL REPORT.--Annually, at a time specified by the department of education, each local school board of a school district and each governing authority of a state institution, private school or adult basic education center acquiring instructional material pursuant to the Instructional Material Law shall file a report with the department of education."

Section 9

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1998.

SENATE BILL 8

CHAPTER 101

RELATING TO GAMBLING; ENACTING A NEW SECTION OF THE CRIMINAL CODE TO PROVIDE FOR BINGO OPERATIONS BY SENIOR CITIZEN GROUPS.

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

Section 1

Section 1. A new section of the Criminal Code, Section 30-19-7.2 NMSA 1978 is enacted to read:

"30-19-7.2. RECREATIONAL BINGO EXCEPTION.--Nothing in this chapter or in the New Mexico Bingo and Raffle Act prohibits a senior citizen group from organizing and conducting bingo at a senior citizen center, provided that no person other than players participating in the bingo game receive or become entitled to receive any part of the proceeds, either directly or indirectly, from the bingo game, and no minor is allowed to participate in the organization or conduct of games or play bingo. As used in this section, "senior citizen group" means an organization in which the majority of the membership consists of persons who are at least fifty-five years of age and the primary activities and purposes of which are to provide recreational or social activities for those persons."

CHAPTER 102

RELATING TO STATE EDUCATIONAL INSTITUTIONS; AMENDING A SECTION OF THE NMSA 1978 TO AUTHORIZE RESIDENT STUDENT STATUS FOR ATHLETIC SCHOLARSHIP RECIPIENTS.

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

Section 1

Section 1. Section 21-1-2 NMSA 1978 (being Laws 1970, Chapter 9, Section 1, as amended) is amended to read:

"21-1-2. MATRICULATION AND TUITION FEES.--

A. Except as otherwise provided in this section and in Section 21-1-4.3 NMSA 1978, the boards of regents of the university of New Mexico, New Mexico state university, New Mexico highlands university, western New Mexico university, eastern New Mexico university, New Mexico military institute, New Mexico institute of mining and technology and New Mexico junior college shall establish and charge matriculation fees and tuition fees as follows:

(1) each student shall be charged a matriculation fee of not less than five dollars ($5.00) upon enrolling in each institution;

(2) each student who is a resident of New Mexico shall be charged a tuition fee of not less than twenty dollars ($20.00) a year;

(3) each student who is not a resident of New Mexico shall be charged a tuition fee of not less than fifty dollars ($50.00) a year;

(4) each student shall be charged a tuition fee of not less than ten dollars ($10.00) for each summer session; and

(5) each student may be charged a tuition fee for extension courses.

B. Except as otherwise provided in this section and in Section 21-1-4.3 NMSA 1978, the board of regents of northern New Mexico state school shall establish and charge each student a matriculation fee and a tuition fee.

C. The board of regents of each institution may establish and grant gratis scholarships to students who are residents of New Mexico in an amount not to exceed the matriculation fee or tuition and fees, or both. Except as provided in Section 21-1-4.3 NMSA 1978, the number of scholarships established and granted shall not exceed three percent of the preceding fall semester enrollment in each institution and shall not be established and granted for summer sessions. The president of each institution shall select and recommend to the board of regents of his institution, as recipients of scholarships, students who possess good moral character and satisfactory initiative, scholastic standing and personality. At least thirty-three and one-third percent of the gratis scholarships established and granted by each board of regents each year shall be granted on the basis of financial need.

D. The board of regents of each institution set out in this subsection may establish and grant, in addition to those scholarships provided for in Subsection C of this section, athletic scholarships for tuition and fees. In no event shall the board of regents of any institution be allowed to award scholarships for tuition and fees for more than the number of athletic scholarships set out in this subsection and in no event shall more than seventy-five percent of the scholarships granted be for out-of-state residents:

(1) the board of regents of the university of New Mexico may grant up to two hundred ninety-three athletic scholarships;

(2) the board of regents of New Mexico state university may grant up to two hundred seventy athletic scholarships;

(3) the boards of regents of New Mexico highlands university, eastern New Mexico university and western New Mexico

university may each grant up to one hundred forty athletic scholarships; and

(4) the board of regents of New Mexico junior college may grant up to fifty-two athletic scholarships.

E. In the event that the number of athletic scholarships exceeds the number of athletic scholarships permitted that institution by regulations and bylaws of the national collegiate athletic association or the national association of intercollegiate athletics of which that institution is a member, the appropriate board of regents shall reduce the number of authorized tuition scholarships to comply with association rules and regulations.

F. Matriculation fees and tuition fees shall be fixed and made payable as directed by the board of regents of each institution, collected by the officers of each institution and accounted for as are other funds of the institutions. Matriculation fees shall be charged only once for each institution in which a student enrolls."

Section 2

Section 2. Section 21-1-3 NMSA 1978 (being Laws 1970, Chapter 47, Section 1, as amended) is amended to read:

"21-1-3. STATE EDUCATIONAL INSTITUTIONS--RESIDENT STUDENTS.--

A. For the purpose of tuition payment at the resident student rates at state educational institutions, as defined in Article 12, Section 11 of the constitution of New Mexico, "resident student" includes:

(1) any person not otherwise entitled to claim residence who is a member of the armed forces of the United States assigned to active duty within the exterior boundaries of this state; and

(2) the spouse or dependent child of any person who qualifies under Paragraph (1) of this subsection.

B. Assignment to active duty within the exterior boundaries of this state may be established by a certificate of assignment from the commanding officer of the person so assigned.

C. For the purpose of tuition payment at resident student rates at New Mexico highlands university, "resident student" may include any person who is a Native American and a citizen of the United States.

D. For the purposes of tuition payment and budget and revenue calculations, the board of regents of any post-secondary, state educational institution, as defined in Article 12, Section 11 of the constitution of New Mexico, may determine that "resident student" includes any Texas resident who resides within a one hundred thirty-five mile radius of that institution.

E. For the purpose of tuition payment and budget and revenue calculations, "resident student" includes any student receiving an athletic scholarship from a post-secondary educational institution set forth in Article 12, Section 11 of the constitution of New Mexico."

SENATE BILL 81

CHAPTER 103

RELATING TO EDUCATIONAL RETIREMENT; AMENDING SECTION 22-11-34 NMSA 1978 (BEING LAWS 1967, CHAPTER 16, SECTION 157, AS AMENDED) TO PROVIDE THAT THE PURCHASE COST OF SERVICE-CREDIT SHALL BE BASED UPON THE ACTUARIAL VALUE OF THE SERVICE PURCHASED.

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

Section 1

Section 1. Section 22-11-34 NMSA 1978 (being Laws 1967, Chapter 16, Section 157, as amended) is amended to read:

"22-11-34. ALLOWED SERVICE-CREDIT.--

A. A member shall be certified to have acquired allowed service-credit for those periods of time when he was:

(1) employed prior to the effective date of the Educational Retirement Act in any federal educational program within

New Mexico, including United States Indian schools and civilian conservation corps camps. This service-credit shall be allowed without contribution;

(2) engaged in military service that interrupted his employment in New Mexico, if he returned to his employment within eighteen months following honorable discharge. This service-credit shall be allowed without contribution;

(3) engaged in United States military service or the commissioned corps of the public health service from which he was honorably discharged if he contributes to the fund a sum equal to ten and one-half percent of his average annual salary for that period of time for which he has acquired earned service-credit under the Educational Retirement Act for each year of service-credit he desires to purchase. Average annual salary shall be determined in accordance with rules promulgated by the board, but shall always be based upon actual salaries earned by the member where the actual salaries can be ascertained by the board. The employer's contributions for service-credit shall not be paid by the employer. The purchase of service-credit provided in this section shall be carried out by the member within three years after the date of the member's employment following service; or

(4) employed:

(a) in any public school or public institution of higher learning in another state, territory or possession of the United States;

(b) in any United States military dependents' school operated by a branch of the armed forces of the United States;

(c) as provided in Paragraph (1) of this subsection after the effective date of the Educational Retirement Act; or

(d) in any private school or institution of higher learning in New Mexico whose education program is accredited or approved by the state board at the time of employment.

B. The member or employer under Paragraph (4) of Subsection A of this section shall contribute to the fund for each year of allowed service-credit desired an amount equal to twelve percent of the member's annual salary at the time payment is made if the member is employed or twelve percent times the member's annual salary during the member's last year of employment if the member is not employed at the time of payment. Contributions paid for the member who is not

employed shall bear interest at the average rate earned by the fund during the five-fiscal-year period immediately preceding the date of payment. Such interest shall run from the date the member last terminated employment to the date of payment. Effective July 1, 2001, the member or employer under Paragraph (4) of Subsection A of this section shall contribute to the fund for each year of allowed service-credit desired an amount equal to the actuarial value of the service purchased as defined by the board. Payment pursuant to Paragraph (4) of Subsection A of this section may be made in installments, at the discretion of the board, over a period of not to exceed one year, and, if the sum paid does not equal the amount required for any full year of allowed service-credit, the member shall acquire allowed service-credit for that period of time which is proportionate to the payment made. Half credit may be allowed without contribution for not more than ten years of the educational service described by Subparagraph (a) of Paragraph (4) of Subsection A of this section if that service was prior to June 13, 1953 and if the member was employed in New Mexico prior to June 13, 1953 in any position covered by the Educational Retirement Act or any law repealed thereby.

C. No member shall be certified to have acquired allowed service-credit:

(1) under any single paragraph or the combination of only Paragraphs (1) and (4) or only Paragraphs (2) and (3) of Subsection A of this section in excess of five years; or

(2) in excess of ten years for any other combination of Paragraphs (1) through (4) of Subsection A of this section.

D. The provisions of this section are made applicable to the services described prior to as well as after the effective date of the Educational Retirement Act."

SENATE BILL 120, AS AMENDED

CHAPTER 104

RELATING TO GOVERNMENT PAYMENTS; REDUCING THE TIME FOR PAYMENTS FROM GOVERNMENT; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 13-1-158 NMSA 1978 (being Laws 1984, Chapter 65, Section 131, as amended) is amended to read:

"13-1-158. PAYMENTS FOR PURCHASES.--

A. No warrant, check or other negotiable instrument shall be issued in payment for any purchase of services, construction or items of tangible personal property unless the central purchasing office or the using agency certifies that the services, construction or items of tangible personal property have been received and meet specifications or unless prepayment is permitted under Section 13-1-98 NMSA 1978 by exclusion of the purchase from the Procurement Code.

B. Unless otherwise agreed upon by the parties or unless otherwise specified in the invitation for bids, request for proposals or other solicitation, within fifteen days from the date the central purchasing office or using agency receives written notice from the contractor that payment is requested for services or construction completed or items of tangible personal property delivered on site and received, the central purchasing office or using agency shall issue a written certification of complete or partial acceptance or rejection of the services, construction or items of tangible personal property.

C. Except as provided in Subsection D of this section, upon certification by the central purchasing office or the using agency that the services, construction or items of tangible personal property have been received and accepted, payment shall be tendered to the contractor within thirty days of the date of certification. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the contractor at the rate of one and one-half percent per month. For purchases funded by state or federal grants to local public bodies, if the local public body has not received the funds from the federal or state funding agency, payments shall be tendered to the contractor within five working days of receipt of funds from that funding agency.

D. If the central purchasing office or the using agency finds that the services, construction or items of tangible personal property are not acceptable, it shall, within thirty days of the date of receipt of written notice from the contractor that payment is requested for services or construction completed or items of tangible personal property delivered on site, provide to the contractor a letter of exception explaining the

defect or objection to the services, construction or delivered tangible personal property along with details of how the contractor may proceed to provide remedial action.

E. Late payment charges that differ from the provisions of Subsection C of this section may be assessed if specifically provided for by contract or pursuant to tariffs approved by the New Mexico public utility commission or the state corporation commission."

Section 2

Section 2. Section 13-1-170 NMSA 1978 (being Laws 1984, Chapter 65, Section 143) is amended to read:

"13-1-170. UNIFORM CONTRACT CLAUSES.--

A. A state agency, local public body or central purchasing office with the power to issue regulations may require by regulation that contracts include uniform clauses providing for termination of contracts, adjustments in prices, adjustments in time of performance or other contract provisions as appropriate, including but not limited to the following subjects:

(1) the unilateral right of a state agency or a local public body to order in writing:

(a) changes in the work within the scope of the contract; and

(b) temporary stoppage of the work or the delay of performance;

(2) variations occurring between estimated quantities of work in a contract and actual quantities;

(3) liquidated damages;

(4) permissible excuses for delay or nonperformance;

(5) termination of the contract for default;

(6) termination of the contract in whole or in part for the convenience of the state agency or a local public body;

(7) assignment clauses providing for the assignment by the contractor to the state agency or a local public body of causes of action for violation of state or federal antitrust statutes;

(8) identification of subcontractors by bidders in bids; and

(9) uniform subcontract clauses in contracts.

B. A state agency, local public body or central purchasing office with the power to issue regulations shall require by regulation that contracts include a clause imposing late payment charges against the state agency, local public body or central purchasing office in the amount and under the conditions stated in Section 13-1-158 NMSA 1978."

Section 3

Section 3. 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 attorney 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 thirty 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."

CHAPTER 105

RELATING TO CRIMINAL LAW; ENACTING THE DNA IDENTIFICATION ACT; PROVIDING FOR COLLECTION OF DNA SAMPLES FROM CONVICTED FELONS; ASSESSING A FEE; CREATING A FUND; PROVIDING A PENALTY; 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 "DNA Identification Act".

Section 2

Section 2. PURPOSE OF ACT.--The purpose of the DNA Identification Act is to:

A. establish a DNA identification system for covered offenders; and

B. facilitate the use of DNA records by local, state and federal law enforcement agencies in the identification, detection or exclusion of persons in connection with criminal investigations.

Section 3

Section 3. DEFINITIONS.--As used in the DNA Identification Act:

A. "administrative center" means the law enforcement agency or unit that administers and operates the DNA identification system;

B. "DNA oversight committee" means the DNA identification system oversight committee;

C. "CODIS" means the federal bureau of investigation's national DNA index system for storage and exchange of DNA records submitted by forensic DNA laboratories;

D. "covered offender" means any person convicted of a felony offense as an adult under the Criminal Code, the Motor Vehicle Code or the constitution of New Mexico or convicted as an adult pursuant to youthful offender or serious youthful offender proceedings under the Children's Code;

E. "department" means the department of public safety;

F. "DNA" means deoxyribonucleic acid as the basis of human heredity;

G. "DNA identification system" means the DNA identification system established pursuant to the DNA Identification Act;

H. "DNA records" means the results of DNA testing and related information;

I. "DNA testing" means a forensic DNA analysis that includes restriction fragment length polymorphism, polymerase chain reaction or other valid methods of DNA typing performed to obtain identification characteristics of samples;

J. "fund" means the DNA identification system fund; and

K. "sample" means a sample of biological material sufficient for DNA testing.

Section 4

Section 4. ADMINISTRATIVE CENTER--POWERS AND DUTIES --TRANSFER TO OTHER LAW ENFORCEMENT AGENCY.--

A. The administrative center shall be an appropriate unit of the department or such other qualified New Mexico law enforcement agency as the secretary of public safety may designate in accordance with this section.

B. The administrative center shall:

(1) establish and administer the DNA identification system. The DNA identification system shall provide for collection, storage, DNA testing, maintenance and comparison of samples and DNA records for forensic purposes. Such purposes shall include generation of investigative leads and statistical analysis of DNA profiles. Procedures used for DNA testing shall be compatible with the procedures the federal bureau of investigation has specified, including comparable test procedures, laboratory equipment, supplies and computer software. Procedures used shall meet or exceed the provisions of the federal DNA Identification Act of 1994 regarding minimum standards for state participation in CODIS, including minimum standards for the acceptance, security and dissemination of DNA records;

(2) coordinate sample collection activities;

(3) perform or contract for DNA testing;

(4) serve as a repository for samples and DNA records;

(5) act as liaison with the federal bureau of investigation for purposes of CODIS; and

(6) adopt regulations and procedures governing:

(a) sample collection;

(b) DNA testing;

(c) the DNA identification system and DNA records; and

(d) the acceptance, security and dissemination of DNA records.

C. The secretary of public safety may designate, pursuant to a joint powers agreement, the crime laboratory of the police department for the largest municipality in a class A county having a population of more than two hundred fifty thousand at the most recent federal decennial census to act as the administrative center.

D. The secretary of public safety may designate, pursuant to a joint powers agreement, any other law enforcement agency to act as administrative center upon recommendation of five voting members of the advisory committee.

Section 5

Section 5. DNA OVERSIGHT COMMITTEE--CREATED--

POWERS AND DUTIES.--

A. The "DNA identification system oversight committee" is created. The DNA oversight committee shall be composed of nine voting members as follows:

(1) a scientific representative from the department crime laboratory appointed by the secretary of public safety;

(2) a scientific representative from the crime laboratory of the police department for the largest municipality in a class A county having a population of more than two hundred fifty thousand at the most recent federal decennial census;

(3) the secretary of corrections or his designated representative;

(4) the state medical investigator or his designated representative;

(5) the attorney general or his designated representative;

(6) the president of the district attorney's association or his designated representative;

(7) the chief public defender or his designated representative; and

(8) the president of the New Mexico criminal defense lawyers association or his designated representative; and

(9) the head of the administrative center or his designated representative.

B. The DNA oversight committee shall adopt rules, regulations and procedures regarding the administration and operation of the DNA identification system.

C. The administrative center shall review and make recommendations to the DNA oversight committee regarding rules, regulations and procedures for the administration and operation of the DNA identification system.

Section 6

Section 6. COVERED OFFENDERS SUBJECT TO COLLECTION OF SAMPLES.--Each covered offender shall provide one or more samples to the administrative center, as follows:

A. covered offenders convicted on or after the effective date of the DNA Identification Act shall provide a sample at any time before release from any correctional facility or, if the covered offender is not sentenced to incarceration, before the end of any period of probation or other supervised release;

B. covered offenders incarcerated on the effective date of the DNA Identification Act shall provide a sample at any time before release from any correctional facility; and

C. covered offenders on probation or other supervised release on the effective date of the DNA Identification Act shall provide a sample before the end of any period of probation or other supervised release.

Section 7

Section 7. PROCEDURES FOR COLLECTION OF SAMPLES.--

A. The collection of samples pursuant to the provisions of Section 6 of the DNA Identification Act shall be conducted in a medically approved manner in accordance with rules, regulations and procedures adopted by the DNA oversight committee.

B. All persons who collect samples shall be trained in procedures that meet the requirements and standards specified in Subsection A of this section.

C. All persons authorized to collect samples and their employers shall be immune from liability in any civil or criminal action with regard to the collection of samples, if the collection is performed without negligence. This subsection shall not be deemed to create any additional liability or waive any immunity of public employees under the Tort Claims Act.

D. Samples shall be stored in accordance with rules, regulations and procedures adopted by the administrative center.

E. DNA testing shall be performed by the administrative center or a contract facility it may designate.

F. DNA records and samples shall be securely classified and stored at the administrative center.

Section 8

Section 8. CONFIDENTIALITY--DISCLOSURE AND DISSEMINATION OF DNA RECORDS.--

A. DNA records and samples are confidential and shall not be disclosed except as authorized in the DNA Identification

Act pursuant to the rules and regulations developed and adopted by the DNA oversight committee.

B. The administrative center shall make DNA records available for identification, comparison and investigative purposes to local, state and federal law enforcement agencies pursuant to the rules and regulations developed and adopted by the DNA oversight committee. The administrative center may disseminate statistical or research information derived from samples and DNA testing if all personal identification is removed pursuant to the rules and regulations developed and adopted by the DNA oversight committee.

Section 9

Section 9. ENFORCEMENT.--The attorney general or a district attorney may petition a district court for an order requiring a covered offender to:

A. provide a sample; or

B. provide a sample by alternative means if the covered offender will not cooperate.

Section 10

Section 10. EXPUNGEMENT OF SAMPLES AND DNA RECORDS FROM THE DNA IDENTIFICATION SYSTEM AND CODIS.-

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A. A person may request expungement of his sample and DNA records from the DNA identification system on the grounds that the conviction that led to the inclusion of his sample and DNA records in the DNA identification system has been reversed.

B. The administrative center shall expunge a person's sample and DNA records from the DNA identification system when the person provides the administrative center with the following materials:

(1) a written request for expungement of his sample and DNA records; and

(2) a certified copy of a court order that reverses the conviction that led to the inclusion of his sample and DNA records in the DNA identification system.

C. When a person's sample and DNA records are expunged from the DNA identification system, the head of the administrative center shall ensure that the person's sample and DNA records are expunged from CODIS.

Section 11

Section 11. ASSESSMENT OF FEE.--On and after the effective date of the DNA Identification Act, when a covered offender is convicted, the court shall assess a fee of one hundred dollars ($100) in addition to any other fee, restitution or fine. The fee shall be deposited in the

fund.

Section 12

Section 12. PENALTY.--

A. Any person who by virtue of his employment or official position possesses or has access to samples or DNA records and who willfully discloses any of them to any person or in any manner not authorized by the DNA Identification Act 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 uses or attempts to use samples or DNA records for a purpose not authorized by the DNA Identification Act 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 obtains or attempts to obtain samples or DNA records for a purpose not authorized by the DNA Identification Act is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section

31-18-15 NMSA 1978.

Section 13

Section 13. DNA FUND CREATED--PURPOSES.--

A. The "DNA identification system fund" is created in the state treasury.

B. The fund shall consist of all money received by appropriation, gift or grant, all money collected pursuant to Section 11 of the DNA Identification Act and all investment income from the fund.

C. Money and investment income in the fund at the end of any fiscal year shall not revert to the general fund but shall remain in the fund.

D. Money and investment income in the fund is appropriated to the administrative center for expenditure in fiscal year 1998 and subsequent fiscal years for the purposes of the fund.

E. The fund shall be used for the purposes of the

DNA Identification Act, including paying the expenses incurred by the administrative center and all other reasonable expenses. The administrative center may use money in the fund for loans or grants of money, equipment or personnel to any law enforcement agency, correctional facility, judicial agency, the public defender department or the office of the medical investigator, upon recommendation of the DNA oversight committee.

Section 14

Section 14. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1,

1997.

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR

SENATE BILL 114, AS AMENDED

CHAPTER 106

RELATING TO STATE LOTTERY REVENUES; APPROPRIATING MONEY IN THE LOTTERY TUITION FUND TO THE COMMISSION ON HIGHER EDUCATION FOR DISTRIBUTION TO NEW MEXICO PUBLIC POST-SECONDARY EDUCATIONAL INSTITUTIONS TO PROVIDE TUITION ASSISTANCE TO NEW MEXICO STUDENTS; AMENDING A SECTION OF THE NMSA

1978.

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

Section 1

Section 1. Section 6-24-23 NMSA 1978 (being Laws 1995, Chapter 155, Section 23) is amended to read:

"6-24-23. 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. After appropriation, if any, by the legislature for scholarships pursuant to Subsection C of Section 21-1-2 NMSA 1978, the remaining money in the lottery tuition fund is appropriated to the commission on higher education for distribution to New Mexico's public post-secondary educational institutions to provide tuition assistance for New Mexico resident undergraduates as provided by law."

SENATE BILL 168, AS AMENDED

CHAPTER 107

RELATING TO HEALTH CARE PROVIDERS; ENACTING THE PROVIDER SERVICE NETWORK ACT; CLARIFYING THE REQUIREMENT FOR A CERTIFICATE OF AUTHORITY UNDER THE NEW MEXICO INSURANCE CODE; PROVIDING FOR A GUARANTY ASSOCIATION; 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 "Provider Service Network Act".

Section 2

Section 2. DEFINITIONS.--As used in the Provider Service Network Act:

A. "association" means the provider service network guaranty association;

B. "board" means the provider service network guaranty board;

C. "health care facility" means an institution providing health care services, including a hospital or other licensed inpatient center, an ambulatory surgical or treatment center, a skilled nursing center, a residential treatment center, a home health agency, a diagnostic,

laboratory or imaging center and a rehabilitation or other therapeutic health setting;

D. "health care insurer" means a person that has a valid certificate of authority in good standing under the New Mexico Insurance Code to act as an insurer, health maintenance organization, nonprofit health care plan or prepaid dental plan;

E. "health care professional" means a physician or other health care practitioner, including a pharmacist, who is licensed, certified or otherwise authorized by the state to provide health care services consistent with state law;

F. "health care services" includes physical health services or community-based mental health or developmental disability services, including services for developmental delay;

G. "person" means an individual or other legal entity;

H. "provider" means a person that is licensed or otherwise authorized by the state to furnish health care services, including health care professionals and health care facilities; and

I. "provider service network" means two or more providers affiliated for the purpose of providing health care services on a capitated or similar prepaid, flat-fee basis.

Section 3

Section 3. PROVIDER SERVICE NETWORKS--INSURANCE CODE APPLICABILITY.--

A. Except as provided otherwise in this section, a provider service network shall obtain and maintain a certificate of authority under the New Mexico Insurance Code.

B. A provider service network is not required to obtain or maintain a certificate of authority in connection with health care coverage for which the risk of loss is directly and fully underwritten by a health care insurer, subject to any applicable deductible, coinsurance or copayment provisions.

C. A provider service network that obtains and maintains a certificate of authority as a health care insurer may contract directly with government agencies to provide goods and services to persons receiving public assistance, including medicare and medicaid.

D. A provider service network that does not obtain or maintain a certificate of authority as a health care insurer may contract in appropriate circumstances, including membership and participation in the association, directly with government agencies to provide goods and services to persons receiving public assistance, including medicare and medicaid. The contract shall incorporate and be subject to specific financial, quality-of-

service and consumer-protection standards that the contracting agency shall specify by regulation.

E. This section does not abrogate any other New Mexico Insurance Code requirements that may be applicable to provider service networks, including requirements relating to third-party administrators and examinations. This section does not bar or restrict the right of a provider service network to obtain and maintain a certificate of authority.

Section 4

Section 4. GUARANTY ASSOCIATION AND BOARD--

CREATED--MEMBERSHIP.--

A. The "provider service network guaranty association" is created as an independent public nonprofit corporation. The association's purpose is to guarantee health care services obligations of its members in the event of financial insolvency, bankruptcy or other inability or failure to perform based on financial difficulties. All provider service networks contracting to provide services to public assistance recipients pursuant to Subsection D of Section 3 of the Provider Service Network Act shall organize and be members of the association. The association is not and shall not be deemed a governmental agency or instrumentality for any purpose.

B. The "provider service network guaranty board" is created. The board shall consist of the superintendent of insurance or his designee, who shall be a nonvoting, ex-officio member, and five voting members as follows:

(1) the secretary of human services or his designee;

(2) two representatives of the provider service network industry, who shall be appointed by majority vote of the association's members; and

(3) two representatives of the health insurance industry, who shall be appointed by majority vote of the association's members.

C. The association shall operate subject to the board's supervision and approval. The board is a state government entity for purposes of the Tort Claims Act.

D. The secretary of human services shall notify the superintendent of insurance and the association of each contract signed pursuant to Subsection D of Section 3 of the Provider Service Network Act.

E. The superintendent of insurance shall give notice at least sixty days before the proposed effective date of the first contract entered into pursuant to Subsection D of Section 3 of the Provider Service Network Act, to each provider service network so contracting, stating the time and place of the association's initial organizational meeting.

F. At the organizational meeting and at all successive meetings, each association member shall be entitled to one vote. At the organizational meeting and any subsequent meeting at which board members are to be appointed, the association members shall elect the appointive board members by majority vote. At the organizational meeting, the members shall instruct the board concerning preparation of a proposed plan of operation for the association.

G. Appointive board members shall have initial terms of three years or less, staggered so that the term of at least one such board member expires on June 30 of each year. Following the initial terms, appointive board members shall have three-year terms. When a vacancy occurs in the position of an appointive board member, the remaining board members shall appoint a successor who meets the required qualifications for that position for the balance of the unexpired term. Board members may be reimbursed by the association as provided in the Per Diem and Mileage Act but shall receive no other compensation, perquisite or allowance.

Section 5

Section 5. PLAN OF OPERATION.--

A. The board shall submit to the superintendent of insurance for approval a plan of operation and any subsequent

amendments necessary or suitable to assure proper and fair operation of the association.

B. After notice and hearing, the superintendent of insurance shall approve or disapprove the plan of operation or any subsequent amendments. The superintendent shall approve the plan or an amendment only if he finds that it provides for administering the association on a fair, reasonable and equitable basis and for sharing the association's losses on an equitable basis. The plan of operation or amendment shall become effective upon the superintendent's written approval.

C. If the board fails to submit a plan of operation satisfactory to the superintendent of insurance within ninety days after the initial board is appointed or fails in a timely manner to submit any amendment the superintendent deems necessary at any time thereafter, the superintendent shall adopt and promulgate such plan of operation or amendment by rule. Any such rule shall continue in force until the superintendent modifies it or approves a plan of operation or an amendment submitted by the board that he deems to supersede the rule.

D. The plan of operation submitted to the superintendent of insurance shall:

(1) establish procedures for handling and accounting of the association's money, other assets and property;

(2) provide for payment of claims or provision of alternative health care services to public assistance recipients;

(3) establish regular times and places for board meetings;

(4) establish procedures for records to be kept of all financial transactions and for annual fiscal reporting to the superintendent;

(5) establish procedures for the determination and collection of assessments from members to pay claims or to provide alternative health care services and administrative expenses incurred or estimated to be incurred during the period for which the assessment is made;

(6) establish penalties for nonpayment or late payment of assessments; and

(7) contain any additional provisions necessary and proper for the execution of the association's powers and duties.

Section 6

Section 6. BOARD--POWERS AND DUTIES.--The board has the power and authority to:

A. enter into contracts necessary or proper to carry out the provisions and purposes of the Provider Service Network Act, including contracts with independent contractors for the performance of the association's administrative functions;

B. sue or be sued;

C. determine and pay the association's obligations, including its obligation to pay claims or to provide alternative health care services to public assistance recipients on behalf of an insolvent or

financially troubled provider service network;

D. borrow money to satisfy the association's obligations;

E. assess association members in accordance with the provisions of the Provider Service Network Act and make initial and interim assessments as may be reasonable and necessary for organizational or interim operating expenses. Interim expense assessments shall be credited as offsets against any regular assessments due following the close of the calendar year;

F.

recoup expenditures on behalf of an insolvent or financially troubled provider service network from that provider service network or any other available source, including a governmental agency, and be subrogated to that provider service network's rights to payment to the extent of such expenditures;

G. employ or contract with appropriate legal,

actuarial, clerical and other personnel as necessary to provide assistance in the operation of the association;

H. conduct periodic audits to assure the general accuracy of the financial data submitted to the association. The board shall cause

the association to undergo an annual audit on a calendar-year basis of its financial records and operations by an independent certified public

accountant;

I. take all other actions, whether like or unlike the foregoing, necessary or appropriate to carry out the board's or the association's duties;

J. reinsure any or all of the risk of the association; and

K. assess each original and new provider service network an initial administrative fee of five thousand dollars ($5,000) times the number of providers in the provider service network. If a provider service network adds new members to increase the number of providers, then that provider service network shall pay an additional administrative fee of five thousand dollars ($5,000) for each additional provider. An employee of a provider shall not be used in computing the administrative fee due under this subsection.

Section 7

Section 7. EXAMINATION.--

A. The association is subject to and responsible to pay the cost of examination by the superintendent of insurance on a periodic basis, pursuant to Chapter 59A, Article 4 NMSA 1978.

B. Not later than March 31 of each year, the board shall submit to the superintendent an audited financial report for the preceding calendar year in a form approved by the superintendent.

Section 8

Section 8. ASSESSMENTS--FUND CREATED.--

A. The "provider service network guarantee fund" is created in the state treasury. The fund shall be administered by the board and money in the fund is appropriated to the board to carry out the provisions of the Provider Service Network Act. Money in the fund shall be invested by the state treasurer as other state funds are invested; provided that interest on the fund shall be credited to the fund. Any

unexpended or unencumbered balance remaining in the fund at the end of any fiscal year shall not revert.

B. The secretary of human services shall report to the board

within thirty days of the close of each calendar quarter the amounts paid each member for services to public assistance recipients

during that calendar quarter.

C. The proportion of participation of each member shall be determined annually by the board based on the secretary of human services' report, together with members' annual statements and other reports deemed necessary by the board.

D. The assessment for each member shall be determined by multiplying the member's income from services to public assistance recipients pursuant to Subsection D of Section 3 of the Provider Service Network Act for the preceding calendar quarter by a percentage set by the board not to exceed five percent.

E. The board shall notify each member of the amount of the assessment within forty-five days of the close of a calendar quarter. The member shall pay the assessment within sixty days of the close of a calendar quarter.

F. The board may abate or defer, in whole or in part, the assessment of a member if, in the opinion of the board, payment of the assessment would endanger the ability of the member to fulfill its contractual obligations. In the event an assessment against a member is abated or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other members in a manner consistent with the basis for assessments set forth in Subsection A of this section. The member receiving the abatement or deferment shall remain liable to the association for the deficiency for four years.

G. If assessments exceed actual expenses in any year, the excess shall be held at interest and used by the board to offset future expenses. Any deficit incurred shall be recouped by assessments apportioned among the association's members pursuant to the assessment formula provided by Subsection D of this section.

H. If it appears that the maximum assessment available, together with unencumbered money and other assets, will be insufficient

in any year to make all necessary payments, the association's obligations shall be paid pro rata. The unpaid portion shall be paid as soon as additional assessment proceeds or other assets become available. Notwithstanding the foregoing, the association may pay its obligations in any order it deems reasonable.

Section 9

Section 9. NOTIFICATION TO PAY CLAIMS OR PROVIDE SERVICES.--

A. The association shall be liable to pay claims or to provide alternative health care services for insolvent or financially troubled members who are not fulfilling obligations to provide such services to public assistance recipients under contracts pursuant to Subsection D of Section 3 of the Provider Service Network Act. The association's obligation shall commence on the date the secretary of human services gives the association notice that a member is failing, because of insolvency or financial difficulties, to provide some or all of such services.

B. Nothing the Provider Service Network Act shall be deemed to authorize or obligate the association to pay or otherwise assume any obligation of a provider service network prior to the date of notification, or any obligation thereafter other than the obligation to provide services to public assistance recipients under a contract pursuant to Subsection D of Section 3 of the Provider Service Network Act. In no event shall the association be liable to the creditors of a provider service network.

Section 10

Section 10. A new Section 59A-5-11.1 NMSA 1978 is enacted to read:

"59A-5-11.1. EXEMPTION FROM AUTHORITY REQUIREMENT--PROVIDER SERVICE NETWORKS.--A certificate of authority shall not be required of a provider service network, except as provided in the Provider Service Network Act."

SENATE BILL 189, AS AMENDED

WITH CERTIFICATE OF CORRECTION

CHAPTER 108

RELATING TO INSURANCE; INCREASING THE EXPENSE LIMIT FROM THE PATIENT'S COMPENSATION FUND FOR THE MEDICAL REVIEW COMMISSION.

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

Section 1

Section 1. Section 41-5-28 NMSA 1978 (being Laws 1976, Chapter 2, Section 29, as amended) is amended to read:

"41-5-28. PAYMENT OF MEDICAL REVIEW COMMISSION EXPENSES.--Unless otherwise provided by law, expenses incurred in carrying out the powers, duties and functions of the New Mexico medical review commission, including the salary of the director, shall be paid by the patient's compensation fund. The superintendent, in his capacity as custodian of the fund, shall disburse fund money to the director upon receipt of vouchers itemizing expenses incurred by the New Mexico medical review commission. The director shall supply the chief justice of the New Mexico supreme court with duplicates of all vouchers submitted to the superintendent. Expenses paid by the fund shall not exceed three hundred fifty thousand dollars ($350,000) in any single calendar year; provided, however, that expenses incurred in defending the commission shall not be subject to that maximum amount."

SENATE BILL 190

CHAPTER 109

RELATING TO INSURANCE; LIMITING THE USE OF THE PATIENT'S COMPENSATION FUND.

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

Section 1

Section 1. Section 41-5-25 NMSA 1978 (being Laws 1992, Chapter 33, Section 9) is amended to read:

"41-5-25. PATIENT'S COMPENSATION FUND.--

A. There is created in the state treasury a "patient's compensation fund" to be collected and received by the superintendent for exclusive use for the purposes stated in the Medical Malpractice Act. The fund and any income from it shall be held in trust, deposited in a segregated account, invested and reinvested by the superintendent with the prior approval of the state board of finance and shall not become a part of or revert to the general fund of this state. The fund and any income from the fund shall only be expended for the purposes of and to the extent provided in the Medical Malpractice Act. The superintendent shall have the authority to use fund money to purchase insurance for the fund and its obligations. The superintendent, as custodian of the patient's compensation fund, shall be notified by the health care provider or his insurer within thirty days of service on the health care provider of a complaint asserting a malpractice claim brought in a court in this state against the health care provider.

B. To create the patient's compensation fund, an annual surcharge shall be levied on all health care providers qualifying under Paragraph (1) of Subsection A of Section 41-5-5 NMSA 1978 in New Mexico. The surcharge shall be determined by the superintendent based upon sound actuarial principles, using data obtained from New Mexico experience if available. The surcharge shall be collected on the same basis as premiums by each insurer from the health care provider.

C. The surcharge with accrued interest shall be due and payable within thirty days after the premiums for malpractice liability insurance have been received by the insurer from the health care provider in New Mexico.

D. If the annual premium surcharge is collected but not paid within the time limit specified in Subsection C of this section, the certificate of authority of the insurer may be suspended until the annual premium surcharge is paid.

E. All expenses of collecting, protecting and administering the patient's compensation fund or of purchasing insurance for the fund shall be paid from the fund.

F. Claims payable pursuant to Laws 1976, Chapter 2, Section 30 shall be paid in accordance with the payment schedule constructed by the court. If the patient's compensation fund would be exhausted by payment of all claims allowed during a particular calendar year, then the amounts paid to each patient and other parties obtaining judgments shall be prorated, with each such party receiving an amount equal to the percentage his own payment schedule bears to the total of payment schedules outstanding and payable by the fund. Any amounts due and

unpaid as a result of such proration shall be paid in the following calendar years. However, payments for medical care and related benefits shall be made before any payment made under Laws 1976, Chapter 2, Section 30.

G. Upon receipt of one of the proofs of authenticity listed in this subsection, reflecting a judgment for damages rendered pursuant to the Medical Malpractice Act, the superintendent shall issue or have issued warrants in accordance with the payment schedule constructed by the court and made a part of its final judgment. The only claim against the patient's compensation fund shall be a voucher or other appropriate request by the superintendent after he receives:

(1) a certified copy of a final judgment in excess of two hundred thousand dollars ($200,000) against a health care provider;

(2) a certified copy of a

court-approved settlement or certification of settlement made prior to initiating suit, signed by both parties, in excess of two hundred thousand dollars ($200,000) against a health care provider; or

(3) a certified copy of a final judgment less than two hundred thousand dollars ($200,000) and an affidavit of a health care provider or its insurer attesting that payments made pursuant to Subsection E of Section 41-5-7 NMSA 1978, combined with the monetary recovery, exceed two hundred thousand dollars ($200,000).

H. The superintendent shall contract for an independent actuarial study of the patient's compensation fund to be performed not less than once every two

years."

SENATE BILL 191

CHAPTER 110

RELATING TO THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT; PROVIDING QUALIFICATIONS FOR CORRECTIONAL OFFICERS OF THE DEPARTMENT; ENACTING A NEW SECTION OF THE NMSA 1978.

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

Section 1

Section 1. CORRECTIONAL OFFICERS--CHILDREN, YOUTH AND FAMILIES DEPARTMENT--QUALIFICATIONS.--Correctional officers of the children, youth and families department shall:

A. be citizens of the United States;

B. be eighteen years of age or older;

C. possess a high school education or its equivalent;

D. be of good moral character and not have been convicted of a felony offense by a court of this state, any other state or the United States; and

E. successfully pass a physical examination and an aptitude examination administered by the department.

Section 2

Section 2. EFFECTIVE

DATE.--The effective date of the provisions of this act is July 1,

1997.

SENATE BILL 200

CHAPTER 111

RELATING TO PUBLIC MONEY; AUTHORIZING THE STATE TREASURER TO ISSUE TAX AND REVENUE ANTICIPATION NOTES; MAKING AN APPROPRIATION; 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 "Short-Term Cash Management Act".

Section 2

Section 2. PURPOSE.--The purpose of the Short-Term Cash Management Act is to ensure an orderly and uninterrupted flow of money to the general fund by anticipating the receipt of taxes and other state revenues into the general fund and authorizing the state treasurer to issue short-term notes payable from those anticipated receipts.

Section 3

Section 3. DEFINITIONS.--As used in the Short-Term Cash Management Act:

A. "anticipated revenue" means tax receipts and other state revenues that are to be credited by law to the general fund;

B. "anticipation notes" means state of New Mexico tax and revenue anticipation notes; and

C. "general fund" means the fund created in Section 6-4-2 NMSA 1978 to which the state treasurer credits all revenue not otherwise allocated by law.

Section 4

Section 4. STATE TREASURER CERTIFICATION.--Whenever the state treasurer deems it necessary to issue anticipation notes pursuant to the Short-Term Cash Management Act, the state treasurer shall certify that:

A. the issuance of anticipation notes is necessary to regulate cash flow in the general fund;

B. the issuance of anticipation notes will not have an adverse impact on the general fund;

C. the issuance of anticipation notes is in the best interest of the state;

D. the amount of anticipation notes proposed for issuance is reasonable under existing and anticipated market conditions and complies with the requirements of the Internal Revenue Code of 1986, as amended, to the extent applicable; and

E. the payment of all interest and principal on anticipation notes can be made on a timely basis.

Section 5

Section 5. ANTICIPATION NOTES--AUTHORIZATION--STATE BOARD OF FINANCE APPROVAL.--

A. In order to anticipate the collection and receipt of anticipated revenue and after certifying the need to issue anticipation notes as provided in the Short-Term Cash Management Act, the state treasurer may issue and sell one or more anticipation notes. The anticipation notes shall mature not later than the end of the fiscal year in which the anticipation notes are issued and shall bear interest at rates permitted in the Public Securities Act.

B. The state treasurer shall pledge the anticipated revenue to secure the payment of the principal of and interest on the anticipation notes.

C. Anticipation notes may be sold at a public or negotiated sale at, above or below par. Any negotiated sale shall be made with one or more investment bankers whose services are obtained through a competitive proposal process. For any sale, the state treasurer shall also procure through a competitive proposal process the services of any financial adviser and bond counsel, unless the state treasurer contracts with the state board of finance to employ the services of the board's financial adviser or bond counsel under contracts the board may have, from time to time, with those professionals.

D. Anticipation notes may be issued in an aggregate principal amount not to exceed fifty percent of the anticipated revenue that the state treasurer anticipates will be collected by the state and credited to the general fund in the fiscal year in which the notes are issued and will be available to pay the principal of and interest on the anticipation notes.

E. Anticipation notes shall be issued by the state treasurer pursuant to the Short-Term Cash Management Act only upon approval by the state board of finance at a public meeting held prior to the delivery of the anticipation notes.

Section 6

Section 6. SOURCE OF REPAYMENT.--Principal of and interest on anticipation notes shall be payable solely from that portion of anticipated revenue pledged for that purpose and collected by the state for credit to the general fund in the fiscal year in which the anticipation notes are issued.

Section 7

Section 7. ANTICIPATION NOTES DEBT SERVICE FUND CREATED.--The "anticipation notes debt service fund" is created in the state treasury. Upon collection of anticipated revenue that has been pledged for the payment of principal of and interest

on the outstanding anticipation notes, the state treasurer shall deposit into the fund that portion of the pledged revenue necessary for payment of the principal of and interest on anticipation notes. Anticipated revenue in the fund is appropriated to the state treasurer for the payment of anticipation notes with interest at maturity. Money in the fund shall be held for the benefit of the registered owner or owners of the anticipation notes and for no other purpose.

Section 8

Section 8. PROCEEDS FROM ANTICIPATION NOTES--ANTICIPATION NOTES FUND CREATED--INVESTMENT.--The "anticipation notes fund" is created in the state treasury. All proceeds from the sale of anticipation notes shall be deposited in the fund. The state treasurer shall invest the proceeds of anticipation notes as provided in Section 6-10-10 NMSA 1978.

Section 9

Section 9. ANTICIPATION NOTES--LEGAL INVESTMENT--TAX EXEMPTION.--Anticipation notes issued by the state treasurer pursuant to the Short-Term Cash Management Act are legal and authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, fiduciaries, trustees and guardians and for the sinking funds of political subdivisions, departments, institutions and agencies of the state. Anticipation notes are sufficient security for all deposits of state funds and of all funds of any board in control of public money at the par value of the anticipation notes.

Section 10

Section 10. EXPENSES.--The expenses incurred by the state treasurer related to the issuance and sale of anticipation notes shall be paid out of the proceeds from the sale of the anticipation notes, and all rebate, penalty, interest and other obligations of the state related to the anticipation notes and anticipation notes proceeds under the Internal Revenue Code of 1986, as amended, shall be paid from the earnings on anticipation notes proceeds or any money of the state legally available for such payment.

Section 11

Section 11. STATE TREASURER--DUTY TO MAKE PAYMENTS AND KEEP RECORDS.--The state treasurer shall pay the principal of and interest on outstanding anticipation notes and shall keep a complete register showing the interest paid and principal outstanding on all anticipation notes and such other records as he deems appropriate.

Section 12

Section 12. AUTHORITY FOR ISSUANCE.--The Short-Term Cash Management Act, without reference to any other statute, shall be full authority for the issuance and sale of anticipation notes and shall have all the qualities of investment securities under the Uniform Commercial Code.

Section 13

Section 13. ACTION TO COMPEL PERFORMANCE OF OFFICERS.--Any holder of anticipation notes or any person who is a party in interest may bring an action to enforce and compel the performance of the provisions of the Short-Term Cash Management Act.

Section 14

Section 14. ANTICIPATION NOTES EXEMPT FROM TAXATION.--Anticipation notes are exempt from taxation by the state or any of its political subdivisions.

Section 15

Section 15. ANTICIPATION NOTES NOT A GENERAL OBLIGATION OF THE STATE.--Anticipation notes are not a general obligation of the state, but are payable solely out of anticipated revenues that have been pledged for their payment.

Section 16

Section 16. DELAYED REPEAL.--The Short-Term Cash Management Act is repealed effective June 30, 1999.

Section l7. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE BILL 223, AS AMENDED,

WITH EMERGENCY CLAUSE

SIGNED APRIL 9, 1997

CHAPTER 112

RELATING TO GOVERNMENTAL ETHICS; AMENDING, ENACTING AND RECOMPILING 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 Campaign Reporting Act is enacted to read:

"RULES AND REGULATIONS.--The secretary of state may adopt and promulgate rules and regulations to implement the provisions of the Campaign Reporting Act. In adopting and promulgating these rules and regulations, the secretary of state shall comply with the provisions of the Administrative Procedures Act. In addition to any other notification required pursuant to the provisions of Paragraph (2) of Subsection A of Section 12-8-4 NMSA 1978, the secretary of state shall notify all qualified political parties in the state and the New Mexico legislative council prior to adopting, amending or repealing any rule or regulation."

Section 2

Section 2. Section 1-19-26 NMSA 1978 (being Laws 1979, Chapter 360, Section 2, as amended) is amended to read:

"1-19-26. DEFINITIONS.--As used in the Campaign Reporting Act:

A. "advertising campaign" means an advertisement or series of advertisements used for a political purpose and disseminated to the public either in print, by radio or television broadcast or by any other electronic means, including telephonic communications, and may include direct or bulk mailings of printed materials;

B. "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;

C. "bank account" means an account in a financial institution located in New Mexico;

D. "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;

E. "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;

F. "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;

G. "deliver" or "delivery" means by certified or registered mail, by telecopier, electronic mail or facsimile or by personal service;

H. "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;

I. "election year" means an even-numbered year in which an election covered by the Campaign Reporting Act is held;

J. "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;

K. "person" means an individual or entity;

L. "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 and a person or an organization of two or more persons that within one calendar year expends funds in excess of two thousand dollars ($2,000) to conduct an advertising campaign for a political purpose;

M. "political purpose" means influencing or attempting to influence an election or pre-primary convention, including a constitutional amendment or other question submitted to the voters;

N. "prescribed form" means a form prepared and prescribed by the secretary of state;

O. "proper filing officer" means either the secretary of state or the county clerk as provided in Section 1-19-27 NMSA 1978;

P. "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;

Q. "reporting individual" means every public official, candidate or treasurer of a campaign committee and every treasurer of a political committee; and

R. "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 3

Section 3. Section 1-19-29 NMSA 1978 (being Laws 1993, Chapter 46, Section 5, as amended) 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 5:00 p.m. on the Thursday 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 legislative or nonstatewide judicial election, or two thousand five hundred dollars ($2,500) or more in a statewide election, shall be reported to the proper filing officer either in a supplemental report on a prescribed form within twenty-four hours of receipt or in the report to be filed by 5:00 p.m. on the Thursday before a primary, general or statewide special election, 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, regardless of whether any expenditures were made or contributions were received during the reporting period. Reports shall be required 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 4

Section 4. Section 1-19-34.4 NMSA 1978 (being Laws 1993, Chapter 46, Section 15, as amended) 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 that 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 that 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 any time 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 and 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 be due and payable within ten working days of the date of notice of final action. No additional fine shall accrue pending the issuance of the arbitration decision. Fines paid

pursuant to a notice of final action that are subsequently reduced or dismissed shall be reimbursed with interest within ten working days after the filing of the arbitration decision with the secretary of state. Interest on the reduced or dismissed portion of the fine shall be the same as the rate of interest earned by the secretary of state's escrow account to be established by the department of finance and administration.

E. An arbitration hearing shall be conducted by a single arbitrator selected within ten days by the person against whom the penalty has been imposed from a list of five arbitrators provided by the secretary of state. Neither the secretary of state nor a person subject to the Campaign Reporting Act, Lobbyist Regulation Act or Financial Disclosure Act may serve as an arbitrator. Arbitrators shall be considered to be independent contractors, not public officers or employees, and shall not be paid per diem and mileage.

F. The arbitrator shall conduct the hearing within thirty days of the request for arbitration. The arbitrator may impose any penalty the secretary of state is authorized to impose. The arbitrator shall state the reasons for his 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 thirty days of the conclusion of the hearing. Unless otherwise provided for in this section or by rule or regulation adopted by the secretary of state, the procedures for the arbitration shall be governed by the Uniform Arbitration Act. No arbitrator 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 5

Section 5. 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 Thursday 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 Thursday 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 that act and pays all penalties owed."

Section 6

Section 6. 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 or in opposition to 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 forty-eight hours for each separate expenditure made or incurred during a legislative session that was for five hundred dollars ($500) or more; and

(3) by May 1 for all expenditures and political contributions made or incurred through April 25 of the current year and not previously reported.

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 7

Section 7. 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 be due and payable within ten working days of the notice of final action. No additional penalty shall accrue pending issuance of the arbitration decision. Fines paid pursuant to a notice of final action that are subsequently reduced or dismissed shall be reimbursed with interest within ten working days after the filing of the arbitration decision with the secretary of state. Interest on the reduced or dismissed portion of the fine shall be the same as the rate of interest earned by the secretary of state's escrow account to be established by the department of finance and administration.

E. An arbitration hearing shall be conducted by a single arbitrator selected within ten days by the person against whom the penalty has been imposed from a list of five arbitrators provided by the secretary of state. Neither the secretary of state nor a person subject to the Lobbyist Regulation Act, Campaign Reporting Act or Financial Disclosure Act may serve as an arbitrator. Arbitrators shall be considered to be independent contractors, not public officers or employees, and shall not be paid per diem and mileage.

F. The arbitrator may impose any penalty and take any action the secretary of state is authorized to take. The arbitrator shall state the reasons for his 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 thirty days of the conclusion of the hearing. Unless otherwise provided for in this section, or by rule or regulation adopted by the secretary of state, the procedures for the arbitration shall be governed by the Uniform Arbitration Act. No arbitrator 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 8

Section 8. Section 10-16A-3 NMSA 1978 (being Laws 1993, Chapter 46, Section 41, as amended) 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 elected official 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 9

Section 9. Section 10-16A-6 NMSA 1978 (being Laws 1993, Chapter 46, Section 44) is amended to read:

"10-16A-6. INVESTIGATIONS--BINDING ARBITRATION--

FINES--ENFORCEMENT.--

A. The secretary of state may conduct thorough examinations of statements and initiate investigations to determine whether the Financial Disclosure Act has been violated. Any person who believes that act has been violated may file a written complaint with the secretary of state. The secretary of state shall adopt procedures for processing complaints and notifications of violations.

B. If the secretary of state determines that a violation has occurred for which a penalty should be imposed, the secretary of state shall so notify the person charged and impose the penalty. If the person charged disputes the secretary of state's determination, the person charged may request binding arbitration.

C. The arbitration decision shall be decided by a single arbitrator selected within ten days by the person against whom the penalty has been imposed from a list of five arbitrators provided by the secretary of state. No arbitrator may be a person subject to the Financial Disclosure Act, Campaign Reporting Act or Lobbyist Regulation Act. Arbitrators shall be considered to be independent contractors, not public officers or employees, and shall not be paid per diem and mileage.

D. The arbitrator may take any action the secretary of state is authorized to take. The arbitrator shall state the reasons for his decision in a written document that shall be a public record. The decision shall be final and binding. The decision shall be issued within thirty days of the conclusion of the hearing. Unless otherwise provided for in this section, or by rule or regulation adopted by the secretary of state, the procedures for the arbitration shall be governed by the Uniform Arbitration Act. No arbitrator shall be subject to liability for actions taken pursuant to this section.

E. Any person who files a statement or report after the deadline imposed by the Financial Disclosure Act or any person who files a false or incomplete statement or report is liable for and shall pay to the secretary of state, at or from the time initially required for the filing, fifty dollars ($50.00) per day for each regular working day after the time required for the filing of the statement or report until the complete report is filed, up to a maximum of five thousand dollars ($5,000).

F. 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 10

Section 10. TEMPORARY PROVISION--RECOMPILATION.--Section 10-16-16 NMSA 1978 (being Laws 1980, Chapter 86, Section 1) is recompiled as Section 27-2-12.7 NMSA 1978.

SENATE BIL 229, AS AMENDED

CHAPTER 113

RELATING TO HOSPITALS; PROVIDING FOR THE CONSOLIDATION OF LICENSE APPLICATIONS FOR HOSPITALS OPERATING AS HOSPITAL-BASED PRIMARY CARE CLINICS.

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

Section 1

Section 1. Section 24-1-5 NMSA 1978 (being Laws 1973, Chapter 359, Section 5, as amended) is amended to read:

"24-1-5. LICENSURE OF HEALTH FACILITIES.--

A. No health facility shall be operated without a license issued by the department. If a health facility is found to be operating without a license, in order to protect human health or safety the secretary may issue a cease-and-desist order. The health facility may request a hearing, which shall be held in the manner provided in this section. The department may also proceed pursuant to the Health Facility Receivership Act.

B. The department is authorized to make inspections and investigations and to prescribe regulations it deems necessary or desirable to promote the health, safety and welfare of persons using health facilities.

C. Except as provided in Subsection F of this section, upon receipt of an application for a license to operate a health facility, the department shall promptly inspect the health facility to determine if it is in compliance with all regulations of the department. Applications for hospital licenses shall include evidence that the bylaws or regulations of the hospital apply equally to osteopathic and medical physicians. The department shall consolidate the applications and inspections for a hospital that also operates as a hospital-based primary care clinic.

D. Upon inspection of any health facility, if the department finds any violation of its regulations, it may deny the application for a

license, whether initial or renewal, or it may issue a temporary license. A temporary license shall not be issued for a period exceeding one hundred twenty days, nor shall more than two consecutive temporary licenses be issued.

E. A one-year nontransferable license shall be issued to any health facility complying with all regulations of the department. The license shall be renewable for successive one-year periods, upon filing of a renewal application, if the department is satisfied that the health facility is in compliance with all regulations of the department or, if not in compliance with any regulation, has been granted a waiver or variance of that regulation by the department pursuant to procedures, conditions and guidelines adopted by regulation of the department. Licenses shall be posted in a conspicuous place on the licensed premises, except that child-care centers that receive no state or federal funds may apply for and receive from the department a waiver from the requirement that a license be posted or kept on the licensed premises.

F. Any health facility that has been inspected and licensed by the department and that has received certification for participation in federal reimbursement programs and that has been fully accredited by the joint commission on accreditation of health care organizations or the American osteopathic association shall be granted a license renewal based on that accreditation. Health facilities receiving less than full accreditation by the joint commission on the accreditation of health care organizations or by the American osteopathic association may be granted a license renewal based on such accreditation. License renewals shall be issued upon application submitted by the facility upon forms prescribed by the department. This subsection does not limit in any way the department's various duties and responsibilities under other provisions of the Public Health Act or under any other subsection of this section, including any of the department's responsibilities for the health and safety of the public.

G. The department may charge a reasonable fee not to exceed three dollars ($3.00) per bed for an in-patient health facility or one hundred dollars ($100) for any other health facility for each license application, whether initial or renewal, of an annual license or the second consecutive issuance of a temporary license. Fees collected shall not be refundable. All fees collected pursuant to licensure applications shall be deposited with the state treasurer for credit to the general fund.

H. The department may revoke or suspend the license of any health facility or may impose on any health facility any intermediate sanction and civil monetary penalty provided in Section 24-1-5.2 NMSA

1978 after notice and an opportunity for a hearing before a hearing officer designated by the department to hear the matter and, except for child-care centers and facilities, may proceed pursuant to the Health Facility Receivership Act upon a determination that the health facility is not in compliance with any regulation of the department. If immediate action is required to protect human health and safety, the secretary may suspend any license or impose any intermediate sanction pending a hearing, provided the hearing is held within five working days of the suspension or imposition of the sanction, unless waived by the licensee, and, except for child-care centers and facilities, may proceed ex parte pursuant to the Health Facility Receivership Act.

I. The department shall schedule a hearing pursuant to Subsection H of this section if the department receives a request for a hearing from a licensee:

(1) within ten working days after receipt by the licensee of notice of suspension, revocation, imposition of an intermediate sanction or civil monetary penalty or denial of an initial or renewal application;

(2) within four working days after receipt by the licensee of an emergency suspension order or emergency intermediate sanction imposition and notice of hearing, if the licensee wishes to waive the early hearing scheduled and request a hearing at a later date; or

(3) within five working days after receipt of a cease-and-desist order.

The department shall also provide timely notice to the licensee of the date, time and place for the hearing, identity of the hearing officer, subject matter of the hearing and alleged violations.

J. Any hearing held pursuant to provisions of this section shall be conducted in accordance with adjudicatory hearing rules and procedures adopted by regulation of the department. The licensee has the right to be represented by counsel, to present all relevant evidence by means of witnesses and books, papers, documents, records, files and other evidence and to examine all opposing witnesses who appear on any matter relevant to the issues. The hearing officer has the power to administer oaths on request of any party and issue subpoenas and subpoenas duces tecum prior to or after the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents, records, files and other evidence. Documents or records pertaining to abuse, neglect or

exploitation of a resident, client or patient of a health facility or other documents, records or files in the custody of the human services department or the office of the state long-term care ombudsman at the state agency on aging that are relevant to the alleged violations are discoverable and admissible as evidence in any hearing.

K. Any party may appeal to the court of appeals on the record within thirty days after the final decision of the department. The court shall set aside the final decision only if it is found to be arbitrary, capricious or an abuse of discretion; not supported by substantial evidence in the record; outside the authority of the department; or otherwise not in accordance with law.

L. Every complaint about a health facility received by the department pursuant to this section shall be promptly investigated to substantiate the allegation and to take appropriate action if substantiated. The department shall coordinate with the human services department, the office of the state long-term care ombudsman at the state agency on aging and any other appropriate agency to develop a joint protocol establishing responsibilities and procedures to assure prompt investigation of complaints, including prompt and appropriate referrals and necessary action regarding allegations of abuse, neglect or exploitation of residents, clients or patients in a health facility.

M. Complaints received by the department pursuant to this section shall not be disclosed publicly in such manner as to identify any individuals or health facilities if upon investigation the complaint is unsubstantiated.

N. Notwithstanding any other provision of this section, where there are reasonable grounds to believe that any child is in imminent danger of abuse or neglect while in the care of a child-care facility, whether or not licensed, or upon the receipt of a report pursuant to Section 32A-4-3 NMSA 1978, the department shall consult with the owner or operator of the child-care facility. Upon a finding of probable cause, the department shall give the owner or operator notice of its intent to suspend operation of the child-care facility and provide an opportunity for a hearing to be held within three working days, unless waived by the owner or operator. Within seven working days from the day of notice, the secretary shall make a decision, and, if it is determined that any child is in imminent danger of abuse or neglect in the child-care facility, the secretary may suspend operation of the child-care facility for a period not in excess of fifteen days. Prior to the date of the hearing, the department shall make a reasonable effort to notify the parents of children in the child-care facility of the notice and opportunity for hearing given to the owner or operator.

O. Nothing contained in this section or in the Public Health Act shall authorize either the secretary or the department to make any inspection or investigation or to prescribe any regulations concerning group homes as defined in Section 9-8-13 NMSA 1978 except as are reasonably necessary or desirable to promote the health and safety of persons using group homes."

SENATE BILL 350

CHAPTER 114

RELATING TO MAGISTRATE JUDGES; PROVIDING THAT A RETIRED MAGISTRATE JUDGE MAY BE APPOINTED AS A MAGISTRATE JUDGE PRO TEMPORE; ENACTING A NEW SECTION OF THE NMSA 1978.

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

Section 1

Section 1. A new Section 35-2-6 NMSA 1978 is enacted to read:

"35-2-6. APPOINTMENT AS SPECIAL MASTER, ARBITRATOR OR MAGISTRATE JUDGE PRO TEMPORE.--A chief district court judge may appoint a retired magistrate judge, with the retired judge's consent, to serve as a magistrate judge pro tempore, subject to the monies available to the judge pro tempore fund. The retired magistrate judge shall be compensated for his services as provided for nonsalaried public officers in the Per Diem and Mileage Act."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

SENATE BILL 371, AS AMENDED

CHAPTER 115

RELATING TO POST-SECONDARY EDUCATIONAL INSTITUTIONS; AUTHORIZING A POST-SECONDARY EDUCATIONAL INSTITUTION GOVERNING BOARD TO ESTABLISH A CAMPUS POLICE FORCE; PROVIDING FOR THE AUTHORITY OF THE CAMPUS POLICE THUS ESTABLISHED.

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

Section 1

Section 1. A new section of Chapter 29, Article 5 NMSA 1978 is enacted to read:

"POST-SECONDARY EDUCATIONAL INSTITUTIONS--BOARDS AUTHORIZED TO ESTABLISH CAMPUS POLICE FORCE--QUALIFICATIONS AND AUTHORITY OF CAMPUS POLICE OFFICERS.--

A. As used in this section "post-secondary educational institution" means a community college operating pursuant to Chapter 21, Article 13 NMSA 1978, a technical and vocational institute operating pursuant to Chapter 21, Article 16 NMSA 1978 and an area vocational school operating pursuant to Chapter 21, Article 17 NMSA 1978.

B. The governing board of a post-secondary educational institution may adopt and promulgate traffic regulations to apply to areas within the exterior boundaries of the lands under control of the board, including streets and highways.

C. The governing board of a post-secondary educational institution may employ and assign duties to persons as campus police officers for the community college.

D. Persons employed as campus police officers by a post-secondary educational institution governing board:

(1) shall have the powers of peace officers within the exterior boundaries of lands under the control of the board, including streets and highways;

(2) shall at all times while on duty carry commissions of office issued by the board;

(3) shall fulfill the requirements for certification in Subsection A of Section 29-7-6 NMSA 1978 within one year of the date of first employment;

(4) may enforce all applicable laws, ordinances and campus traffic regulations within the territory in which they have powers of peace officers; and

(5) may make arrests for violations of laws, ordinances and campus traffic regulations that they have authority to enforce, but no arrest is valid unless the arresting campus police officer is at the time of the arrest wearing:

(a) a distinctive badge issued to him by

the post-secondary educational institution governing board and bearing the name of the post-secondary educational institution; and

(b) a distinctive uniform prescribed and issued to him by the board."

SENATE BILL 505, AS AMENDED

CHAPTER 116

RELATING TO CEMETERIES; RAISING THE INTERMENT FEE.

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

Section 1

Section 1. Section 24-13-4 NMSA 1978 (being Laws 1939, Chapter 224, Section 4, as amended) is amended to read:

"24-13-4. BURIAL AFTER INVESTIGATION--COST OF OPENING AND CLOSING GRAVE.--The board of county commissioners after proper investigation shall cause any deceased indigent to be decently interred or cremated. The cost of opening and closing a grave shall not exceed six hundred dollars ($600), which sum shall be in addition to the sums enumerated in Section 24-13-3 NMSA 1978."

SENATE BILL 518

CHAPTER 117

RELATING TO TAXATION; AMENDING SECTION 7-2-18 NMSA 1978 (BEING LAWS 1977, CHAPTER 196, SECTION 1, AS AMENDED) TO AUTHORIZE COUNTIES TO PROVIDE FOR AN EXPANDED TAX REBATE FOR PROPERTY TAX DUE FOR CERTAIN TAXPAYERS SIXTY-FIVE YEARS OF AGE AND OLDER.

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

Section 1

Section 1. Section 7-2-18 NMSA 1978 (being Laws 1977, Chapter 196, Section 1, as amended) is amended to read:

"7-2-18. TAX REBATE OF PROPERTY TAX DUE THAT EXCEEDS THE ELDERLY TAXPAYER'S MAXIMUM PROPERTY TAX LIABILITY--REFUND.--

A. Any resident who has attained the age of sixty-five and files an individual New Mexico income tax return and is not a dependent of another individual may claim a tax rebate for the taxable year for which the return is filed. The tax rebate shall be the amount of property tax due on the resident's principal place of residence for the taxable year that exceeds the property tax liability indicated by the table in Subsection F or G, as appropriate, of this section, based upon the taxpayer's modified gross income.

B. Any resident otherwise qualified under this section who rents a principal place of residence from another person may calculate the amount of property tax due by multiplying the gross rent for the taxable year by six percent. The tax rebate shall be the amount of property tax due on the taxpayer's principal place of residence for the taxable year that exceeds the property tax liability indicated by the table in Subsection F or G, as appropriate, of this section, based upon the taxpayer's modified gross income.

C. As used in this section, "principal place of residence" means the resident's dwelling, whether owned or rented, and so much of the land surrounding it, not to exceed five acres, as is reasonably necessary for use of the dwelling as a home and may consist of a part of a multi-dwelling or a multi-purpose building and a part of the land upon which it is built.

D. No claim for the tax rebate provided in this section shall be allowed a resident who was an inmate of a public institution for more than six months during the taxable year or who was not physically present in New Mexico for at least six months during the taxable year for which the tax rebate could be claimed.

E. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the tax rebate that would have been allowed on a joint return.

F. For taxpayers whose principal place of residence is in a county that does not have in effect for the taxable year a resolution in accordance with Subsection J of this section, the tax rebate provided for in this section may be claimed in the amount of the property tax due each taxable year that exceeds the amount shown as property tax liability in the following table:

ELDERLY HOMEOWNERS' MAXIMUM PROPERTY TAX LIABILITY TABLE

Taxpayer's Modified Gross Income		Property Tax Liability
Over	But Not Over	
$0	$ 1,000	$20
1,000	2,000	25
2,000	3,000	30
3,000	4,000	35
4,000	5,000	40
5,000	6,000	45
6,000	7,000	50
7,000	8,000	55
8,000	9,000	60
9,000	10,000	75

10,000 11,000 90

11,000 12,000 105

12,000 13,000 120

13,000 14,000 135

15,000 16,000 180.

G. For taxpayers whose principal place of residence is in a county that has in effect for the taxable year a resolution in accordance with Subsection J of this section, the tax rebate provided for in this section may be claimed in the amount of the property tax due each taxable year that exceeds the amount shown as property tax liability in the following table:

ELDERLY HOMEOWNERS' MAXIMUM PROPERTY TAX LIABILITY TABLE

Taxpayer's Modified Gross Income		Property Tax Liability
But Over	Not Over	
$0	$1,000	$ 20
1,000	2,000	25
2,000	3,000	30
3,000	4,000	35
4,000	5,000	40
5,000	6,000	45
6,000	7,000	50
7,000	8,000	55
8,000	9,000	60
9,000	10,000	75
10,000	11,000	90
11,000	12,000	105
12,000	13,000	120
13,000	14,000	135
14,000	15,000	150

15,000 16,000 165

16,000 17,000 180

17,000 18,000 195

18,000 19,000 210

19,000 20,000 225

20,000 21,000 240

21,000 22,000 255

22,000 23,000 270

23,000 24,000 285

24,000 25,000 300.

H. If a taxpayer's modified gross income is zero, the taxpayer may claim a tax rebate based upon the amount shown in the first row of the appropriate table. The tax rebate provided for in this section shall not exceed two hundred fifty dollars ($250) per return, and, if a return is filed separately that could have been filed jointly, the tax rebate shall not exceed one hundred twenty-five dollars ($125). No tax rebate shall be allowed any taxpayer whose modified gross income exceeds sixteen thousand dollars ($16,000) for taxpayers whose principal place of residence is in a county that does not have in effect for the taxable year a resolution in accordance with Subsection J of this section and twenty-five thousand dollars ($25,000) for all other taxpayers.

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

J. The board of county commissioners may adopt a resolution authorizing otherwise qualified taxpayers whose principal place of residence is in the county to claim the rebate provided by this section in the amounts set forth in Subsection G of this section. The resolution must also provide that the county will reimburse the state for the additional amount of tax rebates paid to such taxpayers over the amount that would have been paid to such taxpayers under Subsection F of this section. The resolution may apply to one or more taxable years. The county must adopt the resolution and notify the department of the adoption by no later than September 1 of the taxable year to which the resolution first applies. The department shall determine the additional

amounts paid to taxpayers of the county for each taxable year and shall bill the county for the amount at the time and in the manner determined by the department. If the county fails to pay any bill within thirty days, the department may deduct the amount due from any amount to be transferred or distributed to the county by the state, other than debt interceptions."

Section 2

Section 2. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 1997.

SENATE BILL 395

CHAPTER 118

RELATING TO HOUSING; ENACTING THE LAND TITLE TRUST FUND ACT; CREATING A FUND AS A SOURCE FOR LOANS AND GRANTS TO MAKE HOUSING MORE ACCESSIBLE FOR LOW-INCOME PERSONS; PROVIDING FOR INTEREST EARNED ON CERTAIN LAND TITLE INDUSTRY ACCOUNTS TO BE PAID INTO THE FUND; CREATING AN ADVISORY COMMITTEE; AMENDING A SECTION OF THE NMSA 1978; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1

Section 1. SHORT TITLE.--Sections 1 through 8 of this act may be cited as the "Land Title Trust Fund Act".

Section 2

Section 2. DEFINITIONS.--As used in the Land Title Trust Fund Act:

A. "committee" means the land title trust fund advisory committee;

B. "depository institution" means any bank, savings and loan association or credit union authorized by federal or state law to do business in New Mexico and insured by the federal deposit insurance corporation or the national credit union administration;

C. "division" means the financial institutions division of the regulation and licensing department;

D. "eligible organization" means a nonprofit corporation whose primary purpose is to provide affordable housing and that is qualified for tax exemption under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; a unit of state or local government dealing with housing; a local or regional housing authority or a tribal agency dealing with housing;

E. "fund" means the land title trust fund;

F. "low-income persons" means a household consisting of a single individual, a family or unrelated individuals living together if the household's total annual income does not exceed eighty percent of the median income for the area, as determined by the United States department of housing and urban development, and as adjusted for family size or other income ceiling determined for the area on the basis of that department's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents or unusually high or low family incomes;

G. "pooled interest-bearing transaction account" means a trust or escrow account made available by a depository institution in the form of a negotiable order of withdrawal account, sweep account or other interest-bearing account;

H. "title company" means a title insurer or title insurance agent as defined in and regulated pursuant to the New Mexico Title Insurance Law; and

I. "trustee" means the New Mexico mortgage finance authority.

Section 3

Section 3. LAND TITLE TRUST FUND CREATED.--The "land title trust fund" is created. The New Mexico mortgage finance authority shall be the trustee for the fund.

Section 4

Section 4. TRUST ACCOUNTS--ESCROW ACCOUNTS--POOLED INTEREST-BEARING TRANSACTION ACCOUNTS--DISPOSITION OF EARNED INTEREST ON CERTAIN ACCOUNTS.--

A. A title company that maintains one or more trust accounts or escrow accounts into which customer funds are deposited for use in the purchase, sale or financing of real property located in New Mexico may maintain one or more pooled interest-bearing transaction accounts and may deposit customer funds into those accounts, except for funds required to be deposited into interest-bearing accounts or investments under instructions from one or more of the parties to a transaction that provide for the payment of interest to be earned on the deposited funds to a person other than the title company. A pooled interest-bearing transaction account established pursuant to the provisions of this section shall be maintained in the name of the title company, but the trustee shall be named and shown as the beneficial owner of the account income or interest. A title company maintaining one or more pooled interest-bearing transaction accounts shall not be paid or receive any interest earned on funds deposited in the accounts except for the purpose of remitting net earned interest to the trustee pursuant to the provisions of this section.

B. The interest earned on customer funds deposited in a pooled interest-bearing transaction account pursuant to the requirements of Subsection A of this section, net of any service charges and fees that a depository institution charges to regular, non-title company depositors and net of any reasonable charge for preparation and transmittal of any required report pursuant to the provisions of Subsection F of this section, shall be remitted monthly or quarterly either directly to the fund or to the title company for its remittance to the fund. Alternatively, the depository institution may credit the title company account with the net interest earned either monthly or quarterly. Interest accrued after deducting the allowable charges and fees shall be treated as interest earned by the trustee and reported as such by the depository institution.

C. The provisions of this section shall not change existing duties or obligations of a title company under other laws to safeguard and account for funds held for customers.

D. Funds in each pooled interest-bearing transaction account shall be subject to withdrawal upon request and without delay, subject only to the notice period the depository institution is required to observe by law or regulation.

E. The rate of interest payable on a pooled interest-bearing transaction account shall not be less than the rate customarily paid by the depository institution to regular, non-title company depositors for similar accounts. Interest shall be computed in accordance with the depository institution's standard accounting practice. Higher rates

offered by the depository institution to customers whose deposits exceed certain time or quantity minima, such as those offered in the form of certificates of deposit, may be obtained by the title company on some or all of the deposited funds so long as there is no impairment of the right to withdraw or transfer principal, subject only to the notice period the depository institution is required to observe by law or regulation.

F. A depository institution or title company making a remittance of interest to the fund shall at the time of the remittance transmit a report to the trustee for each account from which remittance is made showing:

(1) the name of the title company maintaining the account from which remittance is made;

(2) the rate of interest used to compute the earned interest and the amount of earned interest;

(3) the amount, if any, of depository institution service charges and fees deducted and any charge for the preparation and transmittal of the report; and

(4) the account balance as of the ending date of the reporting period.

G. If the depository institution remits to the title company or credits the title company account, it shall make the remittance or credit no later than ten days after the statement cutoff for that account. The title company shall remit to the fund and shall send the report with the remittance no later than thirty days after receipt of the remittance or credit by the depository institution.

H. Remittances to the fund shall be made at least quarterly, no later than ten days after the statement cutoff for that account if made by the depository institution and no later than thirty days after receipt of remittance or credit from the depository institution if made by the title company.

I. The division shall adopt and promulgate rules and regulations regarding the obligations of depository institutions pursuant to the provisions of the Land Title Trust Fund Act.

Section 5

Section 5. USE OF MONEY--ELIGIBLE ACTIVITIES.--Money from the fund and other sources may be used to finance in whole or in part any loans or grant projects that will provide housing for low-income persons and for other uses specified in this section. Money deposited into the fund may be used annually as follows:

A. no more than seven percent of the fund shall be used for expenses of administering the fund;

B. no less than twenty percent of the fund shall be invested in a permanent capital fund, the interest on which may be used for purposes specified in this section;

C. no less than fifty percent of the fund shall be allocated to eligible organizations to make housing more accessible to low-income persons; and

D. the remaining balance may be allocated to eligible organizations for other housing-related programs for the benefit of the public as specifically approved by the trustee from time to time.

Section 6

Section 6. CONFLICT WITH FEDERAL REQUIREMENTS.--If any part of the Land Title Trust Fund Act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of that act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of that act in its application to the agencies concerned. The rules adopted pursuant to the provisions of the Land Title Trust Fund Act shall meet those federal requirements that are a necessary condition to the receipt of federal funds by the state.

Section 7

Section 7. MATCHING FUNDS.--Money from the fund may be used to match federal, local or private money to be used for projects authorized under the Land Title Trust Fund Act.

Section 8

Section 8. LAND TITLE TRUST FUND ADVISORY COMMITTEE CREATED--FUNCTIONS.--

A. The "land title trust fund advisory committee" is created. The committee shall consist of seven persons:

(1) the chairman of the trustee or his designee, who shall serve as chairman of the committee;

(2) two representatives of the land title industry appointed by the governor;

(3) one representative of the banking industry and one representative of the real estate industry appointed by the president pro tempore of the senate; and

(4) one representative of the mortgage lending industry and one representative of the real estate industry appointed by the speaker of the house of representatives.

B. Of the first committee members appointed, two shall be appointed for terms of five years, two shall be appointed for terms of four years and two shall be appointed for terms of three years. Thereafter, appointed members shall be appointed for terms of five years. Members shall serve at the pleasure of their respective appointing authorities, and vacancies shall be filled by the appropriate appointing authority. Any member of the committee shall be eligible for reappointment.

C. The committee shall be advisory to the trustee and shall be subject to oversight by the Mortgage Finance Authority Act oversight committee.

D. The committee shall review all project applications and make recommendations to the trustee for funding them. The committee shall not be involved in or advisory to the trustee in matters relating to the investment of the fund.

E. The committee shall adopt and promulgate rules and regulations regarding:

(1) the time, place and procedures of committee meetings;

(2) the procedures for the review of and standards for recommending applications for loans or grant projects; and

(3) the obligations of title companies pursuant to the provisions of the Land Title Trust Fund Act.

Section 9

Section 9. Section 58-18B-3 NMSA 1978 (being Laws 1994, Chapter 146, Section 3) is amended to read:

"58-18B-3. DEFINITIONS.--As used in the Low-Income Housing Trust Act:

A. "appropriate financial institution service charges and fees" means those service charges and fees that a financial institution charges its customers on demand deposit accounts;

B. "division" means the financial institutions division of the regulation and licensing department;

C. "escrow closing agent" means an escrow agent other than a title company that acts in the normal course of business as the agent of the seller and buyer of real estate for the purpose of consummating a sale, including but not limited to the performance of the following functions:

(1) preparation of deeds, mortgages, promissory notes, deeds of trust, real estate contracts, assignments or other documents incidental to the sale as permitted by law;

(2) calculations and disbursements of prorated taxes, insurance premiums, utility bills and other charges incidental to the sale;

(3) preparation of sellers' and buyers' closing statements;

(4) supervision of signing of documents;

(5) collection and disbursement of down payments, realtors' commissions, fees and other charges pursuant to a sales agreement; and

(6) recordation of documents;

D. "escrow servicing agent" means any person who in the normal course of business collects and disburses funds received from real estate-related financing instruments on behalf of a lender or borrower; E. "first-time home buyer" means:

(1) an individual or the individual's spouse who has not owned a home other than a manufactured home during the three-year period prior to the purchase of a home; or

(2) any individual who is a displaced homemaker or a single parent;

F. "fund" means the low-income housing trust fund created pursuant to the provisions of the Low-Income Housing Trust Act;

G. "low-income persons" means a household consisting of a single individual or a family or unrelated individuals living together when the household's total annual income does not exceed eighty percent of the median income for the area, as determined by the United States department of housing and urban development and as adjusted for family size, or other income ceiling determined for the area on the basis of that department's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents or unusually high or low family incomes;

H. "person" means an individual or any other legal entity; and

I. "property manager" means a person who acts in the normal course of business as the agent for the owner of real property for the purpose of property rental, leasing and management."

Section 11

Section 11. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE BILL 406,

WITH EMERGENCY CLAUSE

SIGNED APRIL 9, 1997

CHAPTER 119

RELATING TO HUNTING LICENSES; REVISING PROVISIONS AFFECTING HUNTING GUIDES, OUTFITTERS AND LICENSES; AMENDING AND REPEALING 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 17-2-10 NMSA 1978 (being Laws 1931, Chapter 117, Section 7, as amended) is amended to read:

"17-2-10. VIOLATION OF GAME AND FISH LAWS OR REGULATIONS--PENALTIES.--

A. Except as otherwise provided in this section, any person violating any of the provisions of Chapter 17 NMSA 1978 or any regulations adopted by the state game commission which 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 is guilty of a misdemeanor and upon conviction may be sentenced to imprisonment in the county jail for a term not to exceed six months and shall be sentenced to the payment of a fine in accordance with the following schedule:

(1) illegally taking, attempting to take, killing, capturing or possessing of each deer, antelope, javelina, bear or cougar during a closed season, a fine of four hundred dollars ($400);

(2) illegally taking, attempting to take, killing, capturing or possessing of each elk, bighorn sheep, oryx, ibex or Barbary sheep, a fine of one thousand dollars ($1,000);

(3) hunting big game without a proper and valid license, lawfully procured, a fine of one hundred dollars ($100);

(4) exceeding the bag limit of any big game species, a fine of four hundred dollars ($400);

(5) attempting to exceed the bag limit of any big game species by the hunting of any big game animal after having tagged a similar big game species, a fine of two hundred dollars ($200);

(6) signing a false statement to procure a resident hunting or fishing license when the applicant is residing in another state at the time of application for a license, a fine of four hundred dollars ($400);

(7) using a hunting or fishing license issued to another person, a fine of one hundred dollars ($100);

(8) violation of Section 17-2-31 NMSA 1978, a fine of three hundred dollars ($300); and

(9) selling, offering for sale, offering to purchase or purchasing any big game animal unless otherwise provided by Chapter 17 NMSA 1978, a fine of one thousand dollars ($1,000).

B. Any person who is convicted of a violation of any regulations adopted by the state game commission which 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, or of a violation of any of the provisions of Chapter 17 NMSA 1978, for which a punishment is not set forth under Subsection A of this section, shall be fined not less than fifty dollars ($50.00) nor more than five hundred dollars ($500) or imprisoned not more than six months, or both.

C. Any person who violates as a first offense Section 17-2A-3 NMSA 1978 or any regulations adopted pursuant to that section is guilty of a misdemeanor and upon conviction may be sentenced to imprisonment in the county jail for a term not to exceed six months and shall be fined not less than fifty dollars ($50.00) or more than five hundred dollars ($500), or both. Any person who violates as a second or subsequent offense Section 17-2A-3 NMSA 1978 or any regulations adopted pursuant to that section is guilty of a fourth degree felony and shall be sentenced and fined pursuant to the provisions of Section 31-18-15 NMSA 1978."

Section 2

Section 2. Section 17-2A-3 NMSA 1978 (being Laws 1996, Chapter 89, Section 5) is amended to read:

"17-2A-3. HUNTING GUIDES AND OUTFITTERS.--

A. Effective April 1, 1997, it is unlawful to be a hunting guide or outfitter in New Mexico without being registered, except for a private landowner or his authorized agent who outfits or guides pursuant to a landowner permit issued by the department of game and fish for the landowner's property or for the landowner's shared private and public unit.

B. The state game commission shall adopt regulations by September 1, 1997 to govern the granting of non-interim registration, permits and certificates to hunting guides and outfitters and to regulate the operations and professional conduct of registered hunting guides and outfitters. Regulations shall be adopted in accordance with the following procedures and standards:

(1) the commission shall establish dates and locations for a public hearing and provide reasonable prior public notice of a hearing. A public hearing shall be held at a place within any quadrant of the state affected by the proposed regulation when the commission determines there is substantial public interest in holding a hearing in that quadrant;

(2) a hearing shall be held within six months of the date a proposed regulation is issued;

(3) notice of a hearing shall:

(a) include the date, time and location of the hearing;

(b) include a statement of the recommended action;

(c) include an indication of the location and availability of the public file on the regulation;

(d) indicate where and by what date written and oral comments and testimony may be received; and

(e) specify that the public record shall remain open for comments for thirty days after the date of the final hearing; and

(4) the commission shall make its decision and take action based upon relevant and reliable evidence.

C. No person shall be allowed to work as a registered hunting guide or outfitter in New Mexico:

(1) without being registered by the state game commission;

(2) if the person has had a guide or outfitter license, registration, permit or certificate revoked in another state;

(3) if the person has had a guide or outfitter license, registration, permit or certificate suspended in another state and it has not been reinstated; or

(4) if the person has been convicted of a felony.

D. The state game commission shall develop a point system for the suspension or revocation of a guide or outfitter registration. The point system shall be similar to the point system that governs individual hunting and fishing license privileges.

E. To be granted a registration to be a guide, an applicant shall, in addition to any other reasonable criteria adopted by the state game commission, and except as provided for persons granted an interim registration:

(1) be at least eighteen years of age;

and

(2) pass a written or oral examination approved by the department of game and fish at a date and time approved by the

department.

F. A registered or interim registered guide shall work only under the supervision of a New Mexico registered or interim registered outfitter and in an area designated by the registered or interim registered outfitter.

G. The department of game and fish may provide a registration for a temporary emergency guide, provided the registration is limited to a maximum seven-day period and is granted only in emergency circumstances as determined by the department. The fee for a temporary emergency guide registration is ten dollars ($10.00).

H. To be granted a registration to be an outfitter, an applicant shall, in addition to any other reasonable criteria adopted by the state game commission, and except as provided for persons granted an interim registration:

(1) be at least twenty-one years of age;

(2) have operated as a New Mexico registered guide for at least three years or have been granted an interim outfitter's registration;

(3) not be a convicted felon or have a history of violation of federal or state game and fish laws or regulations or federal or state guide or outfitter licensing or registration laws or regulations;

and

(4) pass a written or oral examination approved by the department of game and fish at a date and time determined by the department.

I. A registered outfitter shall:

(1) provide proof of commercial liability insurance of at least five hundred thousand dollars ($500,000);

(2) responsibly supervise each registered guide working under his direction;

(3) provide a written contract for outfitting services, signed by the registered outfitter and identifying the outfitter's registration number, to each resident and nonresident who seeks to use the services of a registered outfitter;

(4) register with the taxation and revenue department and provide proof of that registration to the department of game and fish; and

(5) provide at least one registered guide or outfitter for every four or fewer resident or nonresident hunters who have contracted for an outfitter's guided services.

J. The department of game and fish shall provide to the taxation and revenue department a copy of each outfitter registration that is granted.

K. No person shall be allowed to charge a processing or other fee to obtain for a resident or nonresident a license that is granted from a special drawing for a hunt on public lands pursuant to the provisions of Section 17-3-16 NMSA 1978, except that nothing in this subsection shall prohibit the department of game and fish from collecting an application fee.

L. A New Mexico resident registered outfitter shall be a registered outfitter who is a resident as defined in Section 17-3-4 NMSA 1978. The state game commission shall adopt regulations that set forth additional requirements and that shall include at a minimum that a resident registered outfitter shall maintain a business address in New Mexico and, except as provided in Subsection Q of this section, derive at least fifty percent of his guiding or outfitting income from guiding or outfitting in New Mexico, as determined by gross receipts or corporate or individual income tax returns for the immediately preceding three years.

M. The department of game and fish shall maintain for public distribution a list of New Mexico registered outfitters.

N. The annual registration fee for a registered guide in New Mexico is fifty dollars ($50.00) for a resident and one hundred dollars ($100) for a nonresident.

O. The annual registration fee to be a registered outfitter in New Mexico is five hundred dollars ($500) for either a resident or a nonresident.

P. Annual registration fees for guides and outfitters shall be deposited in the game protection fund.

Q. A resident interim registered or registered outfitter may apply for inactive status of his registration for any period in which he does not operate as an outfitter. The state game commission shall reactivate an outfitter registration at the request of the outfitter and upon proof that the outfitter complies with the provisions of this section and

upon payment of the annual registration fee for the year the registration is being reinstated and payment of a reinstatement fee of not to exceed fifty dollars ($50.00).

R. The state game commission shall adopt by September 1, 1996 interim regulations, consistent to the greatest extent practicable with the provisions of this section, to provide for the granting of interim registrations to guides and outfitters. The commission shall issue interim registrations prior to mailing applications for 1997 licensed hunts to persons who qualify for interim registration and submit applications to the department of game and fish.

S. A person adversely affected by an action, other than a regulation, taken pursuant to the provisions of this section, including the denial, suspension or revocation of a registration, license, permit or certificate, may seek review of the action pursuant to the provisions of the Uniform Licensing Act.

T. A person adversely affected by a regulation adopted by the state game commission pursuant to this section may appeal to the court of appeals. All appeals shall be made upon the record at the hearing and shall be taken to the court of appeals within thirty days following the date of the action. 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.

U. Upon appeal, the court of appeals shall set aside a regulation only if it is 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.

V. After a hearing and a showing of good cause by the appellant, a stay of a regulation being appealed may be granted:

(1) by the state game commission; or

(2) by the court of appeals if the state game commission denies a stay or fails to act upon an application for a stay within sixty days after receipt of the application.

W. The appellant shall pay all costs for any appeal found to be frivolous by the court of appeals."

Section 3

Section 3. Section 17-3-16 NMSA 1978 (being Laws 1964 (

1st S.S.), Chapter 17, Section 7, as amended) is amended to read:

"17-3-16. FUNDS--SPECIAL DRAWINGS FOR LICENSES.--

A. The director of the department of game and fish may provide special envelopes and application blanks when a special drawing is to be held to determine the persons to receive licenses. Money required to be submitted with these applications, if enclosed in the special envelopes, need not be deposited with the state treasurer but may be held by the director until the successful applicants are determined. At that time, the fees of the successful applicants shall be deposited with the state treasurer and the fees submitted by the unsuccessful applicants shall be returned to them.

B. Beginning with the licenses issued from a special drawing for a hunt code on public lands that commences on or after April 1, 1997:

(1)

twenty-two percent of the licenses shall be issued to nonresidents divided as follows:

(a) twelve percent of the licenses to be drawn by nonresidents who will be guided by a New Mexico outfitter or guide; and

(b) ten percent of the licenses to be drawn by nonresidents who are not required to be guided by a New Mexico outfitter or guide; and

(2) seventy-eight percent of the licenses shall be issued to residents of New Mexico.

C. If the number of nonresidents or residents who apply for licenses pursuant to the provisions of Paragraphs (1) and (2) of Subsection B of this section does not constitute the allocated percentages for either category of nonresidents or residents, then the additional licenses available shall be granted to the other category of nonresidents or residents.

D. If the determination

of the percentages in Subsection B of this section yields a fraction of:

(1) five-tenths or greater, the number of licenses to be issued shall be rounded up to the next whole number; and

(2) less than five-tenths, the number of licenses shall be rounded down to the next whole number.

E. The fee for a nonresident license for a special drawing in a high-demand hunt covered in Subsection B of this section shall be assessed at the same rate as a license for nonresident quality elk or quality deer. As used in this subsection, "high-demand hunt" means:

(1) a hunt where the total number of nonresident applicants for a hunt code in each unit exceeds twenty-two percent of the total applicants and where the total applicants for a hunt exceeds the number of licenses available based on application data indicating that this criteria occurred in each of the two immediately preceding years; or

(2) an additional hunt code designated by the department of game and fish as a quality hunt."

Section 4

Section 4. REPEAL.--

A. That version of Section 17-3-16 NMSA 1978 (being Laws 1996, Chapter 89, Section 2) that is to become effective June 30, 1999 is repealed.

B. Laws 1996, Chapter 89, Sections 6 and 7 are repealed.

Section 5

Section 5. SEVERABILITY.--If any part or application of this act or Laws 1996, Chapter 89, Sections 1 and 3 through 5 is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 6

Section 6. ACT RETROACTIVE.--In the event this act is not enacted with the emergency clause, to make it effective prior to April 1, 1997, upon its effective date its provisions shall be made retroactive in operation to April 1, 1997.

Section 7

Section 7. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE BILL 430, AS AMENDED

WITH EMERGENCY CLAUSE AND

CERTIFICATE OF CORRECTION

SIGNED APRIL 9, 1997.

CHAPTER 120

RELATING TO UNEMPLOYMENT COMPENSATION; PROVIDING THAT CERTAIN DEMONSTRATION SERVICES DO NOT QUALIFY AS EMPLOYMENT FOR THE PURPOSES OF THE UNEMPLOYMENT COMPENSATION LAW; AMENDING A SECTION OF THE UNEMPLOYMENT COMPENSATION LAW.

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

Section 1

Section 1. Section 51-1-42 NMSA 1978 (being Laws 1936 (S.S.), Chapter 1, Section 19, as amended) is amended to read:

"51-1-42. DEFINITIONS.--As used in the Unemployment Compensation Law:

A. "base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year;

B. "benefits" means the cash unemployment compensation payments payable to an eligible individual pursuant to Section 51-1-4 NMSA 1978 with respect to his weeks of unemployment;

C. "contributions" means the money payments required by Section 51-1-9 NMSA 1978 to be made into the fund by an employer on account of having individuals performing services for him;

D. "employing unit" means any individual or type of organization, including any partnership, association, cooperative, trust, estate, joint-stock company, agricultural enterprise, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, household, fraternity or club, the legal representative of a deceased person or any state or local government entity to the extent required by law to be covered as an employer, which has in its employ one or more individuals performing services for it within this state. All individuals performing services for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of the Unemployment Compensation Law. Individuals performing services for contractors, subcontractors or agents which are performing work or services for an employing unit, as described in this subsection, which is within the scope of the employing unit's usual trade, occupation, profession or business shall be deemed to be in the employ of the employing unit for all purposes of the Unemployment Compensation Law unless such contractor, subcontractor or agent is itself an employer within the provision of Subsection E of this section;

E. "employer" includes:

(1) any employing unit which:

(a) unless otherwise provided in this section, paid for service in employment as defined in Subsection F of this section wages of four hundred fifty dollars ($450) or more in any calendar quarter in either the current or preceding calendar year or had in employment, as defined in Subsection F of this section, for some portion of a day in each of twenty different calendar weeks during either the current or the preceding calendar year, and irrespective of whether the same individual was in employment in each such day, at least one individual;

(b) for the purposes of Subparagraph (a) of this paragraph, if any week includes both December 31 and January 1,

the days of that week up to January 1 shall be deemed one calendar week and the days beginning January 1, another such week; and

(c) for purposes of defining an "employer" under Subparagraph (a) of this paragraph, the wages or remuneration paid to individuals performing services in employment in agricultural labor or domestic services as provided in Paragraphs (6) and (7) of Subsection F of this section shall not be taken into account; except that any employing unit determined to be an employer of agricultural labor under Paragraph (6) of Subsection F of this section shall be an employer under Subparagraph (a) of this paragraph so long as the employing unit is paying wages or remuneration for services other than agricultural services;

(2) any individual or type of organization that acquired the trade or business or substantially all of the assets thereof, of an employing unit which at the time of such acquisition was an employer subject to the Unemployment Compensation Law; provided that where such an acquisition takes place, the secretary may postpone activating the separate account pursuant to Subsection A of Section 51-1-11 NMSA 1978 until such time as the successor employer has employment as defined in Subsection F of this section;

(3) any employing unit which acquired all or part of the organization, trade, business or assets of another employing unit and which, if treated as a single unit with such other employing unit or part thereof, would be an employer under Paragraph (1) of this subsection;

(4) any employing unit not an employer by reason of any other paragraph of this subsection,

(a) for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment fund, or

(b) which, as a condition for approval of the Unemployment Compensation Law for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such act, to be an "employer" under the Unemployment Compensation Law;

(5) any employing unit which, having become an employer under Paragraph (1), (2), (3) or (4) of this subsection, has not,

under Section 51-1-18 NMSA 1978, ceased to be an employer subject to the Unemployment Compensation Law;

(6) for the effective period of its election pursuant to Section 51-1-18 NMSA 1978, any other employing unit which has elected to become fully subject to the Unemployment Compensation Law; and

(7) any employing unit for which any services performed in its employ are deemed to be performed in this state pursuant to an election under an arrangement entered into in accordance with Subsection A of Section 51-1-50 NMSA 1978;

F. "employment" means:

(1) any service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied;

(2) and includes an individual's entire service, performed within or both within and without this state if:

(a) the service is primarily localized in this state with services performed outside the state being only incidental thereto; or

(b) the service is not localized in any state but some of the service is performed in this state and: 1) the base of operations or, if there is no base of operations, the place from which such service is directed or controlled, is in this state; or 2) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state;

(3) services performed within this state but not covered under Paragraph (2) of this subsection if contributions or payments in lieu of contributions are not required and paid with respect to such services under an unemployment compensation law of any other state, the federal government or Canada;

(4) services covered by an election pursuant to Section 51-1-18 NMSA 1978 and services covered by an election duly approved by the secretary in accordance with an arrangement pursuant to Paragraph (1) of Subsection A of Section 51-1-50 NMSA 1978 shall be deemed to be employment during the effective period of such election;

(5) services performed by an individual for an employer for wages or other remuneration unless and until it is established by a preponderance of evidence that:

(a) such individual has been and will continue to be free from control or direction over the performance of such services both under his contract of service and in fact;

(b) such service is either outside the usual course of business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(c) such individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the contract of service;

(6) service performed after December 31, 1977 by an individual in agricultural labor as defined in Subsection Q of this section if:

(a) such service is performed for an employing unit which: 1) paid remuneration in cash of twenty thousand dollars ($20,000) or more to individuals in such employment during any calendar quarter in either the current or the preceding calendar year; or 2) employed in agricultural labor ten or more individuals for some portion of a day in each of twenty different calendar weeks in either the current or preceding calendar year, whether or not such weeks were consecutive, and regardless of whether such individuals were employed at the same time;

(b) such service is not performed before January 1, 1980 by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to Sections 214(c) and 101(15)(H) of the Immigration and Nationality Act; and

(c) for purposes of this paragraph, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for a farm operator or other person shall be treated as an employee of such crew leader: 1) if such crew leader meets the requirements of a crew leader as defined in Subsection L of this section; or 2) substantially all the members of such crew operate or maintain mechanized agricultural equipment which is provided by the crew leader; and 3) the individuals performing such services are not, by written agreement or in fact, within the meaning of

Paragraph (5) of this subsection, performing services in employment for the farm operator or other person;

(7) service performed after December 31, 1977 by an individual in domestic service in a private home, local college club or local chapter of a college fraternity or sorority for a person or organization that paid cash remuneration of one thousand dollars ($1,000) in any calendar quarter in the current or preceding calendar year to individuals performing such services;

(8) service performed after December 31, 1971 by an individual in the employ of a religious, charitable, educational or other organization but only if the following conditions are met:

(a) the service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of Section 3306(c)(8) of that act; and

(b) the organization meets the requirements of "employer" as provided in Subparagraph (a) of Paragraph (1) of Subsection E of this section;

(9) service of an individual who is a citizen of the United States, performed outside the United States, except in Canada, after December 31, 1971 in the employ of an American employer (other than service which is deemed "employment" under the provisions of Paragraph (2) of this subsection or the parallel provisions of another state's law), if:

(a) the employer's principal place of business in the United States is located in this state;

(b) the employer has no place of business in the United States, but: 1) the employer is an individual who is a resident of this state; 2) the employer is a corporation which is organized under the laws of this state; or 3) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(c) none of the criteria of Subparagraphs (a) and (b) of this paragraph are met, but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

"American employer" for purposes of this paragraph means a person who is: 1) an individual who is a resident of the United States; 2) a partnership if two-thirds or more of the partners are residents of the United States; 3) a trust if all of the trustees are residents of the United States; or 4) a corporation organized under the laws of the United States or of any state. For the purposes of this paragraph, "United States" includes the United States, the District of Columbia, the commonwealth of Puerto Rico and the Virgin Islands;

(10) notwithstanding any other provisions of this subsection, service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under the Unemployment Compensation Law;

(11) "employment" shall not include:

(a) service performed in the employ of: 1) a church or convention or association of churches; or 2) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled or principally supported by a church or convention or association of churches;

(b) service performed by a duly ordained, commissioned or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(c) service performed by an individual in the employ of his son, daughter or spouse, and service performed by a child under the age of majority in the employ of his father or mother;

(d) service performed in the employ of the United States government or an instrumentality of the United States immune under the constitution of the United States from the contributions imposed by the Unemployment Compensation Law except that to the extent that the congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation act, all of the provisions of the Unemployment Compensation Law shall be applicable to such instrumentalities, and to service performed for such instrumentalities in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services; provided, that if this state

shall not be certified for any year by the secretary of labor of the United States under Section 3304 of the federal Internal Revenue Code (26 U.S.C. Section 3304), the payments required of such instrumentalities with respect to such year shall be refunded by the department from the fund in the same manner and within the same period as is provided in Subsection D of Section 51-1-36 NMSA 1978 with respect to contributions erroneously collected;

(e) service performed in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work;

(f) service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

(g) service performed in the employ of a foreign government, including service as a consular or other officer or employee or a nondiplomatic representative;

(h) service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

(i) service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(j) service covered by an election duly approved by the agency charged with the administration of any other state or federal unemployment compensation law, in accordance with an arrangement pursuant to Paragraph (1) of Subsection A of Section 51-1-50 NMSA 1978 during the effective period of such election;

(k) service performed, as part of an unemployment work-relief or work-training program assisted or financed in whole or part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training;

(l) service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if the service is an integral part of such program, and the institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(m) service performed in the employ of a hospital, if the service is performed by a patient of the hospital, or services performed by an inmate of a custodial or penal institution for a governmental entity or nonprofit organization;

(n) service performed by real estate salesmen for others when the services are performed for remuneration solely by way of commission;

(o) service performed in the employ of a school, college or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university;

(p) service performed by an individual for a fixed or contract fee officiating at a sporting event which is conducted by or under the auspices of a nonprofit or governmental entity if that person is not otherwise an employee of the entity conducting the sporting event;

(q) service performed for a private, for-profit person or entity by an individual as a product demonstrator or product merchandiser if the service is performed pursuant to a written contract between that individual and a person or entity whose principal business is obtaining the services of product demonstrators and product merchandisers for third parties, for demonstration and merchandising purposes and the individual: 1) is compensated for each job or the compensation is based on factors related to the work performed; 2) provides the equipment used to perform the service, unless special equipment is required and provided by the manufacturer through an agency; 3) is responsible for completion of a specific job and for any failure to complete the job; 4) pays all expenses, and the opportunity for profit or loss rests solely with the individual; and 5) is responsible for operating costs, fuel, repairs and motor vehicle insurance. For the purpose of this subparagraph, "product demonstrator" means an

individual who, on a temporary, part-time basis, demonstrates or gives away samples of a food or other product as part of an advertising or sales promotion for the product and who is not otherwise employed directly by the manufacturer, distributor or retailer, and "product merchandiser" means an individual who, on a temporary, part-time basis builds or resets a product display and who is not otherwise directly employed by the manufacturer, distributor or retailer; or

(r) service performed for a private for-profit person or entity by an individual as a landman if substantially all remuneration paid in cash or otherwise for the performance of the services is directly related to the completion by the individual of the specific tasks contracted for rather than to the number of hours worked by the individual. For the purposes of this subparagraph, "landman" means a land professional who has been engaged primarily in: 1) negotiating for the acquisition or divestiture of mineral rights; 2) negotiating business agreements that provide for the exploration for or development of minerals; 3) determining ownership of minerals through the research of public and private records; and 4) reviewing the status of title, curing title defects and otherwise reducing title risk associated with ownership of minerals; managing rights or obligations derived from ownership of interests and minerals; or utilizing or pooling of interest in minerals; and

(12) for the purposes of this subsection, if the services performed during one-half or more of any pay period by an individual for the person employing him constitute employment, all the services of such individual for such period shall be deemed to be employment but, if the services performed during more than one-half of any such pay period by an individual for the person employing him do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this paragraph, the term "pay period" means a period, of not more than thirty-one consecutive days, for which a payment of remuneration is ordinarily made to the individual by the person employing him. This paragraph shall not be applicable with respect to services performed in a pay period by an individual for the person employing him where any of such service is excepted by Subparagraph (f) of Paragraph (11) of this subsection;

G. "employment office" means a free public employment office, or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices;

H. "fund" means the unemployment compensation fund established by the Unemployment Compensation Law to which all

contributions and payments in lieu of contributions required under the Unemployment Compensation Law and from which all benefits provided under the Unemployment Compensation Law shall be paid;

I. "unemployment" means, with respect to an individual, any week during which he performs no services and with respect to which no wages are payable to him and during which he is not engaged in self-employment or receives an award of back pay for loss of employment. The secretary shall prescribe by regulation what constitutes part-time and intermittent employment, partial employment and the conditions under which individuals engaged in such employment are eligible for partial unemployment benefits;

J. "state", when used in reference to any state other than New Mexico, includes, in addition to the states of the United States, the District of Columbia, the commonwealth of Puerto Rico and the Virgin Islands;

K. "unemployment compensation administration fund" means the fund established by Subsection A of Section 51-1-34 NMSA 1978 from which administrative expenses under the Unemployment Compensation Law shall be paid. "Employment security department fund" means the fund established by Subsection B of Section 51-1-34 NMSA 1978 from which certain administrative expenses under the Unemployment Compensation Law shall be paid;

L. "crew leader" means a person who:

(1) holds a valid certificate of registration as a crew leader or farm labor contractor under the Migrant and Seasonal Agricultural Worker Protection Act;

(2) furnishes individuals to perform services in agricultural labor for any other person;

(3) pays, either on his own behalf or on behalf of such other person, the individuals so furnished by him for service in agricultural labor; and

(4) has not entered into a written agreement with the other person for whom he furnishes individuals in agricultural labor that such individuals will be the employees of the other person;

M. "week" means such period of seven consecutive days, as the secretary may by regulation prescribe. The secretary may by

regulation prescribe that a week shall be deemed to be "in", "within" or "during" that benefit year which includes the greater part of such week;

N. "calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30 or December 31;

O. "insured work" means services performed for employers who are covered under the Unemployment Compensation Law;

P. "benefit year" with respect to any individual means the one-year period beginning with the first day of the first week of unemployment with respect to which the individual first files a claim for benefits in accordance with Subsection A of Section 51-1-8 NMSA 1978 and thereafter the one-year period beginning with the first day of the first week of unemployment with respect to which the individual next files such a claim for benefits after the termination of his last preceding benefit year; provided that at the time of filing such a claim the individual has been paid the wages for insured work required under Paragraph (5) of Subsection A of Section 51-1-5 NMSA 1978;

Q. "agricultural labor" includes all services performed:

(1) on a farm, in the employ of any person, in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry and fur-bearing animals and wildlife;

(2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation or maintenance of such farm and its tools and equipment, if the major part of such service is performed on a farm;

(3) in connection with the operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for supplying and storing water for farming purposes when such ditches, canals, reservoirs or waterways are owned and operated by the farmers using the water stored or carried therein; and

(4) in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivery to storage or to market or to a carrier for transportation to market any agricultural or horticultural commodity but only if such service is performed as an incident to ordinary farming operations. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in

connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal and truck farms, plantations, ranches, nurseries, greenhouses, ranges and orchards;

R. "payments in lieu of contributions" means the money payments made into the fund by an employer pursuant to the provisions of Subsection A of Section 51-1-13 NMSA 1978;

S. "department" means the labor department; and

T. "wages" means all remuneration for services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be established and determined in accordance with regulations prescribed by the secretary; provided that the term "wages" shall not include:

(1) subsequent to December 31, 1977, that part of the remuneration in excess of the base wage as determined by the secretary for each calendar year. The base wage upon which contribution shall be paid during any calendar year shall be sixty-five percent of the state's average annual earnings computed by the department by dividing total wages reported to the department by contributing employers for the second preceding calendar year before the calendar year the computed base wage becomes effective by the average annual employment reported by contributing employers for the same period rounded to the next higher multiple of one hundred dollars ($100); provided that the base wage so computed for any calendar year shall not be less than seven thousand dollars ($7,000). Wages paid by an employer to an individual in his employ during any calendar year in excess of the base wage in effect for that calendar year shall be reported to the department but shall be exempt from the payment of contributions unless such wages paid in excess of the base wage become subject to tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund;

(2) the amount of any payment with respect to services performed after June 30, 1941 to or on behalf of an individual in its employ under a plan or system established by an employing unit which makes provision for individuals in its employ generally or for a class or classes of such individuals, including any amount paid by an

employing unit for insurance or annuities, or into a fund, to provide for any such payment, on account of:

(a) retirement if such payments are made by an employer to or on behalf of any employee under a simplified employee pension plan that provides for payments by an employer in addition to the salary or other remuneration normally payable to such employee or class of such employees and does not include any payments which represent deferred compensation or other reduction of an employee's normal taxable wages or remuneration or any payments made to a third party on behalf of an employee as part of an agreement of deferred remuneration;

(b) sickness or accident disability if such payments are received under a workers' compensation or occupational disease disablement law;

(c) medical and hospitalization expenses in connection with sickness or accident disability; or

(d) death;

provided the individual in its employ has not the option to receive, instead of provision for such death benefit, any part of such payment, or, if such death benefit is insured, any part of the premiums or contributions to premiums paid by his employing unit and has not the right under the provisions of the plan or system or policy of insurance providing for such death benefit to assign such benefit, or to receive a cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his service with such employing unit;

(3) remuneration for agricultural labor paid in any medium other than cash;

(4) any payment made to, or on behalf of, an employee or an employee's beneficiary under a cafeteria plan within the meaning of Section 125 of the federal Internal Revenue Code of 1986;

(5) any payment made, or benefit furnished to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under Section 129 of the federal Internal Revenue Code of 1986; or

(6) any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

SENATE BILL 492, AS AMENDED

CHAPTER 121

RELATING TO INSURANCE; AMENDING CERTAIN SECTIONS OF THE NEW MEXICO INSURANCE CODE.

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

Section 1

Section 1. Section 59A-2-9 NMSA 1978 (being Laws 1984, Chapter 127, Section 27) is amended to read:

"59A-2-9. RULES AND REGULATIONS--PROMULGATION--VIOLATION.--

A. The superintendent, after a hearing thereon, may make reasonable rules and regulations necessary for or as an aid to administration or effectuation of any provision of the Insurance Code administered by the superintendent, and from time to time withdraw, modify or amend any such rule or regulation.

B. No such rule or regulation shall extend, modify or conflict with any such provision or other laws of New Mexico.

C. The superintendent shall file all new rules, amendments of rules or repeals of rules in accordance with the State Rules Act not later than the submittal deadline for publication in the New Mexico register on or before the effective date of any such rule, amendment or repeal.

D. Willful violation of any such rule or regulation shall subject the violator to such penalty as may be applicable under the Insurance Code for violation of the provision to which the rule or

regulation relates; but no penalty shall apply to any act done or omitted in good faith in conformity with any such rule or regulation, notwithstanding that the rule or regulation may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason."

Section 2

Section 2. Section 59A-4-16 NMSA 1978 (being Laws 1984, Chapter 127, Section 60) is amended to read:

"59A-4-16. NOTICE OF HEARING.--

A. Except where a different period is expressly provided, the superintendent shall give written notice of the hearing not less than twenty days in advance. The notice shall state the date, time and place of the hearing and specify the matters to be considered thereat.

B. If any person is entitled to a hearing by any provision of the Insurance Code before any proposed action is taken, or if the superintendent otherwise deems advisable, notice of the hearing may be in the form of a notice to show cause, stating that proposed action may be taken unless such person shows cause at a hearing to be held as specified in the notice why the action should not be taken, and stating the basis of the proposed action.

C. If a hearing is to be held for consideration of rules of the superintendent, the superintendent may give notice of the hearing by publication thereof in a newspaper of general circulation in this state, and once in the New Mexico register; and the superintendent shall mail the notice to all persons who had requested the same in writing in advance and shall have paid to the superintendent the reasonable costs of such mailing as fixed by the superintendent.

D. If the hearing is for a purpose other than the consideration of rules of the superintendent, and if the persons to be given notice are not specified in the provision pursuant to which the hearing is held, the superintendent shall give the notice to all persons whose pecuniary interests, to the superintendent's knowledge or belief, are to be directly and immediately affected by the hearing.

E. All such notices, except published notice, shall be given as provided for in 59A-2-10 NMSA 1978.

F. The superintendent shall specify in the notice of hearing whether the hearing is to be an administrative hearing pursuant to

Section 59A-4-17 NMSA 1978 or an informal hearing pursuant to Section 59A-4-18 NMSA 1978."

Section 3

Section 3. Section 59A-5-26 NMSA 1978 (being Laws 1984, Chapter 127, Section 93) is amended to read:

"59A-5-26. SUSPENSION, LIMITATION OR REVOCATION OF AUTHORITY--DISCRETIONARY AND SPECIAL GROUNDS.--

A. The superintendent may, at his discretion, suspend, limit or revoke an insurer's certificate of authority if he finds after a hearing thereon, or upon waiver of hearing by the insurer, that the insurer has:

(1) violated or failed to comply with any lawful order of the superintendent;

(2) willfully violated or willfully failed to comply with any lawful regulation of the superintendent;

(3) violated any provision of the Insurance Code other than those for violation of which suspension or revocation is mandatory; or

(4) reinsured all or substantially all of its risks, or all or substantially all of its risks in a particular kind of insurance, in another insurer.

B. In lieu of suspension or revocation of certificate of authority as provided in Subsection A of this section, the superintendent may, at his discretion, levy upon the insurer and the insurer shall forthwith pay to the superintendent, an administrative fine of not more than five thousand dollars ($5,000). The superintendent shall promptly deposit with the state treasurer to the credit of the general fund all money received under this subsection.

C. The superintendent shall suspend or revoke an insurer's certificate of authority on any of the following grounds, if found after a hearing thereon that the insurer:

(1) is in unsound condition, or being fraudulently conducted, or in such condition or using such methods and practices in conduct of its business as to render its further transaction of insurance in this state currently or prospectively hazardous or injurious to policyholders or the public;

(2) with such frequency as to indicate its general business practice in this state:

(a) has without just cause failed to pay, or delayed payment of, claims arising under its policies, whether the claim is in favor of an insured or in favor of a third person with respect to the liability of an insured to such third person; or

(b) without just cause compels insureds or claimants to accept less than amount due them or to employ attorney or to bring suit against the insurer or such an insured to secure full payment or settlement of a claim;

(3) refuses to be examined, or if its directors, officers, employees or representatives refuse to submit to examination relative to its affairs, or to produce books, papers, records, contracts, correspondence or other documents for examination by the superintendent when required, or refuses or fails to pay expenses of the examination or to perform any other legal obligation relative to the examination; or

(4) has failed to pay any final judgment rendered against it in this state upon any policy, bond, recognizance or undertaking as issued or guaranteed by it, within thirty days after the judgment becomes final.

D. The superintendent may, at his discretion and without advance notice or hearing thereon, immediately suspend the certificate of authority of an insurer as to which proceedings for receivership, conservation, rehabilitation or other delinquency proceedings have been commenced in any state by the public insurance supervisory officer of that state."

Section 4

Section 4. Section 59A-8-9 NMSA 1978 (being Laws 1984, Chapter 127, Section 126) is amended to read:

"59A-8-9. UNEARNED PREMIUM RESERVE, CASUALTY, VEHICLE, PROPERTY, MARINE AND SURETY INSURANCES.--As to property, casualty, vehicle and surety insurance, and marine and transportation insurance other than as provided in Section 59A-8-10 NMSA 1978, the insurer shall maintain as a liability an unearned premium reserve on policies in force computed as follows: fifty percent of the gross premium in force on policies having one year or less to run

and pro rata on those for longer periods, or pro rata for all premiums in force."

SENATE BILL 504, AS AMENDED

CHAPTER 122

RELATING TO CRIMINAL LAW; CREATING A NEW CRIMINAL OFFENSE OF DISARMING A PEACE OFFICER; PROVIDING A PENALTY; 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 is enacted to read:

"DISARMING A PEACE OFFICER.--

A. Disarming a peace officer consists of knowingly:

(1) removing a firearm or weapon from the person of a peace officer when the officer is acting within the scope of his duties; or

(2) depriving a peace officer of the use of a firearm or weapon when the officer is acting within the scope of his duties.

B. The provisions of Subsection A of this act shall not apply when a peace officer is engaged in criminal conduct.

C. Whoever commits disarming a peace officer is guilty of a third degree felony."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

SENATE BILL 746, AS AMENDED

CHAPTER 123

RELATING TO TECHNICAL AND VOCATIONAL INSTITUTE DISTRICTS; PROVIDING TECHNICAL AND VOCATIONAL INSTITUTES AUTHORITY TO CONTRACT WITH ONE OR MORE FISCAL AGENTS AND DESIGNATE ONE OR MORE DEPOSITORIES FOR THE DEPOSIT OF FUNDS; AMENDING SECTION 6-10-36 NMSA 1978 (BEING LAWS 1977, CHAPTER 136, SECTION 1, AS AMENDED).

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

Section 1

Section 1. A new section of the Technical and Vocational Institute Act is enacted to read:

"FISCAL AGENT AND DEPOSITORY.--

A. The board may designate a bank or savings and loan association doing business in New Mexico and having an unimpaired tier one capital of at least ten million dollars ($10,000,000), as defined by the federal deposit insurance corporation, as the fiscal agent of the technical and vocational institute. The selection of the fiscal agent shall be made pursuant to the procedures of the Procurement Code.

B. The bank or savings and loan association so designated shall enter into an agreement with the technical and vocational institute for any or all of the following services:

(1) the collection for the technical and vocational institute of all checks and other items received by the technical and vocational institute on any account;

(2) the

handling of the checking account of the technical and vocational institute; (3) the handling of all transfers of money in connection with the sale or retirement of bonds or obligations of the technical and vocational institute or the purchase by the technical and vocational institute of bonds or other securities;

(4) the investment of funds of the technical and vocational institute;

(5) the safekeeping of bonds or other securities belonging to or held by the technical and vocational institute or any official thereof;

(6) implementation of a cash management system to provide daily sweeps of balances into a revenue generating account;

(7) processing of credit card transactions involving the technical and vocational institute;

(8) administration of direct deposit payroll and other payment programs; and

(9) acting as the agent of the technical and vocational institute in fiscal matters generally.

C. The agreement shall contain the terms and conditions which are necessary, in the judgment of the board, for the proper conduct of the fiscal affairs and the safekeeping of the money of the technical and vocational institute."

Section 2

Section 2. Section 6-10-36 NMSA 1978 (being Laws 1977, Chapter 136, Section 1, as amended) is amended to read:

"6-10-36. PUBLIC MONEY DEPOSITS OF CERTAIN GOVERNMENTAL UNITS--DISTRIBUTION--INTEREST.--

A. All public money except that in the custody of the state treasurer, institutions of higher education, technical and vocational institutes, incorporated municipalities and counties which have adopted home rule charters as authorized by the constitution and local school boards which have been designated as boards of finance shall be deposited in qualified depositories in accordance with the terms of this section or invested as otherwise provided by law.

B. Deposits of funds of a governmental unit may be made in noninterest-bearing checking accounts in one or more banks or savings and loan associations designated as checking depositories located within the geographical boundaries of the governmental unit. In addition, deposits of funds may be in noninterest-bearing accounts in one or more credit unions designated as checking depositories located within the geographical boundaries of the governmental unit to the extent the deposits are insured by an agency of the United States. If there is no checking depository within the geographical boundaries of

the governmental unit, one or more banks, savings and loan associations or credit unions within the county in which the principal office of the governmental unit is located may be so designated; provided any credit union deposits are insured by an agency of the United States.

C. Public money placed in interest-bearing deposits in banks and savings and loan associations shall be equitably distributed among all banks and savings and loan associations having their main or manned branch offices within the geographical boundaries of the governmental unit which have qualified as public depositories by reason of insurance of the account by an agency of the United States or by depositing collateral security or by giving bond as provided by law in the proportion that each bank's or savings and loan association's net worth bears to the total net worth of all banks and savings and loan associations having their main office or manned branch office within the geographical boundaries of the governmental unit. The net worth of the main office of a savings and loan association and its manned branch offices within the geographical boundaries of a governmental unit is the total net worth of the association multiplied by the percentage that deposits of the main office and the manned branch offices located within the geographical boundaries of the governmental unit are of the total deposits of the association. The net worth of each manned branch office or aggregate of manned branch offices of a savings and loan association located outside the geographical boundaries of the governmental unit in which the main office is located is the total net worth of the association multiplied by the percentage that deposits of the branch or the aggregate of branches located outside the geographical boundaries of the governmental unit in which the main office is located are of the total deposits of the association. The director of the financial institutions division of the regulation and licensing department shall promulgate a formula for determining the net worth of banks' main offices and branches for the purposes of distribution of public money as provided for by this section. "Net worth" means the assets less liabilities as reported by those banks and savings and loan associations on their most recent semiannual reports to the state or federal supervisory authority having jurisdiction.

D. Public money may be placed at the discretion of the designated board of finance or treasurer in interest-bearing deposits in credit unions having their main or manned branch offices within the geographical boundaries of the governmental unit to the extent such deposits are insured by an agency of the United States.

E. The rate of interest for all public money deposited in interest-bearing accounts in banks, savings and loan associations and

credit unions shall be set by the state board of finance, but in no case shall the rate of interest be less than one hundred percent of the asked price on United States treasury bills of the same maturity on the day of deposit. Any bank or savings and loan association that fails to pay the minimum rate of interest at the time of deposit provided for herein for any respective deposit forfeits its right to an equitable share of that deposit under this section.

If the deposit is part or all of the proceeds of a bond issue and the interest rate prescribed in this subsection materially exceeds the rate of interest of the bonds, the interest rate prescribed by this subsection shall be reduced on that deposit to an amount not materially exceeding the interest rate of the bonds if the bond issue would lose its tax exempt status pursuant to the provisions of the Internal Revenue Code of 1986, as amended.

F. Public money in excess of that for which banks, savings and loan associations and credit unions within the geographical boundaries of the governmental unit have qualified may be deposited in qualified depositories in other areas within the state under the same requirements for payment of interest as if the money were deposited within the geographical boundaries of the governmental unit or may be invested as provided by law.

G. The department of finance and administration may monitor the deposits of public money by governmental units to assure full compliance with the provisions of this section."

SENATE BILL 865, AS AMENDED

CHAPTER 124

RELATING TO PROPERTY TAX; ALLOWING COUNTIES TO RETAIN RESPONSIBILITY FOR COLLECTION OF DELINQUENT PERSONAL PROPERTY TAXES; REQUIRING RECORDATION OF TAX DELINQUENCY LIST FOR REAL PROPERTY.

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

Section 1

Section 1. Section 7-38-60 NMSA 1978 (being Laws 1973, Chapter 258, Section 101, as amended) is amended to read:

"7-38-60. NOTIFICATION TO PROPERTY OWNER OF DELINQUENT TAXES.--By June 10 of each year, the county treasurer shall mail a notice to each property owner of property for which taxes have been delinquent for more than two years. The notice shall be in a form and contain the information prescribed by department regulations and shall include the following:

A. a description of the property upon which the taxes are due;

B. a statement of the amount of property taxes due, the date on which they became delinquent, the rate of accrual of interest and any penalties or costs that may be charged;

C. a statement that the delinquent tax account on real property will be transferred to the department for collection;

D. a statement that if taxes due on real property are not paid within three years from the date of delinquency, the real property will be sold and a deed issued; and

E. a statement that if taxes due on personal property are not paid, the personal property may be seized and sold for taxes under authority of a demand warrant."

Section 2

Section 2. Section 7-38-61 NMSA 1978 (being Laws 1973, Chapter 258, Section 100, as amended) is amended to read:

"7-38-61. REAL PROPERTY TAXES DELINQUENT FOR MORE THAN TWO YEARS--TREASURER TO PREPARE DELINQUENCY LIST--NOTATION ON PROPERTY TAX SCHEDULE.--

A. By July 1 of each year, the county treasurer shall prepare a property tax delinquency list of all real property for which taxes have been delinquent for more than two years. The tax delinquency list shall contain the information and be in a form prescribed and submitted by the date required by department regulations. The county treasurer shall record the tax delinquency list in the office of the county clerk. There shall be no recording fee for recordation of the tax delinquency list. The updated final property tax sale list shall be recorded with the office of the county clerk the day following the sale of the property. There shall be no recording fee for recordation of the final property tax sale list.

B. The county treasurer shall make a notation on the property tax schedule indicating that the account has been transferred to the department for collection at the time the tax delinquency list is mailed to the department."

Section 3

Section 3. REPEAL.--Section 7-38-64 NMSA 1978 (being Laws 1973, Chapter 258, Section 104) is repealed.

Section 4

Section 4. APPLICABILITY.--The provisions of this act are applicable to the 1998 and subsequent tax years.

SENATE BILL 885, AS AMENDED

CHAPTER 125

RELATING TO THE TAXATION AND REVENUE DEPARTMENT; AUTHORIZING THE WITHHOLDING OF AN ADMINISTRATIVE FEE ON CERTAIN DISTRIBUTIONS; PROVIDING FOR THE DISTRIBUTION OF THE ADMINISTRATIVE FEE WITHHELD; AUTHORIZING THE NEW MEXICO FINANCE AUTHORITY TO ISSUE REVENUE BONDS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING APPROPRIATIONS; DECLARING AN EMERGENCY.

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

Section 1

Section 1. A new section of the Tax Administration Act is enacted to read:

"ADMINISTRATIVE FEE IMPOSED--APPROPRIATION.--

A. The taxation and revenue department is directed to withhold an administrative fee of three percent of the net amount to be distributed under the provisions of:

(1) Section 7-1-6.32 NMSA 1978;

(2) Section 66-12-20 NMSA 1978; and

(3) Section 74-1-13 NMSA 1978.

B. The administrative fee to be withheld pursuant to Subsection A of this section shall be withheld on distributions made on or after July 1, 1997 and shall continue until the earlier of December 31, 2006 or the date on which the New Mexico finance authority certifies to the taxation and revenue department that all obligations for bonds issuedpursuant to Section 12 of this 1997 act have been fully discharged and directs the department to cease distributing money to the authority pursuant to this section.

C. The taxation and revenue department is directed to withhold an additional administrative fee at the following percentage of the net amount to be distributed pursuant to the following provisions of law:

(1) two percent of the net amount to be distributed pursuant to Section 7-1-6.12 NMSA 1978; and

(2) six-tenths of one percent of the net amount to be distributed pursuant to Section 7-1-6.13 NMSA 1978.

D. The administrative fee to be withheld under Subsection C of this section shall be withheld on distributions made on or after July 1, 1997 and shall continue until the earlier of July 1, 2000 or the date on which the New Mexico finance authority certifies to the taxation and revenue department that all obligations for bonds issued pursuant to Section 12 of this 1997 act have been fully discharged and directs the department to cease distributing money to the authority pursuant to this section.

E. The administrative fee to be withheld by the taxation and revenue department under Section 7-1-6.12 and 7-1-6.13 NMSA 1978 shall be set at three percent of the net amount to be distributed pursuant to the provisions of those sections.

F. The administrative fee to be withheld under Subsection E of this section shall be withheld on distributions made on or after July 1, 2000 and shall continue until the earlier of December 31, 2006 or the date on which the New Mexico finance authority certifies to the taxation and revenue department that all obligations for bonds issued pursuant to Section 12 of this 1997 act have been fully discharged and directs the

department to cease distributing money to the authority pursuant to this section. After the department has been directed by the authority to cease distributing money to the authority pursuant to this section, the administrative fee shall be remitted to the state treasurer for deposit in the state general fund each month.

G. The administrative fee shall be distributed monthly to the New Mexico finance authority to be pledged irrevocably for the payment of principal, interest and any expenses or obligations related to the bonds issued by the authority to finance the taxation and revenue information management systems project."

Section 2

Section 2. Section 7-1-6.12 NMSA 1978 (being Laws 1983, Chapter 211, Section 17, as amended) is amended to read:

"7-1-6.12. TRANSFER--REVENUES FROM MUNICIPAL LOCAL OPTION GROSS RECEIPTS TAXES.--A transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each municipality for which the department is collecting a local option gross receipts tax imposed by that municipality in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the net receipts attributable to the local option gross receipts tax imposed by that municipality, less any deduction for administrative cost determined and made by the department pursuant to the provisions of the act authorizing imposition by that municipality of the local option gross receipts tax and any additional administrative fee withheld pursuant to Subsection C of Section 1 of this 1997 act."

Section 3

Section 3. Section 7-1-6.13 NMSA 1978 (being Laws 1983, Chapter 211, Section 18, as amended) is amended to read:

"7-1-6.13. TRANSFER--REVENUES FROM COUNTY LOCAL OPTION GROSS RECEIPTS TAXES.--A transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each county for which the department is collecting a local option gross receipts tax imposed by that county in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the net receipts attributable to the local option gross receipts tax imposed by that

county, less any deduction for administrative cost determined and made by the department pursuant to the provisions of the act authorizing imposition by that county of the local option gross receipts tax and any additional administrative fee withheld pursuant to Subsection C of Section 1 of this 1997 act."

Section 4

Section 4. Section 7-1-6.32 NMSA 1978 (being Laws 1990, Chapter 99, Section 44) is amended to read:

"7-1-6.32. DISTRIBUTION--SOLID WASTE ASSESSMENT FEE.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the solid waste facility grant fund of the net receipts attributable to the solid waste assessment fee authorized under the Solid Waste Act less any administrative fee withheld pursuant to Section 1 of this 1997 act."

Section 5

Section 5. Section 7-2C-12 NMSA 1978 (being Laws 1985, Chapter 106, Section 12, as amended) is amended to read:

"7-2C-12. ADMINISTRATIVE COSTS--CHARGES APPROPRIATED TO DEPARTMENT.--

A. The department shall charge claimant agencies an administrative fee of three percent of the debts for the claimant agencies pursuant to the Tax Refund Intercept Program Act.

B. The administrative fee authorized pursuant to Subsection A of this section shall be withheld on all debts set off and collected by the department on or after July 1, 1997 and shall be distributed monthly to the New Mexico finance authority to be pledged irrevocably for the payment of the principal, interest and expenses or other obligations related to the bonds for the taxation and revenue information management systems project. That distribution shall continue until the earlier of December 31, 2005 or the date on which the New Mexico finance authority certifies to the department that all obligations for bonds

issued pursuant to Section 12 of this 1997 act have been fully discharged or provision has been made for their discharge and directs the department to cease distributing the money from the fee pursuant to Subsection A of this section to the authority. Thereafter, the administrative fees are appropriated to the department for use in administering the Tax Refund Intercept Program Act."

Section 6

Section 6. Section 7-19-15 NMSA 1978 (being Laws 1979, Chapter 397, Section 6, as amended) is amended to read:

"7-19-15. COLLECTION BY DEPARTMENT--TRANSFER OF PROCEEDS--DEDUCTIONS.--

A. The department shall collect the supplemental municipal gross receipts tax in the same manner and at the same time it collects the state gross receipts tax.

B. The department shall withhold an administrative fee pursuant to Section 1 of this 1997 act. The department shall transfer to each municipality for which it is collecting a supplemental municipal gross receipts tax the amount of the tax collected less the administrative fee withheld and less any disbursements for tax credits, refunds and the payment of interest applicable to the supplemental municipal gross receipts tax. Transfer of the tax to a municipality shall be made within the month following the month in which the tax is collected."

Section 7

Section 7. Section 7-19D-7 NMSA 1978 (being Laws 1993, Chapter 346, Section 7) is amended to read:

"7-19D-7. COLLECTION BY DEPARTMENT--TRANSFER OF PROCEEDS--DEDUCTIONS.--

A. The department shall collect each tax imposed pursuant

to the provisions of the Municipal Local Option Gross Receipts Taxes Act in the same manner and at the same time it collects the state gross receipts tax.

B. Except as provided in Subsection C of this section, the department shall withhold an administrative fee pursuant to Section 1 of this 1997 act. The department shall transfer to each municipality for which it is collecting a tax pursuant to the provisions of the Municipal Local Option Gross Receipts Taxes Act the amount of each tax collected for that municipality, less the administrative fee withheld and less any disbursements for tax credits, refunds and the payment of interest applicable to the tax. The transfer to the municipality shall be made within the month following the month in which the tax is collected.

C. With respect to the municipal gross receipts tax imposed by a municipality pursuant to Section 7-19D-9 NMSA 1978, the department shall withhold the administrative fee pursuant to Section 1 of this 1997 act only on that portion of the municipal gross receipts tax arising from a municipal gross receipts tax rate in excess of one-half of one percent."

Section 8

Section 8. Section 7-20C-6 NMSA 1978 (being Laws 1991, Chapter 176, Section 6) is amended to read:

"7-20C-6. COLLECTION BY DEPARTMENT--TRANSFER OF PROCEEDS--DEDUCTIONS.--

A. The department shall collect the local hospital gross receipts tax in the same manner and at the same time it collects the state gross receipts tax.

B. The department shall withhold an administrative fee pursuant to Section 1 of this 1997 act. The department shall transfer to each county for which it is collecting such tax the amount of the tax collected less the administrative fee withheld and less any disbursements for tax credits, refunds and the payment of interest applicable to the tax. Transfer of the tax to a county shall be made within the month following the month in which the tax is collected."

Section 9

Section 9. Section 7-20E-7 NMSA 1978 (being Laws 1993, Chapter 354, Section 7) is amended to read:

"7-20E-7. COLLECTION BY DEPARTMENT--TRANSFER OF PROCEEDS--DEDUCTIONS.--

A. The department shall collect each tax imposed pursuant to the provisions of the County Local Option Gross Receipts Taxes Act in the same manner and at the same time it collects the state gross receipts tax.

B. The department shall withhold an administrative fee pursuant to Section 1 of this 1997 act. The department shall transfer to each county for which it is collecting a tax pursuant to the provisions of the County Local Option Gross Receipts Taxes Act the amount of each tax collected for that county, less the administrative fee withheld and less any disbursements for tax credits, refunds and the payment of interest applicable to the tax. The transfer to the county shall be made within the month following the month in which the tax is collected."

Section 10

Section 10. Section 66-12-20 NMSA 1978 (being Laws 1959, Chapter 338, Section 19, as amended) is amended to read:

"66-12-20. DISPOSITION OF FEES.--The fees collected pursuant to the provisions of the Boat Act, less the administrative fee withheld pursuant to Section 1 of this 1997 act, shall be covered into the state park and recreation fund."

Section 11

Section 11. Section 74-1-13 NMSA 1978 (being Laws 1993, Chapter 317, Section 2) is amended to read:

"74-1-13. WATER CONSERVATION FEE--IMPOSITION--DEFINITIONS.--

A. There is imposed on every person who operates a public water supply system a water conservation fee in an amount equal to three cents ($.03) per thousand gallons of water produced on which the fee imposed by this subsection has not been paid.

B. The "water conservation fund" is created in the state treasury and shall be administered by the department of environment. The fund shall consist of water conservation fees collected pursuant to this section. Balances in the fund at the end of any fiscal year shall not revert to the general fund but shall accrue to the credit of the fund. Earnings on the fund shall be credited to the fund.

C. Money in the water conservation fund is appropriated to the department of environment for administration of a public water supply program to:

(1) test public water supplies for the contaminants required to be tested pursuant to the provisions of Section 1412 of the federal Safe Drinking Water Act,

as finalized through July 1, 1992, and collect chemical compliance samples as required by those provisions of the federal act;

(2) perform vulnerability assessments which will be used to assess a public water supply's susceptibility to those contaminants; and

(3) implement new requirements of the Utility Operators Certification Act and provide training for all public water supply operators.

D. The taxation and revenue department shall provide by regulation for the manner and form of collection of the water conservation fee. All water conservation fees collected by the taxation and revenue department, less the administrative fee withheld pursuant to Section 1 of this 1997 act, shall be deposited in the water conservation fund.

E. The fee imposed by this section shall be administered in accordance with the provisions of the Tax Administration Act and shall be paid to the taxation and revenue department by each person who operates a public water supply system in the manner required by the department on or before the twenty-fifth day of the month following the month in which the water is produced.

F. Each operator of a public water supply system shall register and comply with the provisions of Section 7-1-12 NMSA 1978 and furnish such information as may be required by the taxation and revenue department.

G. As used in this section:

(1) "person" means any individual or legal entity and also means, to the extent permitted by law, any federal, state or other governmental unit or subdivision or an agency, department or instrumentality thereof; and

(2) "public water supply system" means a system that provides piped water to the public for human consumption and that has at least fifteen service connections or regularly services an average of at least twenty-five individuals at least sixty days per year."

Section 12

Section 12. NEW MEXICO FINANCE AUTHORITY REVENUE BONDS--PURPOSE--APPROPRIATION.--

A. The New Mexico finance authority may issue and sell revenue bonds in compliance with the New Mexico Finance Authority Act in installments or at one time in a total amount not exceeding thirty-three million seven hundred nine thousand eight hundred dollars ($33,709,800) for the purpose of financing the taxation and revenue information management systems project.

B. The New Mexico finance authority may issue and sell revenue bonds authorized by this section from time to time when the secretary of taxation and revenue, with the concurrence of the legislative finance committee, certifies the need for issuance of the bonds. The net proceeds from the sale of the bonds are appropriated to the taxation and revenue department for the purpose of financing the taxation and revenue information management systems project.

C. The revenue from administrative fees distributed monthly to the New Mexico finance authority shall be pledged irrevocably for the payment of the principal, interest and any expenses or other obligations related to the bonds.

D. The administrative fees distributed to the New Mexico finance authority shall be deposited in a separate fund or account of the authority. Upon payment of all principal, interest and any other expenses or obligations related to the bonds, the authority shall certify to the taxation and revenue department that all obligations for the bonds issued pursuant to this section have been fully discharged or provision has been made for their discharge and direct the department to cease the distributions to the authority of administrative fees pursuant to Section 1 of this
act.

E. Any law authorizing the imposition or distribution of the administrative fees or that affects the administrative fees shall not be amended, repealed or otherwise directly or indirectly modified so as to impair any outstanding revenue bonds that may be secured by a pledge of the administrative fees, unless the revenue bonds have been discharged in full or provision has been made for a full discharge.

F. The New Mexico finance authority is authorized to make an interim cash loan from the public project revolving fund in an amount not to exceed two million five hundred thousand dollars ($2,500,000) prior to issuance of the bonds pursuant to this section.

Section 13

Section 13. EFFECTIVE DATE.--The effective date of the provisions of Sections 1 through 11 of this act is July 1, 1997.

Section 14

Section 14. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE FINANCE COMMITTEE SUBSTIUTE

FOR SENTE BILL 1129, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 9, 1997

CHAPTER 126

RELATING TO EDUCATION; CHANGING THE STUDENT EXCHANGE PROGRAM OF THE WESTERN INTERSTATE COMMISSION ON HIGHER EDUCATION FROM A GRANT PROGRAM TO A LOAN FOR SERVICE PROGRAM; PROVIDING FOR CONTRACTS; CREATING A FUND; 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 "WICHE Loan for Service Act".

Section 2

Section 2. DEFINITIONS.--As used in the WICHE Loan for Service Act:

A. "commission" means the commission on higher education; and

B. "student" means a New Mexico resident who is a graduate of a New Mexico high school and who attends or is about to attend a graduate or professional program of education through the auspices of the Compact for Western Regional Cooperation in Higher Education.

Section 3

Section 3. STUDENT EXCHANGE PROGRAM--TERMS OF STUDENT LOANS--PAYBACK REQUIREMENTS.--

A. Financial assistance by the state for the student exchange program of the western interstate commission on higher education shall be through a loan program established pursuant to this section.

B. A student may receive a loan of tuition assistance on the following terms:

(1) the loan shall not exceed an amount equivalent to the negotiated support fee for the graduate or professional program; and

(2) the loan shall bear interest at the rate of:

(a) eighteen percent per year if the student completes his education and no portion of the principal and interest is forgiven pursuant to Subsection E of this section; and

(b) 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 cost of tuition assistance and shall be conditioned on the repayment of the loan to the state, together with interest, over a period established by the commission. The contract shall provide further that immediately upon completion or termination of the student's education, all interest then accrued shall be capitalized.

D. Loans made to a student who fails to complete his education shall become due, together with interest, immediately upon termination of his education. The commission 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 in New Mexico. Loan principal and interest shall be forgiven as follows:

(1) loan terms of one year shall require one year of practice for each year of the loan. 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 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;

(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; and

(4) the commission may establish other forgiveness terms for professionals providing service in serious shortage areas.

F. Loan 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 student completes his professional education and does not return to New Mexico to practice his profession, 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 practice his profession in New Mexico, 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 may provide by regulation for the repayment of student exchange program loans in annual or other periodic installments.

Section 4

Section 4. COMMISSION POWERS AND DUTIES--CONTRACTS.--

A. The commission may:

(1) arrange with other agencies for the performance of services required by the provisions of Section 3 of the WICHE Loan for Service Act;

(2) sue in its own name for any balance due the state from a student on a contract;

(3) cancel a contract made between it and a student for a reasonable cause deemed sufficient by the commission; and

(4) adopt regulations to implement the provisions of the WICHE Loan for Service Act.

B. The commission shall make an annual report to the governor and the legislature prior to the regular session of its activities pursuant to the WICHE Loan for Service Act, including loans granted and paid back or fulfilled through the practice of a profession in New Mexico; a list of the schools or colleges attended by those receiving loans; and any other information the commission deems pertinent.

C. The general form of the contract provided for in Section 3 of the WICHE Loan for Service Act shall be prepared and approved by the attorney general and signed by the student and a designee of the commission on behalf of the state.

Section 5

Section 5. FUND CREATED--METHOD OF PAYMENT.--The "WICHE loan for service fund" is created in the state treasury. All money appropriated for loans to students participating in the student exchange program of the western interstate commission on higher education shall be credited to the fund. All payments of principal and interest on loans made pursuant to the WICHE Loan for Service Act shall be credited to the fund. All payments of money for loans shall be made upon vouchers signed by the designated representative of the commission and warrants drawn by the secretary of finance and administration.

For the 1997-98 fiscal year, seventy thousand dollars ($70,000) is appropriated from the nursing-loan-for-service fund to the commission on higher education from collections generated in excess of the amount received and budgeted for the 1997-98 fiscal year. This appropriation shall be used to support the operation and administration of the program, including paying support fees for students currently enrolled in the WICHE program.

Section 6

Section 6. CANCELLATION.--The commission may cancel a contract with a student for reasonable cause deemed sufficient by the commission.

Section 7

Section 7. APPROPRIATION.--Four hundred thousand dollars ($400,000) is appropriated from the general fund to the board of regents of the university of New Mexico for expenditure in fiscal year 1998 to supplement funding of the student exchange program of the western interstate commission on higher education.

Section 8

Section 8. APPLICABILITY.--The WICHE Loan for Service Act applies to contracts entered into with students on or after the effective date of that act.

Section 9

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

SENATE BILL 1115, AS AMENDED,

WITH CERTIFICATE OF CORRECTION

CHAPTER 127

RELATING TO EDUCATION; AMENDING REQUIREMENTS FOR ADMISSION TO STATE INSTITUTIONS FOR HOME SCHOOL OR NON-PUBLIC SCHOOL STUDENTS; REQUIRING PUBLIC SCHOOLS TO ENROLL TRANSFERRING HOME SCHOOL OR PRIVATE SCHOOL STUDENTS AT THE LEVEL APPROPRIATE TO THEIR AGE AND TEST SCORES.

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

Section 1

Section 1. Section 21-1-1 NMSA 1978 (being Laws 1912, Chapter 83, Section 2, as amended) is amended to read:

"21-1-1. STATE INSTITUTIONS--ADMISSION REQUIREMENTS TO BE ESTABLISHED BY BOARDS OF REGENTS.--

A. The respective boards of regents of New Mexico state university, New Mexico institute of mining and technology, the university of New Mexico and the New Mexico military institute at Roswell shall determine and fix the standard of requirements for admission to their respective institutions.

B. In determining the standard of requirements for admission to their respective institutions, boards of regents shall not require a student who has completed the requirements of a home-based or non-public school educational program, and who has submitted test scores that otherwise qualify him for admission to that institution, to obtain or submit proof of having obtained a general education development certificate. In determining requirements for admission, boards of regents shall evaluate and treat applicants from home-based educational programs or non-public schools fairly and in a nondiscriminatory

manner."

Section 2

Section 2. Section 22-1-4 NMSA 1978 (being Laws 1975, Chapter 338, Section 1, as amended) is amended to read:

"22-1-4. FREE PUBLIC SCHOOLS--EXCEPTIONS--WITHDRAWING AND ENROLLING.--

A. Except as provided by Section 24-5-2 NMSA 1978, a free public school education shall be available to any school-age person who is a resident of this state and has not received a high school diploma or its equivalent.

B. A free public school education in those courses already offered to persons under Subsection A of this section shall be available to any person who is a resident of this state and has received a high school diploma or its equivalent if there is available space in such courses.

C. Any person entitled to a free public school education under this section may enroll or re-enroll in a public school at any time and, unless required to attend school pursuant to the Compulsory School Attendance Law, may withdraw from a public school at any time.

D. Local school boards shall promulgate regulations concerning the enrollment and re-enrollment of all

persons. In adopting and promulgating non-discriminatory regulations concerning the enrollment of students transferring from a home school or private school to the public schools, the local school board shall provide that the grade level at which the transferring student is placed is appropriate to the age of the student, to the student's score on a student achievement test administered according to the statewide and local school district testing programs as determined by the state superintendent, or both."

SENATE BILL 1235

CHAPTER 128

RELATING TO PUBLIC MONEY; AUTHORIZING THE STATE TREASURER TO MAKE CERTAIN INVESTMENTS.

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

Section 1

Section 1. Section 6-10-10 NMSA 1978 (being Laws 1933, Chapter 175, Section 4, as amended) is amended to read:

"6-10-10. DEPOSIT AND INVESTMENT OF FUNDS.--

A. Upon the certification or designation of any bank, savings and loan association or credit union whose deposits are insured by an agency of the United States to receive public money on deposit, the state treasurer and the several county or municipal treasurers who have on hand any public money by virtue of their several offices shall make deposit of that money in banks and savings and loan associations

and may make deposit of that money in credit unions whose deposits are insured by an agency of the United States, designated by the authority authorized by law to so designate to receive the deposits of all money thereafter received or collected by the treasurers provided that no deposit of public money shall be made in a credit union unless the deposit is insured by an agency of the United States.

B. The several county or municipal treasurers may deposit money in one or more accounts with any such bank, savings and loan association or credit union located in their respective counties, subject to limitation on credit union accounts.

C. The state treasurer may deposit money in one or more accounts with any such bank, savings and loan association or credit union, subject to the limitation on credit union accounts.

D. Duplicate receipts or deposit slips shall be taken for each deposit made pursuant to Subsection A, B or C of this section. When deposits are made by the state treasurer, one copy of the receipt or deposit slip shall be retained by the treasurer and the other copy shall be filed monthly on the first day of each month with the financial control division of the department of finance and administration. When the deposits are made by the treasurer or any other authorized person making the deposits for a board of finance of any public or educational institution, one copy of the receipt or deposit slip shall be retained by the treasurer or authorized person so making the deposit and the other copy shall be filed monthly on the first day of each month with that board of finance. When the deposits are made by a county or municipal treasurer, one of the duplicate receipts or deposit slips shall be retained by the treasurer so making the deposit, and the other copy shall be filed monthly on the first day of each month with the secretary of the board of finance of the county or municipality for which that treasurer is acting.

E. "Deposit", as used in this section, means either investment or deposit and includes share, share certificate and share draft.

F. County or municipal treasurers, by and with the advice and consent of their respective boards of finance charged with the supervision and control of the respective funds, have the power to invest all sinking funds or money remaining unexpended from the proceeds of any issue of bonds or other negotiable securities of any county, municipality or school district which are now or may hereafter by law be entrusted to their care and custody and all money not immediately necessary for the public uses of the counties, municipalities

or school districts not invested or deposited in banks, savings and loan associations or credit unions in:

(1) bonds or negotiable securities of the United States, the state or any county, municipality or school district which has a taxable valuation of real property for the last preceding year of at least one million dollars ($1,000,000) and has not defaulted in the payment of any interest or sinking fund obligation or failed to meet any bonds at maturity at any time within five years last preceding; or

(2) securities that are issued by the United States government or by its agencies or instrumentalities and that are either direct obligations of the United States or are backed by the full faith and credit of the United States government or agencies guaranteed by the United States government.

G. A local public body, with the advice and consent of the body charged with the supervision and control of the local public body's respective funds, has the power to invest all sinking funds or money remaining unexpended from the proceeds of any issue of bonds or other negotiable securities of the investor that is entrusted to the local public body's care and custody and all money not immediately necessary for the public uses of the investor and not otherwise invested or deposited in banks, savings and loan associations or credit unions, in contracts with banks, savings and loan associations or credit unions for the present purchase and resale at a specified time in the future of specific securities at specified prices at a price differential representing the interest income to be earned by the investor. The contract shall be 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 contract. The collateral required for investment in the contracts provided for in this subsection shall be shown on the books of the financial institution as being the property of the investor and the designation shall be contemporaneous with the investment. As used in this subsection, "local public body" includes all political subdivisions of the state and agencies, instrumentalities and institutions thereof; provided that home rule municipalities who prior to July 1, 1994 had enacted ordinances authorizing the investment of repurchase agreements may continue investment in repurchase agreements pursuant to those ordinances.

H. The state treasurer, with the advice and consent of the state board of finance, has the power to invest money held in demand deposits and not immediately needed for the operation of state government and money held in the short-term investment fund, except as provided in Section 6-10-10.1 NMSA 1978. The investments shall be

made only in securities which are issued by the United States government or by its departments or agencies and which are either direct obligations of the United States or are backed by the full faith and credit of the United States government or agencies sponsored by the United States government.

I. The state treasurer may also invest in contracts for the present purchase and resale at a specified time in the future, not to exceed one year or in the case of bond proceeds not to exceed three years, of specific securities at specified prices at a price differential representing the interest income to be earned by the state. No such contract shall be invested in 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.

J. The state treasurer may also invest in contracts for the temporary exchange of state-owned securities for the use of broker-dealers, banks or other recognized institutional investors in securities, for periods not to exceed one year for a specified fee rate. No such contract shall be invested in unless the contract is fully secured by exchange of an irrevocable letter of credit running to the state, cash or equivalent collateral of at least one hundred two percent of the market value of the securities plus accrued interest temporarily exchanged.

K. The collateral required for either of the forms of investment in Subsection I or J of this section shall be delivered to the state fiscal agent or its 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.

L. Neither of the contracts in Subsection I or J of this section shall be invested in unless the contracting bank, brokerage firm or recognized institutional investor has a net worth in excess of five hundred million dollars ($500,000,000).

M. The state treasurer, with the advice and consent of the state board of finance, may also invest in any of the following investments in an amount not to exceed forty percent of any fund that the state treasurer invests:

(1) commercial paper rated "prime" quality by a national rating service, issued by corporations organized and operating within the United States;

(2) medium term notes and corporate notes with a maturity not exceeding five years that are rated A or its equivalent or better by a nationally recognized rating service and that are issued by a corporation organized and operating in the United States; or

(3) any asset-backed obligation with a maturity not exceeding five years that is rated AAA or its equivalent by a nationally recognized rating service.

N. The state treasurer, with the advice and consent of the state board of finance, may also invest in:

(1) shares of a diversified investment company registered under the federal Investment Company Act of 1940 that invests in United States fixed income securities or debt instruments authorized pursuant to Subsections H, I and M of this section, provided that the investment company has total assets under management of at least one hundred million dollars ($100,000,000); or

(2) individual, common or collective trust funds of banks or trust companies that invest in United States fixed income securities or debt instruments authorized pursuant to Subsections H, I and M of this section, provided that the investment manager has assets under management of at least one hundred million dollars ($100,000,000).

O. No public funds to be invested in negotiable securities or loans to financial institutions fully secured by negotiable securities at current market value shall be paid out unless there is a contemporaneous transfer of the securities at the earliest time industry practice permits, but in all cases settlement shall be on a same-day basis either by physical delivery or, in the case of uncertificated securities, by appropriate book entry on the books of the issuer, to the purchaser or to a reputable third-party safekeeping financial institution acting as agent or trustee for the purchaser, which agent or trustee shall furnish timely confirmation to the purchaser."

HOUSE BILL 12, AS AMENDED

CHAPTER 129

RELATING TO TAXATION; AMENDING THE LOCAL HOSPITAL GROSS RECEIPTS TAX ACT TO DEFINE HOSPITAL FACILITY REVENUES.

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

Section 1

Section 1. Section 7-20C-2 NMSA 1978 (being Laws 1991, Chapter 176, Section 2, as amended) is amended to read:

"7-20C-2. DEFINITIONS.--As used in the Local Hospital Gross Receipts Tax Act:

A. "county" means:

(1) a class B county having a population of less than twenty-five thousand according to the most recent federal decennial census and having a net taxable value for rate-setting purposes for the 1990 property tax year or any subsequent year of more than two hundred fifty million dollars ($250,000,000);

(2) a class B county having a population of less than forty-seven thousand but more than forty-four thousand according to the 1990 federal decennial census and having a net taxable value for rate-setting purposes for the 1992 property tax year of more than three hundred million dollars ($300,000,000) but less than six hundred million dollars ($600,000,000);

(3) a class B county having a population of less than ten thousand according to the most recent federal decennial census and having a net taxable value for rate-setting purposes for the 1990 property tax year or any subsequent year of more than one hundred million dollars ($100,000,000);

(4) a class B county having a population of less than twenty-five thousand according to the 1990 federal decennial census and having a net taxable value for rate-setting purposes for the 1993 property tax year of more than ninety-one million dollars ($91,000,000) but less than one hundred twenty-five million dollars ($125,000,000); or

(5) a class B county having a population of more than seventeen thousand but less than twenty thousand according to the 1990 federal decennial census and having a net taxable value for rate-setting purposes for the 1993 property tax year of more than one hundred fifty-three million dollars ($153,000,000) but less than one hundred fifty-six million dollars ($156,000,000);

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. "governing body" means the board of county commissioners of a county;

D. "hospital facility revenues" means all or a portion of the revenues derived from a lease of a hospital facility acquired, constructed or equipped pursuant to and operated in accordance with the Local Hospital Gross Receipts Tax Act;

E. "local hospital gross receipts tax" means the tax authorized to be imposed under the Local Hospital Gross Receipts Tax Act;

F. "person" means an individual or any other legal entity; and

G. "state gross receipts tax" means the gross receipts tax imposed under the Gross Receipts and Compensating Tax Act."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1,

1997.

HOUSE BILL 13

CHAPTER 130

RELATING TO TAXATION; CHANGING CERTAIN PROVISIONS OF THE PROPERTY TAX CODE PERTAINING TO PROTESTS.

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

Section 1

Section 1. Section 7-38-24 NMSA 1978 (being Laws 1973, Chapter 258, Section 64, as amended) is amended to read:

"7-38-24. PROTESTING VALUES, CLASSIFICATION, ALLOCATION OF VALUES AND DENIAL OF EXEMPTION DETERMINED BY THE COUNTY ASSESSOR.--

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

B. Petitions shall:

(1) be filed with the county assessor on or before:

(a) the later of April 1 of the property tax year to which the notice applies or thirty days after the mailing by the assessor of the notice of valuation if the notice was mailed with the preceding year's tax bill in accordance with Section 7-38-20 NMSA 1978; or

(b) in all other cases, thirty days after the mailing by the assessor of the notice of valuation;

(2) state the property owner's name and address and the description of the property;

(3) state why the property owner believes the value, classification, allocation of value or denial of a claim of an exemption is incorrect and what he believes the correct value, classification, allocation of value or exemption to be; and

(4) state the value, classification, allocation of value or exemption that is not in controversy.

C. Upon receipt of the petition, the county assessor shall schedule a hearing before the county valuation protests board and notify the property owner by certified mail of the date, time and place that he may appear to support his petition. The notice shall be mailed at least fifteen days prior to the hearing date.

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

Section 2

Section 2. APPLICABILITY.--The provisions of this act apply to the 1997 and subsequent property tax years.

HOUSE BILL 75

CHAPTER 131

RELATING TO LICENSURE; AMENDING AND ENACTING SECTIONS OF THE PHARMACY ACT.

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

Section 1

Section 1. Section 61-11-1 NMSA 1978 (being Laws 1969, Chapter 29, Section 1) is amended to read:

"61-11-1. SHORT TITLE.--Chapter 61, Article 11 NMSA 1978 may be cited as the "Pharmacy Act"."

Section 2

Section 2. A new section of the Pharmacy Act is enacted to read:

"LEGISLATIVE FINDINGS--PURPOSE OF ACT.--

A. The legislature finds that the practice of pharmacy in New Mexico is a professional practice affecting the public health, safety and welfare and is subject to regulation and control in the public interest. The legislature finds further that it is a matter of public interest and concern that the practice of pharmacy as defined in the Pharmacy Act merit and receive the confidence of the public, and that only qualified persons be permitted to engage in the practice of pharmacy so that the quality of drugs and related devices distributed in New Mexico is ensured.

B. The purpose of the Pharmacy Act is to promote, preserve and protect the public health, safety and welfare by and through the effective control and regulation of the practice of pharmacy,

including the licensure of pharmacists and pharmacist interns and registration of pharmacy technicians; the licensure, control and regulation of all sites or persons, in or out of state, who distribute, manufacture or sell drugs or devices used in the dispensing and administration of drugs in New Mexico; and the regulation and control of such other materials as may be used in the diagnosis, treatment and prevention of injury, illness or disease of a patient or other person."

Section 3

Section 3. Section 61-11-2 NMSA 1978 (being Laws 1969, Chapter 29, Section 2, as amended) is amended to read:

"61-11-2. DEFINITIONS.--As used in the Pharmacy Act:

A. "administer" means the direct application of a drug to the body of a patient or research subject by injection, inhalation, ingestion or any other means as a result of an order of a licensed practitioner;

B. "board" means the board of pharmacy;

C. "compounding" means preparing, mixing, assembling, packaging or labeling a drug or device as the result of a licensed practitioner's prescription or for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale or dispensing. "Compounding" also includes preparing drugs or devices in anticipation of a prescription based on routine, regularly observed prescribing patterns;

D. "confidential information" means information in the patient's pharmacy records accessed, maintained by or transmitted to the pharmacist or communicated to the patient as part of patient counseling and may be released only to the patient or as the patient directs; or to those licensed practitioners and other authorized health care professionals as defined by regulation of the board when, in the pharmacist's professional judgment, such release is necessary to protect the patient's health and well being; or to such other persons authorized by law to receive such information, regardless of whether such information is on paper, preserved on microfilm or stored on electronic media;

E. "consulting pharmacist" means a pharmacist whose services are engaged on a routine basis by a hospital or other health care facility and who is responsible for the distribution, receipt and storage of drugs according to the state and federal regulations;

F. "custodial care facility" means a nursing home, retirement care, mental care or other facility that provides extended health care;

G. "dangerous drug" means a drug that is required by an applicable federal or state law or rule to be dispensed pursuant to a prescription or is restricted to use by licensed practitioners; or that is required by federal law to be labeled with either of the following statements prior to being dispensed or delivered:

(1) "caution: federal law prohibits dispensing without a prescription"; or

(2) "caution: federal law restricts this drug to use by or on the order of a licensed veterinarian";

H. "device" means an instrument, apparatus, implement, machine, contrivance, implant or similar or related article, including a component part or accessory, that is required by federal law to bear the label, "caution: federal or state law requires dispensing by or on the order of a physician";

I. "dispense" means the evaluation and implementation of a prescription, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for subsequent administration to or use by a patient;

J. "distribute" means the delivery of a drug or device other than by administering or dispensing;

K. "drug" means:

(1) an article recognized as a drug in any official compendium or its supplement that is designated from time to time by the board for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals;

(2) an article intended for use in the diagnosis, cure, mitigation, treatment or prevention of diseases in humans or other animals;

(3) an article, other than food, that affects the structure or any function of the body of humans or other animals; and

(4) an article intended for use as a component of an article described in Paragraph (1), (2) or (3) of this subsection;

L. "drug regimen review" includes an evaluation of a prescription and patient record for:

(1) known allergies;

(2) rational therapy contraindications;

(3) reasonable dose and route of administration;

(4) reasonable directions for use;

(5) duplication of therapy;

(6) drug-drug interactions;

(7) adverse drug reactions; and

(8) proper use and optimum therapeutic outcomes;

M. "electronic transmission" means transmission of information in electronic form or the transmission of the exact visual image of a document by way of electronic equipment;

N. "hospital" means an institution that is licensed as a hospital by the department of health;

O. "labeling" means the process of preparing and affixing a label to any drug container exclusive of the labeling by a manufacturer, packer or distributor of a nonprescription drug or commercially packaged prescription drug or device; and which label includes all information required by federal or state law or regulations adopted pursuant to federal or state law;

P. "licensed practitioner" means a person engaged in a profession licensed by any state, territory or possession of the United States who, within the limits of his license, may lawfully prescribe, dispense or administer drugs for the treatment of a patient's condition;

Q. "manufacturing" means the production, preparation, propagation, conversion or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes packaging or repackaging, labeling or relabeling and the promotion and marketing of such drugs or devices. "Manufacturing" also includes the preparation and promotion of commercially available

products from bulk compounds for resale by pharmacies, licensed practitioners or other persons;

R. "nonprescription drugs" means non-narcotic medicines or drugs that may be sold without a prescription and are prepackaged for use by a consumer and are labeled in accordance with the laws and regulations of the state and federal governments;

S. "nonresident pharmacy" means any pharmacy located outside New Mexico that ships, mails or delivers, in any manner, drugs into New Mexico;

T. "patient counseling" means the oral communication by the pharmacist of information to a patient or his agent or caregiver regarding proper use of a drug or device;

U. "person" means an individual, corporation, partnership, association or other legal entity;

V. "pharmaceutical care" means the provision of drug therapy and other patient care services related to drug therapy intended to achieve definite outcomes that improve a patient's quality of life, including identifying potential and actual drug-related problems, resolving actual drug-

related problems and preventing potential drug-related problems;

W. "pharmacist" means a person who is licensed as a pharmacist in this state;

X. "pharmacist in charge" means a pharmacist who accepts responsibility for the operation of a pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs and who is personally in full and actual charge of the pharmacy and its personnel;

Y. "pharmacy" means a licensed place of business where drugs are compounded or dispensed and pharmaceutical care is provided;

Z. "pharmacist intern" means a person licensed by the board to train under a pharmacist;

AA. "pharmacy technician" means a person who is registered to perform repetitive tasks not requiring the professional judgment of a pharmacist;

BB. "practice of pharmacy" means the evaluation and implementation of a lawful order of a licensed practitioner; the dispensing of prescriptions; the participation in drug and device selection or drug administration that has been ordered by a licensed practitioner, drug regimen reviews and drug or drug-related research; the provision of patient counseling and pharmaceutical care; the responsibility for compounding and labeling of drugs and devices; the proper and safe storage of drugs and devices; and the maintenance of proper records;

CC. "prescription" means an order given individually for the person for whom prescribed, either directly from a licensed practitioner or his agent to the pharmacist, including electronic transmission or indirectly by means of a written order signed by the prescriber, that bears 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;

DD. "significant adverse drug reaction" means a drug-related incident that may result in harm, injury or death to the patient; and

EE. "wholesale drug distributor" means a person engaged in the wholesale distribution of prescription drugs, including manufacturers, repackers, own-label distributors, private-label distributors, jobbers, brokers, manufacturer's warehouses, distributor's warehouses, chain drug warehouses, wholesale drug warehouses, independent wholesale drug traders and retail pharmacies that conduct wholesale distribution."

Section 4

Section 4. Section 61-11-4 NMSA 1978 (being Laws 1969, Chapter 29, Section 3, as amended) is amended to read:

"61-11-4. BOARD CREATED--MEMBERS--

QUALIFICATIONS--TERMS--VACANCIES--REMOVAL.--

A. There is created the "board of pharmacy". The board consists of nine members, each of whom shall be a citizen of the United States and a resident of New Mexico.

B. Five members shall be pharmacists appointed by the governor for staggered terms of five years each from lists submitted to the governor by the New Mexico pharmaceutical association, which lists contain the names of two pharmacists residing in each of the five

pharmacy districts. One of the pharmacist members shall be appointed for a term ending July 1, 1970 and one pharmacist member shall be appointed for a term ending on July 1 of each of the following four years. Thereafter, appointments of pharmacist members shall be made for five years or less each and made in such a manner that the term of one pharmacist member expires on July 1 of each year. One pharmacist member shall be appointed from each pharmacy district. Each pharmacist member of the board shall have been actively engaged in the pharmaceutical profession in this state for at least three years immediately prior to his appointment and shall have had a minimum of eight years of practical experience as a pharmacist. A vacancy shall be filled by appointment by the governor for the unexpired term from lists submitted by the New Mexico pharmaceutical association to the governor. Pharmacist members shall reside in the district from which they are appointed.

C. Three members of the board shall be appointed by the governor to represent the public. The public members of the board shall not have been licensed as pharmacists or have any significant financial interest, whether direct or indirect, in the profession regulated. A vacancy in a public member's term shall be filled by appointment by the governor for the unexpired term. Initial appointments of public members shall be made for staggered terms of five years or less each and made in such a manner that not more than two public members' terms shall expire on July 1 of each year.

D. One member of the board shall be a pharmacist appointed at large from a list submitted to the governor by the New Mexico society of health systems pharmacists. The member shall be appointed by the governor to a term of five years. A vacancy in the member's term shall be filled by appointment by the governor for the unexpired term from a list submitted to the governor by the New Mexico society of health systems pharmacists.

E. There are created five pharmacy districts as follows:

(1) northeast district, which shall be composed of the counties of Colfax, Guadalupe, Harding, Los Alamos, Mora, Quay, Rio Arriba, Sandoval, San Miguel, Santa Fe, Taos, Torrance and Union;

(2) northwest district, which shall be composed of the counties of McKinley, San Juan, Valencia and Cibola;

(3) central district, which shall be composed of the county of Bernalillo;

(4) southeast district, which shall be composed of the counties of Chaves, Curry, DeBaca, Eddy, Lea and Roosevelt; and

(5) southwest district, which shall be composed of the counties of Catron, Dona Ana, Grant, Hidalgo, Lincoln, Luna, Otero, Sierra and Socorro.

F. No board member shall serve more than two full terms, consecutive or otherwise.

G. Any board member failing to attend three consecutive regular meetings is automatically removed as a member of the board.

H. The governor may remove any member of the board for neglect of any duty required by law, for incompetency or for unprofessional conduct and shall remove any board member who violates any provision of the Pharmacy Act."

Section 5

Section 5. Section 61-11-5 NMSA 1978 (being Laws 1969, Chapter 29, Section 4) is amended to read:

"61-11-5. BOARD MEETINGS--QUORUM--

OFFICERS--BONDS--EXPENSES.--

A. The board shall annually elect a chairman, vice chairman and secretary-treasurer from its membership.

B. The board shall meet at least once every three months. Special meetings may be called by the chairman and shall be called upon the written request of two or more members of the board. Notification of special meetings shall be made by certified mail unless the notice is waived by the entire board and noted in the minutes. Notice of all regular meetings shall be made by regular mail at least ten days prior to the meeting, and copies of the minutes of all meetings shall be mailed to each board member within forty-five days after any meeting.

C. A majority of the board constitutes a quorum.

D. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance."

Section 6

Section 6. Section 61-11-6 NMSA 1978 (being Laws 1969, Chapter 29, Section 5, as amended) is amended to read:

"61-11-6. POWERS AND DUTIES OF BOARD.--

A. The board shall:

(1) adopt, amend or repeal rules and regulations necessary to carry out the provisions of the Pharmacy Act in accordance with the provisions of the Uniform Licensing Act;

(2) provide for examinations of applicants for licensure as pharmacists;

(3) provide for the issuance and renewal of licenses for pharmacists;

(4) require and establish criteria for continuing education as a condition of annual renewal of licensure for pharmacists;

(5) provide for the issuance and annual renewal of licenses for pharmacist interns and for their training, supervision and discipline;

(6) provide for the licensing of retail pharmacies, nonresident pharmacies, wholesale drug distributors, drug manufacturers, hospital pharmacies, nursing home drug facilities, industrial and public health clinics and all places where dangerous drugs are stored, distributed, dispensed or administered and provide for the inspection of the facilities and activities;

(7) enforce the provisions of all laws of the state pertaining to the practice of pharmacy and the manufacture, production, sale or distribution of drugs or cosmetics and their standards of strength and purity;

(8) conduct hearings upon charges relating to the discipline of a registrant or licensee or the denial, suspension or revocation of a registration or a license in accordance with the Uniform Licensing Act;

(9) cause the prosecution of any person violating the Pharmacy Act, the New Mexico Drug, Device and Cosmetic Act or the Controlled Substances Act;

(10) keep a record of all proceedings of the board;

(11) make an annual report to the governor;

(12) appoint and employ, in the board's discretion, a qualified person who is not a member of the board to serve as executive director and define his duties and responsibilities; except that the power to deny, revoke or suspend any license or registration authorized by the Pharmacy Act shall not be delegated by the board;

(13) appoint and employ inspectors necessary to enforce the provisions of all acts under the administration of the board, which inspectors shall be pharmacists and have all the powers and duties of peace officers;

(14) provide for other qualified employees necessary to carry out the provisions of the Pharmacy Act;

(15) have the authority to employ a competent attorney to give advice and counsel in regard to any matter connected with the duties of the board, to represent the board in any legal proceedings and to aid in the enforcement of the laws in relation to the pharmacy profession and to fix the compensation to be paid to the attorney; provided, however, that the attorney shall be compensated from the money of the board, including that provided for in Section 61-11-19 NMSA 1978;

(16) register and regulate qualifications, training and permissible activities of pharmacy technicians;

(17) provide a registry of all persons licensed as pharmacists or pharmacist interns in the state; and

(18) adopt rules and regulations that prescribe the activities and duties of pharmacy owners and pharmacists in the provision of pharmaceutical care, drug regimen review and patient counseling in each practice setting.

B. The board may:

(1) delegate its authority to the executive director to issue temporary licenses as provided in Section 61-11-14 NMSA 1978; and

(2) provide by regulation for the electronic transmission of prescriptions."

Section 7

Section 7. 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 if it is in a dosage form suitable for dispensing and if the hospital, institution or clinic employs a 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 non-narcotic, 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 pursuant to 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;

(8) pharmacy technicians from providing assistance to pharmacists; or

(9) a pharmacist from exercising his professional judgment in refilling a prescription for a prescription drug, unless prohibited by another state or federal law, without the authorization of the prescribing licensed practitioner, if:

(a) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(b) the pharmacist is unable to contact the licensed practitioner after reasonable effort;

(c) the quantity of prescription drug dispensed does not exceed a seventy-two-hour supply;

(d) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the licensed practitioner is required for future refills; and

(e) the pharmacist informs the licensed practitioner of the emergency refill at the earliest reasonable time.

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 requiring compounding shall be either compounded or dispensed only by a pharmacist."

Section 8

Section 8. Section 61-11-8 NMSA 1978 (being Laws 1969, Chapter 29, Section 7, as amended) is amended to read:

"61-11-8. DRUG RECORDS TO BE KEPT.--Records shall be kept by all persons licensed pursuant to the Pharmacy Act of all dangerous drugs, their receipt, withdrawal from stock and use or other disposal. The records shall be open to inspection by the board or its agents, and the licensee shall be responsible for the maintenance of the records in proper form."

Section 9

Section 9. Section 61-11-9 NMSA 1978 (being Laws 1969, Chapter 29, Section 8, as amended) is amended to read:

"61-11-9. QUALIFICATIONS FOR LICENSURE AS A PHARMACIST BY EXAMINATION.--

A. An applicant for licensure as a pharmacist by examination shall:

(1) have reached the age of majority and not be addicted to the use of drugs or alcohol;

(2) be a graduate of a school or college of pharmacy approved by the board;

(3) have not less than one year of experience under the direction of a pharmacist in accordance with the programs of supervised training established by regulation of the board;

(4) pass an examination approved by the board; and

(5) pass an examination approved by the board, which examination shall be based on federal and state drug laws and regulations.

B. Any person who is a graduate of a foreign school of pharmacy may be eligible for licensure as a pharmacist upon successful completion of an equivalency examination program approved by the board.

C. The board shall issue a license when the applicant's application has been filed with and approved by the board and the applicant has paid the required fees and has met the requirements of this section."

Section 10

Section 10. Section 61-11-10 NMSA 1978 (being Laws 1969, Chapter 29, Section 9) is amended to read:

"61-11-10. RECIPROCAL LICENSURE.--The board may issue a license, with or without examination, to a person who:

A. is licensed as a pharmacist by examination in another state that under equivalent conditions will grant reciprocal licensure to persons licensed as pharmacists by examination in this state; and

B. produces evidence satisfactory to the board that he has the age, education, experience and qualifications required of applicants

for licensure by examination under the provisions of the Pharmacy Act. Any person who was registered by examination in another state prior to May 20, 1940 is required to satisfy only those requirements in existence in this state at the time he was registered in the other state."

Section 11

Section 11. Section 61-11-11 NMSA 1978 (being Laws 1969, Chapter 29, Section 10) is amended to read:

"61-11-11. PHARMACIST INTERN--QUALIFICATIONS FOR LICENSURE.--The classification of pharmacist intern is established. An applicant for licensure as a pharmacist intern shall:

A. be not less than eighteen years of age and not be addicted to the use of drugs or alcohol;

B. have satisfactorily completed not less than thirty semester hours or the equivalent thereof in a school or college of pharmacy approved by the board; and

C. meet other requirements established by regulation of the board."

Section 12

Section 12. A new section of the Pharmacy Act is enacted to read:

"PHARMACY TECHNICIAN--

QUALIFICATIONS--DUTIES.--

A. The classification of pharmacy technician is established. An applicant for registration as a pharmacy technician shall:

(1) be at least eighteen years of age and not addicted to drugs or alcohol;

(2) complete initial training as required by regulations of the board that includes on-the-job and related education commensurate with the tasks to be performed by the pharmacy technician; and

(3) if the potential duties of the pharmacy technician will include the preparation of sterile products, complete an additional

one hundred hours of experiential training as required by regulations of the board.

B. Permissible activities for pharmacy technicians under the supervision of a pharmacist include:

(1) the preparation, mixing, assembling, packaging and labeling of medications;

(2) processing routine orders of stock supplies;

(3) preparation of sterile products; and

(4) filling of a prescription or medication order that entails counting, pouring, labeling or reconstituting medications.

C. The supervising pharmacist shall observe and direct the pharmacy technician to a sufficient degree to assure the accurate completion of the activities of the pharmacy technician and shall provide a final check of all aspects of the prepared product and document the final check before dispensing.

D. The supervising pharmacist shall be responsible for the tasks performed by the pharmacist technician and subject to discipline for failure to appropriately supervise the performance of the pharmacist technician."

Section 13

Section 13. Section 61-11-12 NMSA 1978 (being Laws 1969, Chapter 29, Section 11, as amended) is amended to read:

"61-11-12. LICENSE FEES.--

A. An applicant for licensure as a pharmacist or pharmacist intern or registration as a pharmacy technician shall pay the following fees, which fees shall not be returnable:

(1) for initial licensure as a pharmacist, a fee set by the board not to exceed four hundred dollars ($400); provided that if the applicant fails a portion of an examination, reexamination is subject to the same fee as the first examination;

(2) for initial licensure as a pharmacist intern, a fee not to exceed twenty-five dollars ($25.00); and

(3) for initial registration as a pharmacy technician, a fee not to exceed twenty-five dollars ($25.00).

B. The board shall issue a license or registration to each successful applicant and enter his name and pertinent information in the reg

istry maintained by the board.

C. Every registration or license shall have the seal of the board affixed and be signed by the board chairman."

Section 14

Section 14. Section 61-11-13 NMSA 1978 (being Laws 1969, Chapter 29, Section 12, as amended) is amended to read:

"61-11-13. RENEWAL--REVOCATION.--

A. The annual renewal date for each licensee shall be the last day of the licensee's birth month. Any person who intends to continue practice shall file an application for renewal and pay the renewal fee set by the board in an amount not to exceed one hundred fifty dollars ($150) prior to that date; provided, however, the board shall prorate any renewal fee charged for any period of less than one year. The license of a pharmacist failing to renew his license on or before that date will automatically expire, and it shall not be reinstated except upon reapplication and payment of a one hundred dollar ($100) reinstatement fee and all delinquent renewal fees.

B. A pharmacist ceasing to be engaged in the practice of pharmacy for such period as the board determines, but not less than twelve months, is deemed to be inactive and shall have his license renewal so marked. A pharmacist having an inactive status shall not be reinstated to active status without either an examination or the presentation of evidence satisfactory to the board that he has taken some form of internship or continuing education relevant to the practice of pharmacy, or both, immediately prior to his application for reinstatement. Pharmacists regularly engaged in teaching in an approved school or college of pharmacy, servicing, manufacturing, inspecting or other phases of the pharmaceutical profession are in active status for the purposes of this subsection.

C. Application for renewal of a pharmacist's license shall be made on forms prescribed and furnished by the board and shall indicate

whether the renewal applied for will be an active or inactive license. The application, together with the renewal fee, shall be filed with the board.

D. Application for renewal of a pharmacist's license shall be accompanied by proof satisfactory to the board that the applicant has completed continuing education requirements established pursuant to Section 61-11-6 NMSA 1978.

E. An application for renewal of a certificate of registration as a pharmacy technician or license as a pharmacist intern shall be filed with the board on forms prescribed and furnished by the board and shall be accompanied by a renewal fee not to exceed twenty-five dollars ($25.00) per year."

Section 15

Section 15. Section 61-11-14 NMSA 1978 (being Laws 1969, Chapter 29, Section 13, as amended) is amended to read:

"61-11-14. PHARMACY LICENSURE--WHOLESALE DRUG DISTRIBUTION BUSINESS LICENSURE--REQUIREMENTS--FEES--REVOCATION.--

A. Any person who desires to operate or maintain the operation of a pharmacy or who engages in a wholesale drug distribution business in this state shall apply to the board for the proper license and shall meet the requirements of the board and pay the annual fee for the license and its renewal.

B. The board shall issue the following classes of licenses that shall be defined and limited by regulation of the board:

(1) retail pharmacy;

(2) nonresident pharmacy;

(3) wholesale drug distributor;

(4) drug manufacturer;

(5) hospital pharmacy;

(6) industrial health clinic;

(7) community health clinic;

(8) department of health public health offices;

(9) custodial care facility;

(10) home care services;

(11) emergency medical services;

(12) animal control facilities; and

(13) wholesaler, retailer or distributor of veterinary drugs bearing the legend: "caution: federal law restricts this drug to use by or on the order of a licensed veterinarian". Such drugs may be sold or dispensed by any person possessing a retail pharmacy license, wholesale drug distributor's license or drug manufacturer's license issued by the board, without the necessity of acquiring an additional license for veterinary drugs.

C. Every application for the issuance or annual renewal of:

(1) a license for a retail pharmacy, wholesale drug distributor, nonresident pharmacy, drug manufacturer or hospital pharmacy shall be accompanied by a fee set by the board in an amount not to exceed three hundred dollars ($300);

(2) a license for a custodial care facility shall be accompanied by a fee set by the board in an amount not to exceed two hundred dollars ($200); and

(3) a license for an industrial health clinic; a community health clinic; a department of health public health office; home care services; emergency medical services; animal control facilities; or wholesaler, retailer or distributor of veterinary drugs shall be accompanied by a fee set by the board in an amount not to exceed two hundred dollars ($200).

D. If it is desired to operate or maintain a pharmaceutical business at more than one location, a separate license shall be obtained for each location.

E. Each application for a license shall be made on forms prescribed and furnished by the board.

F. Any person making application to the board for a license to operate a new retail pharmacy, hospital pharmacy, wholesale drug

distributor or drug manufacturer in this state shall submit to the board an application for licensure indicating:

(1) the name under which the business is to be operated;

(2) the address of each location to be licensed and the address of the principal office of the business;

(3) in the case of a retail pharmacy, the name and address of the owner, partner or officer or director of a corporate owner;

(4) the type of business to be conducted at each location;

(5) a rough drawing of the floor plan of each location to be licensed;

(6) the proposed days and hours of operation of the business; and

(7) other information the board may require.

G. After preliminary approval of the application for a license for a retail pharmacy, a hospital pharmacy, a drug manufacturer or a wholesale drug distributor, a request for an inspection, together with an inspection fee not to exceed two hundred dollars ($200), shall be submitted to the board for each business location, and an inspection shall be made of each location by the board or its agent.

H. Following a deficiency-free inspection, the executive director of the board may issue a temporary license to the applicant. The temporary license shall expire at the close of business on the last day of the next regular board meeting.

I. Licenses issued by the board pursuant to this section are not transferable and shall expire on December 31 of each year unless renewed. Any person failing to renew his license on or before December 31 of each year shall not have his license reinstated except upon reapplication and payment of a reinstatement fee set by the board in an amount not to exceed one hundred dollars ($100) and all delinquent renewal fees.

J. The board, after notice and a refusal or failure to comply, may suspend or revoke any license issued under the provisions of the Pharmacy Act at any time examination or inspection of the operation for

which the license was granted discloses that the operation is not being conducted according to law or regulations of the board.

K. Pharmaceutical sales representatives who carry dangerous drugs shall register with the board. The board may charge a fee not to exceed fifty dollars ($50.00) for registration and annual renewal. Pharmaceutical sales representatives are not subject to the licensing provisions of the Pharmacy Act.

Section 16

Section 16. Section 61-11-14.1 NMSA 1978 (being Laws 1992, Chapter 19, Section 7) is amended to read:

"61-11-14.1. NONRESIDENT PHARMACY LICENSURE--TOLL-FREE TELEPHONE SERVICE.--

A. Any person making application to the board for a nonresident pharmacy license shall submit to the board an application for licensure that discloses the following information:

(1) the address of the principal office of the nonresident pharmacy and the names and titles of all principal corporate officers and all pharmacists who are dispensing controlled substances or dangerous drugs to residents of this state. A report containing this information shall be made on an annual basis and within thirty days after any change of office location, corporate officer or pharmacist in charge;

(2) that the nonresident pharmacy complies with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is a resident, as well as with requests for information made by the board pursuant to this section;

(3) that the nonresident pharmacy maintains, at all times, a valid license, permit or registration to operate the pharmacy in compliance with the laws of the state in which it is a resident;

(4) a copy of the most recent inspection report resulting from an inspection of the nonresident pharmacy conducted by the regulatory or licensing agency of the state in which it is a resident; and

(5) that the nonresident pharmacy maintains its records of controlled substances or dangerous drugs that are dispensed to patients in this state so that the records are readily retrievable.

B. A nonresident pharmacy licensed under this section shall provide a toll-free telephone service to facilitate communication between patients in this state and a pharmacist at the nonresident pharmacy who has access to the patient's records. A nonresident pharmacy shall provide the toll-free telephone service during its regular hours of operation, but not less than six days a week and for a minimum of forty hours a week. The toll-

free telephone number shall be disclosed on a label affixed to each container of drugs dispensed to patients in this state.

C. Nothing in this section shall be construed to authorize the dispensing of contact lenses by nonresident pharmacies."

Section 17

Section 17. Section 61-11-15 NMSA 1978 (being Laws 1969, Chapter 29, Section 14, as amended) is amended to read:

"61-11-15. PHARMACIES--SALE OF DRUGS--SUPERVISION REQUIREMENTS.--

A. No owner of a pharmacy shall:

(1) fail to place a pharmacist in charge;

(2) intentionally or fraudulently adulterate or cause to be adulterated or misbrand or cause to be misbranded any drugs compounded, sold or offered for sale in the pharmacy;

(3) by himself or through any other person, permit the compounding of prescriptions or the selling of dangerous drugs in his place of business except by a pharmacist, pharmacist intern or pharmacy technician;

(4) by himself or through any other person, sell, offer for sale, compound or dispense dangerous drugs without being a pharmacist, pharmacist intern or pharmacy technician; provided that veterinary drugs bearing the legend: "caution: federal law restricts this drug to use by or on the order of a licensed veterinarian" may be sold, offered for sale or distributed by persons holding a license issued pursuant to Subsection B of Section 61-11-14 NMSA 1978; or

(5) operate a pharmacy without the appropriate license.

B. Whenever an applicable law, rule or regulation requires or prohibits action by a pharmacy, responsibility for the violation shall be that of the owner and the pharmacist in charge."

Section 18

Section 18. Section 61-11-16 NMSA 1978 (being Laws 1969, Chapter 29, Section 15) is amended to read:

"61-11-16. PHARMACIES--EQUIPMENT REQUIRED.--There shall be kept in every pharmacy, subject to review or testing by the board or its authorized agents, such references and equipment as the board may desig

nate by regulation."

Section 19

Section 19. Section 61-11-17 NMSA 1978 (being Laws 1969, Chapter 29, Section 16) is amended to read:

"61-11-17. DISPLAY OF LICENSE.--Every person shall have his license or registration and the license for the operation of the business conspicuously displayed in the pharmacy or place of business to which it applies or in which he is employed."

Section 20

Section 20. Section 61-11-18 NMSA 1978 (being Laws 1969, Chapter 29, Section 17, as amended) is amended to read:

"61-11-18. STATE LICENSE--ACTIONS AUTHORIZED.--The board shall license department of health clinics and other health facilities of the department where dangerous drugs are stored, distributed or dispensed. All such clinics or other health facilities of the department are subject to the provisions of the Pharmacy Act."

Section 21

Section 21. A new section of the Pharmacy Act is enacted to read:

"REPORTS TO BOARD.--A licensee shall report in writing the occurrence of any of the following events to the board within fifteen days of discovery:

A. permanent closing of a licensed premises;

B. change of ownership, management, location or pharmacist in charge;

C. theft or loss of drugs or devices;

D. conviction of an employee for violating any federal or state drug laws;

E. theft, destruction or loss of records required by federal or state law to be maintained;

F. occurrences of significant adverse drug reactions, as defined by regulations of the board;

G. dissemination of confidential information or personally identifiable information to a person other than a person authorized by the provisions of the Pharmacy Act or regulations adopted pursuant to that act to receive such information; and

H. other matters or occurrences as the board may require by regulation."

Section 22

Section 22. Section 61-11-20 NMSA 1978 (being Laws 1969, Chapter 29, Section 19, as amended) is amended to read:

"61-11-20. DISCIPLINARY PROCEEDINGS--UNIFORM LICENSING ACT.--

A. In accordance with the Uniform Licensing Act, the board may deny, withhold, suspend or revoke any registration or license held or applied for under the Pharmacy Act upon grounds that the licensee or applicant:

(1) is guilty of gross immorality or dishonorable or unprofessional conduct as defined by regulation of the board;

(2) is convicted of a violation of any federal law relating to controlled substances, any federal food and drug law or any federal law requiring the maintenance of drug records;

(3) is guilty of a violation of the Controlled Substances Act, the Pharmacy Act or the New Mexico Drug, Device and Cosmetic Act;

(4) is addicted to the use of dangerous drugs or narcotic drugs of any kind;

(5) is habitually intemperate;

(6) is guilty of knowingly or fraudulently adulterating or misbranding or causing to be adulterated or misbranded any drugs;

(7) is guilty of procuring or attempting to procure licensure as a pharmacist or pharmacist intern, registration as a pharmacy technician or licensure for a pharmacy or pharmaceutical business in this state for himself or another by knowingly making or causing to be made false representations to the board;

(8) is unfit or unable to practice pharmacy by reason of a physical or mental disease or disability as determined by the board and based on competent medical authority, during the period of such disability;

(9) fails to maintain any drug records required by any federal law resulting in the condemnation of any drugs in his possession or control;

(10) is convicted of any felony;

(11) has furnished false or fraudulent material in any application made in connection with drug or device manufacturing or distribution;

(12) has had any drug manufacturer or wholesale drug distributor license suspended or revoked;

(13) has obtained any remuneration for professional services by fraud, misrepresentation or deception;

(14) has dealt with drugs or devices that he knew or should have known were stolen;

(15) has purchased or received a drug or device from a source other than a person or pharmacy licensed pursuant to the Pharmacy Act, unless otherwise provided in that act, the Controlled Substances Act or the New Mexico Drug, Device and Cosmetic Act;

(16) is a wholesale drug distributor other than a pharmacy and dispenses or distributes drugs or devices directly to a patient;

(17) has violated any rule or regulation adopted by the board pursuant to the Pharmacy Act; or

(18) has divulged or revealed confidential information or personally identifiable information to a person other than a person authorized by the provisions of the Pharmacy Act or regulations adopted pursuant to that act to receive such information.

B. Disciplinary proceedings may be instituted by any person, shall be by sworn complaint and shall conform with the provisions of the Uniform Licensing Act. Any party to the hearing may obtain a copy of the hearing record upon payment of costs for the copy.

C. The board may modify any prior order of revocation, sus

pension or refusal to issue a license of a pharmacist or a pharmacist intern or registration of a pharmacy technician but only upon a finding by the board that there no longer exist any grounds for disciplinary action; provided that any cessation of the practice of pharmacy for twelve months or more shall require the pharmacist to undergo additional education, internship or examination as the board determines necessary."

Section 23

Section 23. Section 61-11-21 NMSA 1978 (being Laws 1969, Chapter 29, Section 20, as amended) is amended to read:

"61-11-21. LICENSING OF PHARMACISTS AND PHARMACIES REQUIRED.--

A. Unless he is a pharmacist or is exempted under the Pharmacy Act, no person shall sell at retail any dangerous drug, compound any prescription or acquire and possess any dangerous drug without its being prescribed.

B. No person shall conduct or operate a place used for the retail sale, compounding or dispensing of drugs or prescriptions or a place represented by a sign or by advertisement to have a business name or specialization that includes the words "pharmacist", "pharmacy", "apothecary", "apothecary shop", "chemist's shop", "drug store", "drugs", "druggist", "drug sundries", "prescriptions" or any combination of these or any other words of similar import or by an insignia or device that might indicate to the public that the place is a pharmacy unless the place is licensed by the board under the Pharmacy Act.

C. No person shall permit anyone in his employ or under his supervision, except a pharmacist, pharmacist intern or pharmacy technician, to compound, dispense, label or otherwise prepare prescriptions.

D. The provisions of Subsections A, B and C of this section shall not apply to a person possessing a license issued pursuant to Subsection B of Section 61-11-14 NMSA 1978 for the sale or distribution of veterinary drugs bearing the legend: "caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; provided that the possessors of such a license may only sell or distribute such drugs on the order of a licensed veterinarian and may not represent their place of business by a sign or advertisement that includes the words "pharmacist", "pharmacy", "apothecary", "apothecary shop", "chemist's shop", "drug store", "drugs", "druggist", "drug sundries", "prescriptions" or any combination of these or any words of similar import or by an insignia or device that might indicate to the public that the place is a pharmacy."

Section 24

Section 24. Section 61-11-22 NMSA 1978 (being Laws 1969, Chapter 29, Section 21) is amended to read:

"61-11-22. EXEMPTIONS FROM ACT.--

A. The Pharmacy Act does not apply to licensed practitioners in this state in supplying to their patients any drug if the licensed practitioner is practicing his profession and does not keep a pharmacy, advertised or otherwise, for the retailing of dangerous drugs.

B. The Pharmacy Act does not prevent:

(1) the personal administration of drugs carried by a licensed practitioner in order to supply the immediate needs of his patients; or

(2) the sale of non-narcotic proprietary preparations."

Section 25

Section 25. Section 61-11-23 NMSA 1978 (being Laws 1969, Chapter 29, Section 22, as amended) is amended to read:

"61-11-23. CONSTRUCTION OF LAWS RELATING TO DRUGS.--

A. The Pharmacy Act does not amend or repeal any of the laws that govern the manufacture, sale or distribution of controlled substances.

B. The Pharmacy Act does not amend or repeal the New Mexico Drug, Device and Cosmetic Act."

Section 26

Section 26. Section 61-11-24 NMSA 1978 (being Laws 1969, Chapter 29, Section 23, as amended) is amended to read:

"61-11-24. VIOLATIONS--PENALTIES.--

A. It is a misdemeanor for any person to:

(1) practice or attempt to practice pharmacy without a current license from the board;

(2) use the title of registered pharmacist unless he is licensed as such pursuant to the Pharmacy Act;

(3) procure or attempt to procure licensure as a pharmacist or to procure a license for a pharmacy for himself or another by making or causing to be made false representations to the board;

(4) allow any other person in his employ or under his supervision to compound or dispense prescriptions unless he is a pharmacist, pharmacist intern or pharmacy technician in accordance with the Pharmacy Act or exempted from the provisions of that act; or

(5) own, operate or maintain a pharmacy, hospital pharmacy, clinic, custodial care facility or drug distribution business unless licensed to do so pursuant to the Pharmacy Act.

B. A person convicted pursuant to Subsection A of this section shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978."

Section 27

Section 27. Section 61-11-25 NMSA 1978 (being Laws 1969, Chapter 29, Section 24) is amended to read:

"61-11-25. POWER TO ENJOIN VIOLATIONS.--In addition to the remedies provided in the Pharmacy Act, the board may apply to the

district court for a temporary or permanent injunction restraining any person from violating any provision of the Pharmacy Act irrespective of whether or not there exists an adequate remedy at law."

Section 28

Section 28. Section 61-11-27 NMSA 1978 (being Laws 1969, Chapter 29, Section 26) is amended to read:

"61-11-27. TRANSFER OF FUNDS.--All money that has accumulated to the credit of the board under any previous law shall be continued for use by the board in the administration of the Pharmacy Act and any other laws being administered by the board."

Section 29

Section 29. Section 61-11-28 NMSA 1978 (being Laws 1969, Chapter 29, Section 28) is amended to read:

"61-11-28. UNIFORM LICENSING ACT.--The board is subject to all the provisions of the Uniform Licensing Act."

HOUSE BILL 84

CHAPTER 132

RELATING TO ADULT PROTECTIVE SERVICES; AMENDING SECTIONS OF THE NMSA 1978 TO PROVIDE PROTECTION FOR INCAPACITATED ADULTS AND TO FACILITATE INVESTIGATION OF ABUSE; PROVIDING EXPANDED IMMUNITY.

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

Section 1

Section 1. Section 27-7-15 NMSA 1978 (being Laws 1989, Chapter 389, Section 2) is amended to read:

"27-7-15. LEGISLATIVE FINDINGS--PURPOSE.--

A. The legislature recognizes that many adults in the state are unable to manage their own affairs or protect themselves from exploitation, abuse or neglect. Often such adults cannot find others able or willing to render assistance.

B. It is the purpose of the Adult Protective Services Act to establish a system of protective services designed to fill this need and to assure the availability of those services to all adults. It is also the purpose of the Adult Protective Services Act to authorize only the least possible restriction on the exercise of personal and civil rights and religious beliefs consistent with the adult's need for services and to require that due process be followed in imposing those restrictions.

C. Nothing in this act shall be construed to mean an adult, including an incapacitated adult or a protected adult, is abused, neglected, being denied essential services or in need of protective services for the sole reason he relies upon or is being furnished with spiritual treatment through prayer alone in accordance with the express or implied intent of the adult; nor shall anything in this act be construed to authorize or require any medical care or treatment in contravention of the express or implied wish of that adult."

Section 2. Section 27-7-16 NMSA 1978 (being Laws 1989, Chapter 389, Section 3, as amended) is amended to read:

"27-7-16. DEFINITIONS.--As used in the Adult Protective Services Act:

A. "abuse" means:

(1) knowingly, intentionally or negligently and without justifiable cause inflicting physical pain, injury or mental anguish; or

(2) the intentional deprivation by a caretaker or other person of services necessary to maintain the mental and physical health of an adult;

B. "adult" means a person eighteen years of age or older;

C. "appropriate facility" means any facility other than a jail or detention facility;

D. "caretaker" means an individual or institution that has assumed the responsibility for the care of an adult;

E. "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;

F. "court" means the district court having jurisdiction;

G. "department" means the children, youth and families department;

H. "emergency" means that an adult is living in conditions that present a substantial risk of death or immediate and serious physical harm to himself or others;

I. "exploitation" means an unjust or improper use of an adult's money or property for another person's profit or advantage, pecuniary or otherwise;

J. "guardian" means a person who has qualified to provide for the care, custody or control of the person or a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem;

K. "inability to manage his personal care" means the inability, as evidenced by recent behavior, to meet one's needs for medical care, nutrition, clothing, shelter, hygiene or safety so that physical injury, illness or disease has occurred or is likely to occur in the near future;

L. "inability to manage his property or financial affairs" means gross mismanagement, waste or dissipation, as evidenced by recent behavior, of an adult's income and resources which has led or is likely in the near future to lead to financial vulnerability, which threatens the adult's ability to obtain or pay for his basic requirements for living;

M. "incapacitated adult" means any adult who demonstrates over time partial or complete functional impairment by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other causes to the extent that he is unable to manage his personal affairs or he is unable to manage his estate or financial affairs, but does not include a person who refuses services without other evidence of incapacity;

N. "independent living arrangements" means a mode of life maintained on a continuing basis outside of a hospital, veterans' administration hospital, nursing home or other facility licensed by or under the jurisdiction of any state agency;

O. "interested person" means any adult relative, any person who has an interest in the welfare of the adult to be protected under the Adult Protective Services Act or any official or representative of a protective services agency or of any public or nonprofit agency, corporation, board or organization eligible for designation as a protective services agency;

P. "neglect" means failure of the caretaker of an adult to provide basic needs such as clothing, food, shelter, supervision and care for the physical and mental health for that adult or failure by an adult to provide such basic needs for himself;

Q. "protected adult" means an adult for whom a guardian or conservator has been appointed or other protective order has been made or

an abused, neglected or exploited adult who has requested protective services;

R. "protective placement" means the transfer of an adult from independent living arrangements to a hospital, nursing home, domiciliary or residential care facility or from one such institution to another;

S. "protective services" means the services furnished by the department or a protective services agency or its delegate, as described in Section 27-7-21 NMSA 1978; and

T. "protective services agency" means a corporation, board or organization authorized by the department pursuant to the Adult Protective Services Act to furnish protective services to protected or incapacitated adults or to serve as conservators or guardians of protected or incapacitated adults upon appointment by a court."

Section 3

Section 3. Section 27-7-17 NMSA 1978 (being Laws 1989, Chapter 389, Section 4) is amended to read:

"27-7-17. ADULT PROTECTIVE SERVICES SYSTEM.--

A. The department shall develop a coordinated system of protective services for incapacitated or protected adults. In planning this system, the department shall obtain the advice of agencies, corporations, boards and associations involved in the provision of social, health, legal, nutritional and other services to adults, as well as of organizations of adults.

B. Upon establishment of the adult protective services system, the department shall be responsible for continuing coordination and supervision of the system. In carrying out these duties, the department shall:

(1) adopt rules and regulations necessary to implement and operate the system;

(2) monitor and evaluate the effectiveness of the system; and

(3) use to the extent available grants from federal, state and other public and private sources to support the system.

C. The department shall administer a public information program regarding the problem, reporting and prevention of adult abuse, neglect and exploitation and the availability of treatment and protective services for those adults."

Section 4

Section 4. Section 27-7-18 NMSA 1978 (being Laws 1989, Chapter 389, Section 5) is amended to read:

"27-7-18. ADULT PROTECTIVE SERVICES ADVISORY BOARD CREATED.--The "adult protective services advisory board" is created, consisting of nine members appointed by the secretary of the department. At least four members shall be involved in the direct provision of adult protective services. The advisory board shall provide continuing advice to the department concerning the protective services system."

Section 5

Section 5. Section 27-7-19 NMSA 1978 (being Laws 1989, Chapter 389, Section 6) is amended to read:

"27-7-19. DEPARTMENT--INVESTIGATIONS--ORDERS--SERVICES AND CONTRACTS.--

A. The department shall investigate all reports of suspected abuse, neglect or exploitation of adults. Upon receipt of a report, the department shall determine whether the adult is abused, neglected or exploited and in need of

protective services and what services are needed, unless the department determines that the adult is knowingly and voluntarily refusing services or that the report is frivolous or is patently without a factual basis. In determining the need for protective services, the department shall visit the person and gather information from others having knowledge of the facts of the particular case. After making the determination, the department or the protective services agency shall make a written report of its findings and recommendations and take whatever action is necessary.

B. The department may petition the court for a protective order or an order for appointment of a guardian or conservator.

C. The department may provide direct protective services and may contract with any protective services agency for the provision of protective services. To the extent appropriate and available, the department shall utilize existing resources and services of public and nonprofit private agencies in providing protective services.

D. Except when prohibited by law, the department shall have immediate access to and may reproduce any record, including medical, personal, psychological and financial records, of the patient, resident or client of any private or public facility or agency which the department determines is necessary to pursue any investigation mandated by this section or by Sections 30-47-1 through 30-47-10 NMSA 1978: if the patient, resident or client:

(1) has the ability to consent, access may only be obtained by the written consent of the patient, resident or client;

(2) is unable to consent in writing, oral consent may be given in the presence of a third party as witness;

(3) is under a New Mexico guardianship or conservatorship that provides the guardian or conservator with the authority to approve review of the records, the department shall obtain the permission of the guardian or conservator for review of the record, unless any of the following applies:

(a) the existence of the guardianship or conservatorship is unknown to the department or facility; or

(b) the guardian or conservator cannot be reached within five working days; and

(4) is unable to express written or oral consent and there is no guardian or conservator or the guardian or conservator refuses to give consent or notification of the guardian or conservator is not applicable for reasons set forth in Paragraph (3) of this subsection or the patient, resident or client is deceased, inspection of records may be made by employees of the department upon petition to the district court for an order requiring appropriate access if the department can demonstrate that access is denied because of the incapacity, coercion, extortion or justifiable fear of future abuse, neglect, exploitation or abandonment of the adult client.

E. Upon request by the department, a long-term care facility shall provide to the department the name, address and telephone number of the guardian, conservator, attorney-in-fact, legal representative or next of kin of any patient, resident or client.

F. The department shall have immediate access to the person who is alleged to be abused, neglected or exploited to determine the accuracy of the report and the necessity of protective services and placement, to evaluate the client's needs and develop a service plan to meet those needs and to provide for the delivery of services by the department or by other service providers that the department deems to be appropriate. If the department is denied access to the person alleged to be abused, neglected or exploited, the department's investigator may gain access upon petition to the district court for an order requiring appropriate access if the department can demonstrate that a care provider or third party has interfered with the department's attempts to access the adult client under investigation.

G. Anyone interfering with an investigation of adult abuse, neglect or exploitation, pursuant to this section, is guilty of a misdemeanor. Interference under this section shall include investigations by facilities or individuals of alleged abuse, neglect or exploitation within their facilities, operation and control without first reporting that alleged abuse, neglect or

exploitation to the department. Interference under this section shall not include efforts by facilities or individuals to establish whether there is reasonable cause to believe that there is adult abuse, neglect or exploitation. "

Section 6

Section 6. Section 27-7-20 NMSA 1978 (being Laws 1989, Chapter 389, Section 7, as amended) is amended to read:

"27-7-20. PROTECTIVE SERVICES AGENCIES DESIGNATION--

POWERS.--

A. The department may designate any corporation, board or organization as a protective services agency. The department shall adopt and promulgate regulations establishing criteria and procedures for the designation of protective services agencies.

B. A protective services agency is authorized to:

(1) furnish protective services to an adult with his consent;

(2) petition the court for an appointment of a conservator or guardian, issuance of an emergency order for protective services or an order for protective placement;

(3) furnish protective services to an adult without his consent in an emergency pursuant to Section 27-7-25 NMSA 1978;

(4) furnish protective services to an incapacitated or protected adult with the consent of the person or his guardian;

(5) serve as conservator, guardian or temporary guardian of a protected or incapacitated adult; and

(6) make such reports as the department or a court may require.

C. The department shall designate for each county the department itself or at least one protective services agency that shall be responsible for rendering protective services in an emergency."

Section 7

Section 7. Section 27-7-21 NMSA 1978 (being Laws 1989, Chapter 389, Section 8, as amended) is amended to read:

"27-7-21. NATURE OF PROTECTIVE SERVICES--COSTS.--

A. Protective services are services furnished by the department or a protective services agency or its delegate to an incapacitated or protected person with the person's consent or appropriate legal authority.

B. The services furnished in a protective services system may include social case work, psychiatric and health evaluation, home care, day care, legal assistance, social services, health care, case management, guardianship, conservatorship and other services consistent with the Adult Protective Services Act.

C. In order to provide the services listed in Subsection B of this section, the adult protective services system established by the department may include outreach, identifying persons in need of services, counseling, referring persons for services, evaluating individuals, arranging for services, tracking and following up cases, petitioning the courts for the appointment of a conservator or guardian of the person and other activities consistent with the Adult Protective Services Act.

D. The costs of providing protective services shall be borne by the provider of those services or the department or other appropriate agency, subject to available appropriations and resources, unless the adult agrees to pay for them or a court authorizes the provider or the department or other agency to receive reasonable reimbursement from the adult's assets after a finding that the person is financially able to make payment."

Section 8

Section 8. Section 27-7-23 NMSA 1978 (being Laws 1989, Chapter 389, Section 10) is amended to read:

"27-7-23. VOLUNTARY PROTECTIVE SERVICES--PROTECTIVE PLACEMENT.--

A. Any adult who has been abused, neglected or exploited and is in need of protective services or protective placement as determined by the department and who requests those services shall receive them, subject to available appropriations and resources. If the person withdraws or refuses consent, voluntary protective services or protective placement shall not be provided. No legal rights are relinquished as a result of acceptance of voluntary protective services or protective placement.

B. No person shall interfere with the provision of protective services or protective placement to an adult who requests and consents to receive those services or placement. In the event that interference occurs on a

continuing basis, the department or a protective services agency may petition the court to enjoin that interference or, at the department's discretion, may request criminal prosecution."

Section 9

Section 9. Section 27-7-24 NMSA 1978 (being Laws 1989, Chapter 389, Section 11) is amended to read:

"27-7-24. INVOLUNTARY PROTECTIVE SERVICES.--

A. If an adult is unable to consent to receive protective services, those services may be ordered by a court on an involuntary basis through an emergency order pursuant to the Adult Protective Services Act or through appointment of a guardian or conservator.

B. In ordering involuntary protective services, the court shall authorize only that intervention which it finds to be least restrictive of the adult's liberty and rights consistent with the adult's welfare and safety. The basis for such a finding shall be stated in the record by the court.

C. The incapacitated or protected adult shall not be required to pay for involuntary protective services unless that payment is authorized by the court upon a showing that the adult is financially able to pay. In this event, the court shall provide for reimbursement of the reasonable costs of the services. The costs of involuntary protective services shall be borne by the provider of those services or the department or other appropriate agency, subject to available appropriations and resources, if the adult is not financially able to cover those costs.

D. No person shall interfere with the provision of involuntary protective services to an adult. In the event that interference occurs on a continuing basis, the department or protective services agency may petition the court to enjoin interference."

Section 10

Section 10. Section 27-7-25 NMSA 1978 (being Laws 1990, Chapter 79, Section 6) is amended to read:

"27-7-25. EX-PARTE ORDERS FOR EMERGENCY PROTECTIVE SERVICES OR EMERGENCY PROTECTIVE PLACEMENT--NOTICE--

PETITION.--

A. Upon petition by the department, the court may issue an order authorizing the provision of involuntary protective services or protective

placement on an emergency basis to an adult under the criteria set forth in Subsection B of this section.

B. At the time a petition is filed or any time thereafter, the court may issue an ex-parte order authorizing the provision of involuntary protective services or involuntary protective placement upon a sworn written statement of facts showing probable cause exists to believe that:

(1) the adult is incapacitated;

(2) an emergency exists;

(3) the adult lacks the capacity to consent to receive protective services; and

(4) no person authorized by law or court order to give consent for the adult is available or willing to consent to the provision of protective services or protective placement on an emergency basis.

C. An affidavit for an ex-parte order for emergency protective services or emergency protective placement may be signed by any person who has knowledge of the facts alleged or is informed of them and believes that they are true.

D. The Rules of Evidence do not apply to the issuance of an emergency ex-parte protective services or protective placement order or to hearings held on an application for renewal of the original emergency order.

E. In issuing an emergency ex-parte order, the court shall adhere to the following limitations:

(1) only the protective services or protective placement necessary to remove the conditions creating the emergency shall be ordered, and the order shall specifically designate the proposed protective services or protective placement;

(2) protective services or protective placement authorized by an emergency ex-parte order shall not include hospitalization or a change of residence, unless the order gives specific approval for the action;

(3) protective services or protective placement may be provided by emergency ex-parte order only for ten days; provided that the original order may be renewed once for a period of twenty additional days upon application to the court showing that continuation of the original order is necessary to remove the conditions creating the emergency. An application for renewal of the original order shall be supported by a written report of the results of the evaluation required by Section 27-7-22 NMSA 1978 and copies of the actual evaluations;

(4) the issuance of an emergency ex-parte order shall not deprive the adult of any rights except those provided for in the order;

(5) the department and its employees are prohibited from:

(a) taking custody;

(b) acting as guardians or conservators for any adult in need of protective services, except that an employee may serve in that capacity when related by affinity or consanguinity to an adult;

(c) acting as treatment guardians under the Mental Health and Developmental Disabilities Code except that an employee may serve in that capacity when related by affinity or consanguinity to an adult;

(d) acting as qualified health care professionals pursuant to the Probate Code; and

(e) acting as visitors under the Probate Code for any adult in need of protective services;

(6) to implement an emergency ex-parte order, the court may authorize forcible entry of premises for the purposes of rendering protective services or transporting the adult to another location for the provision of services only if facts contained in the affidavit supporting the petition for ex-parte order show that attempts to gain voluntary access to the premises have failed and forcible entry is necessary. Persons making an authorized forcible entry shall be accompanied by a law enforcement officer; and

(7) service of an ex-parte order authorizing forcible entry shall be according to the following procedure. The order shall be served on the alleged incapacitated adult by a person authorized to serve arrest warrants and shall direct the officer to advise the adult of the nature of the protective services that have been ordered by the court. If the order authorizes emergency protective placement, the order shall direct the officer to assist in transfer of the adult to a place designated by the court.

F. The petition for an emergency ex-parte order shall set forth:

(1) the name, address and interest of the petitioner;

(2) the name, age and address of the adult in need of protective services;

(3) facts describing the nature of the emergency;

(4) facts describing the nature of the adult's incapacity;

(5) the proposed protective services;

(6) the petitioner's reasonable belief, together with supporting facts, about the need for emergency intervention; and

(7) facts showing the petitioner's attempts to obtain the adult's consent to the proposed services and the outcome of those attempts.

G. Notice of the filing of the petition and the issuance of the emergency ex-parte order, including a copy of the petition and the affidavit for ex-parte order, shall be given to the adult and the adult's spouse or, if none, his adult children or next of kin, or guardian, if any. The notice shall be given in language reasonably understandable by its intended recipients within twenty-four hours, excluding Saturdays, Sundays and legal holidays, from the time that the ex-parte order authorizing protective services is served upon the incapacitated adult. The notice shall inform the recipients that a hearing will be held no later than ten days after the date the petition is filed to determine whether the conditions creating the emergency have been removed and whether the adult should be released from the court's order for protective services.

H. Within ten days from the filing of a petition for an emergency order for protective services or protective placement, the court shall hold a hearing upon any application for renewal of the emergency order. The hearing upon an application for renewal shall be held pursuant to the provisions of Section 27-7-27 NMSA 1978.

I. The protected adult or any interested person may petition the court to have the emergency order set aside or modified at any time, notwithstanding any prior findings by the court that the adult is incapacitated.

J. If the adult continues to need protective services or protective placement after the renewal order provided in Paragraph (3) of Subsection E of this section has expired, the department or original petitioner shall immediately petition the court to appoint a conservator or guardian or to order non-emergency protective placement pursuant to Section 27-7-26 NMSA 1978.

K. The petitioner shall not be liable for filing the petition if he acted in good faith."

Section 11

Section 11. Section 27-7-25.1 NMSA 1978 (being Laws 1990, Chapter 79, Section 7) is amended to read:

"27-7-25.1. EMERGENCY PLACEMENT BY A LAW ENFORCEMENT OFFICER WITHOUT A COURT ORDER.--

A. When, from personal observation of a law enforcement officer, it appears probable that an incapacitated adult will suffer immediate and irreparable physical injury or death if not immediately placed in an appropriate facility, that the adult is unable to give consent and that it is not possible to follow the procedures of Section 27-7-25 NMSA 1978, the law enforcement officer making that observation may transport the adult to an appropriate facility. No court order is required to authorize the law enforcement officer to act upon his observation pursuant to this section.

B. A law enforcement officer who transports an incapacitated adult to an appropriate facility pursuant to the provisions of this section shall immediately notify the department of the placement.

C. The department shall file a petition pursuant to Subsection A of Section 27-7-25 NMSA 1978 within two working days after the placement of the adult by the law enforcement officer has occurred unless the department determines that the criteria for emergency removal and placement have not been met or that there is no further need for involuntary protective services or placement.

D. Upon receipt of notice from a law enforcement officer that an adult has been placed in a facility pursuant to the authority of this section, the department shall give notice pursuant to Subsection G of Section 27-7-25 NMSA 1978 within two working days after the transfer of the adult has taken place.

E. The court shall hold a hearing on the petition filed by the department as a result of the law enforcement officer's emergency placement within ten days of the filing of the petition, pursuant to the provisions of Section 27-7-27 NMSA 1978, to determine whether the conditions creating the need for the emergency placement have been removed and whether the adult should be released from the protective placement."

Section 12

Section 12. Section 27-7-26 NMSA 1978 (being Laws 1989, Chapter 389, Section 13, as amended) is amended to read:

"27-7-26. NON-EMERGENCY PROTECTIVE PLACEMENT--

FINDINGS--PETITION--ORDER.--

A. If the adult is unable to consent, non-emergency protective placement or services shall not take place unless ordered by a court after a finding on the record based on clear and convincing evidence that:

(1) the adult is incapacitated;

(2) the adult is incapable of providing for his own care or custody and his condition creates a substantial risk of serious physical harm to himself or others;

(3) the adult needs care or treatment;

(4) the proposed order is substantially supported by the evaluation provided for in Subsection E of this section or, if not so supported, there are compelling reasons for ordering that placement; and

(5) no less restrictive alternative course of care or treatment is available that is consistent with the incapacitated person's welfare and safety.

B. The petition for non-emergency protective placement or protective services shall state with particularity the factual basis for the allegations specified in Subsection A of this section and shall be based on the most reliable information available to the petitioner.

C. Written notice of a petition for non-emergency protective placement shall be served upon the adult by personal service at least fourteen days prior to the time set for a hearing. Notice shall also be given to the adult's legal counsel, care providers, guardian, spouse and adult children or next of kin, whose names and addresses are known to the petitioner or can with reasonable diligence be ascertained. The person serving the notice shall certify to the court that the petition has been delivered and how the required notice was given. The notice shall be in language reasonably understandable by the adult who is the subject of the petition and also shall be given orally if necessary. The notice shall include:

(1) the names of all petitioners;

(2) the factual basis of the belief that protective placement is needed;

(3) the rights of the adult in the court proceedings; and

(4) the name and address of the proposed

placement or services.

D. Upon the filing of a petition for non-emergency protective placement, the court shall hold a hearing pursuant to the provisions of Section 27-7-27 NMSA 1978.

E. In order to make the findings required in Paragraphs (2) through (5) of Subsection A of this section, the court shall direct that a comprehensive evaluation of the adult alleged to be in need of placement be conducted as provided in Section 27-7-22 NMSA 1978.

F. In ordering non-emergency protective placement, the court shall give consideration to the choice of residence of the adult. The court may order placement in facilities such as hospitals, nursing homes, domiciliary or personal care facilities, sheltered care residences or other appropriate facilities licensed by the state.

G. The court may authorize non-emergency protective placement of or protective services for an adult for a period not to exceed six months.

H. At the time of expiration of an order for non-emergency protective placement or protective services, the original petitioner may petition the court to extend its order for protective placement or protective services for an additional period not to exceed six months. The contents of the petition shall conform to the provisions of Subsections A and B of this section. Notice of the petition for the extension of placement or services shall be made in conformity with Subsection C of this section. The court shall hold a hearing to determine whether to renew the order. Any person entitled to a notice under Subsection C of this section may appear at the hearing and challenge the petition. In this event, the court shall conduct the hearing pursuant to the provisions in Section 27-7-27 NMSA 1978.

I. The residence of or services provided to an adult that had been established pursuant to an order for non-emergency protective placement or protective services shall not be changed unless the court authorizes the transfer of residence or change of services.

J. Prior to the expiration of the non-emergency protective placement or protective services, the department shall review the need for continued protective services, including the necessity for appointment of a conservator or guardian, and shall make such recommendation to the court."

Section 13

Section 13. Section 27-7-27 NMSA 1978 (being Laws 1989, Chapter 389, Section 14, as amended) is amended to read:

"27-7-27. HEARING ON PETITION.--

A. The hearing on a petition for renewal of an emergency ex-parte order for protective services or for an order for non-emergency protective placement or services shall be held under the following conditions:

(1) the adult shall be present unless the court determines it is impossible for the adult to be present or it is not in the adult's best interest because of a threat to that adult's health and safety;

(2) the adult has the right to counsel whether or not the adult is present at the hearing. If the person is indigent, the court shall appoint counsel no later than the time of the filing of the petition;

(3) counsel appointed by the court pursuant to Paragraph (2) of this subsection shall interview the allegedly incapacitated adult prior to any hearing on the petition or any application for renewal of the original emergency order;

(4) the adult shall have the right to trial by jury upon request by the adult or his counsel only in hearings held on petitions for non-

emergency protective placement or services; and

(5) the adult has the right at his own expense or, if indigent, at the expense of the state to secure an independent medical, psychological or psychiatric examination relevant to the issue involved in any hearing under this section and to present a report of this independent evaluation or the evaluator's personal testimony as evidence at the hearing.

B. The duty of counsel representing an adult for whom a petition for an order for emergency protective services or for non-emergency protective placement or services has been filed shall be to represent the adult by presenting his declared position to the court.

C. The court shall issue for the record a statement of its findings in support of any order for renewal of emergency protective services or for non-

emergency protective placement or services."

Section 14

Section 14. Section 27-7-29 NMSA 1978 (being Laws 1989, Chapter 389, Section 16) is amended to read:

"27-7-29. CONFIDENTIALITY OF RECORDS--PENALTY.--

A. All records of the department, the court, state and local agencies and protective services agencies that are created or maintained pursuant to investigations under the Adult Protective Services Act or for whom application has ever been made for protection shall be confidential and shall not be disclosed directly or indirectly to the public.

B. The records described in Subsection A of this section shall be open to inspection only by the following:

(1) the alleged abused, neglected or exploited person, except as to the identity of the referral source and second source information such as medical psychological evaluations;

(2) court personnel;

(3) personnel of any state agency with a legitimate interest in the records;

(4) law enforcement officials;

(5) department personnel;

(6) any state government social services agency in any other state;

(7) health care or mental health professionals involved in the evaluation, treatment, residential care or protection of the adult;

(8) parties and their counsel in all legal proceedings pursuant to the Adult Protective Services Act or legal actions pursuant to the Probate Code;

(9) persons who have been, or will be in the immediate future, providing care or services to the adult except the alleged abuser;

(10) persons appointed by the court pursuant to the Probate Code to be the adult's guardian ad litem, guardian, conservator, visitor or qualified health care professional;

(11) any of the persons who the department petitions the court appoint pursuant to the Probate Code;

(12) any other person or entity, by order of the court, having a legitimate interest in the case or the work of the court; and

(13) protection and advocacy representatives pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act and Protection and Advocacy for Mentally Ill Individuals Act.

C. Records of cases involving substantiated abuse, neglect or exploitation shall be provided as appropriate to the department of

health, the district attorney's office, the medicaid fraud control unit in New Mexico and the office of the long-term care ombudsman for appropriate additional action.

D. Whoever intentionally and unlawfully releases any information or records closed to the public pursuant to this section or releases or makes other unlawful use of records in violation of this section is guilty of a misdemeanor."

Section 15

Section 15. Section 27-7-30 NMSA 1978 (being Laws 1989, Chapter 389, Section 17, as amended) is amended to read:

"27-7-30. DUTY TO REPORT.--

A. Any person having reasonable cause to believe that an incapacitated adult is being abused, neglected or exploited shall immediately report that information to the department.

B. The report required in Subsection A of this section may be made orally or in writing. The report shall include the name, age and address of the adult, the name and address of any other person responsible for the adult's care, the nature and extent of the adult's condition, the basis of the reporter's knowledge and other relevant information.

C. Any person failing or refusing to report, or obstructing or impeding any investigation, as required by Subsection A of this section is guilty of a misdemeanor."

Section 16

Section 16. Section 27-7-31 NMSA 1978 (being Laws 1989, Chapter 389, Section 18) is amended to read:

"27-7-31. IMMUNITY.--Any person making a report pursuant to Section 27-7-30 NMSA 1978, testifying in any judicial proceeding arising from the report or participating in a required evaluation pursuant to the Adult Protective Services Act or any law enforcement officer carrying out his responsibilities under that act or any person providing records or information as required under that act shall be immune from civil or criminal liability on account of that report, testimony or participation, unless the person acted in bad faith or with a malicious purpose."

HOUSE BILL 101, AS AMENDED

CHAPTER 133

MAKING AN APPROPRIATION TO PLAN AND DESIGN WATER SYSTEM IMPROVEMENTS FOR THE DESERT AIRE COMMUNITY IN DONA ANA COUNTY.

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

Section 1

Section 1. APPROPRIATION.--Twenty-five thousand dollars ($25,000) is appropriated from the general fund to the department of environment for expenditure in fiscal year 1998 for the purpose of planning and designing water system improvements for the Desert Aire community in Dona Ana county. Any unexpended or unencumbered balance remaining at the end of fiscal year 1998 shall revert to the general fund.

HOUSE BILL 133

CHAPTER 134

RELATING TO FORFEITURE OF WATER RIGHTS; AMENDING CERTAIN SECTIONS OF THE NMSA 1978 PERTAINING TO PLACING WATER RIGHTS IN A WATER CONSERVATION PROGRAM.

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

Section 1

Section 1. Section 72-5-28 NMSA 1978 (being Laws 1907, Chapter 49, Section 42, as amended) is amended to read:

"72-5-28. FAILURE TO USE WATER--FORFEITURE.--

A. When the party entitled to the use of water fails to beneficially use all or any part of the water claimed by him, for which a right of use has vested for the purpose for which it was appropriated or adjudicated, except the waters for storage reservoirs, for a period of four years, such unused water shall, if the failure to beneficially use the water persists one year after notice and declaration of nonuser given by the state engineer, revert to the public and shall be regarded as unappropriated public water; provided, however, that forfeiture shall not necessarily occur if circumstances beyond the control of the owner have caused nonuse, such that the water could not be placed to beneficial use by diligent efforts of the owner; and provided that periods of nonuse, when irrigated farm lands are placed under the acreage reserve program or conservation reserve program provided by the Food Security Act of 1985, P.L. 99-198, shall not be computed as part of the four-year forfeiture period; and provided, further, that the condition of notice and declaration of nonuser shall not apply to water which has reverted to the public by operation of law prior to June 1, 1965.

B. Upon application to the state engineer at any time and a proper showing of reasonable cause for delay or for nonuse or upon the state engineer finding that it is in the public interest, the state engineer may grant extensions of time, for a

period not to exceed three years for each extension, in which to apply to beneficial use the water for which a permit to appropriate has been issued or a water right has vested, was appropriated or has been adjudicated.

C. Periods of nonuse when water rights are acquired by incorporated municipalities or counties for implementation of their water development plans or for preservation of municipal or county water supplies shall not be computed as part of the four-year forfeiture statute.

D. A lawful exemption from the requirements of beneficial use, either by an extension of time or other statutory exemption, stops the running of the four-year period for the period of the exemption, and the period of exemption shall not be included in computing the four-year period.

E. Periods of nonuse when the nonuser of acquired water rights is on active duty as a member of the armed forces of this country shall not be included in computing the four-year period.

F. The owner or holder of a valid water right or permit to appropriate waters for agricultural purposes appurtenant to designated or specified lands may apply the full amount of water covered by or included in the water right or permit to any part of the designated or specified tract without penalty or forfeiture.

G. Periods of nonuse when water rights are acquired and placed in a state engineer-approved water conservation program, by a conservancy district organized pursuant to Chapter 73, Articles 14 through 19 NMSA 1978, an acequia or community ditch association organized pursuant to Chapter 73, Article 2 or 3 NMSA 1978, an irrigation district organized pursuant to Chapter 73, Articles 9 through 13 NMSA 1978 or the interstate stream commission shall not be computed as part of the four-year forfeiture period."

Section 2

Section 2. Section 72-12-8 NMSA 1978 (being Laws 1931, Chapter 131, Section 8, as amended) is amended to read:

"72-12-8. WATER RIGHT FORFEITURE.--

A. When for a period of four years the owner of a water right in any of the waters described in Sections 72-12-1 through 72-12-28 NMSA 1978 or the holder of a permit from the state engineer to appropriate any such waters has failed to apply them to the use for which the permit was granted or the right has vested, was appropriated or has been adjudicated, the water rights shall be, if the failure to beneficially use the water persists one year after notice and declaration of nonuser given by the state engineer, forfeited and the water so

unused shall revert to the public and be subject to further appropriation; provided that the condition of notice and declaration of nonuser shall not apply to water which has reverted to the public by operation of law prior to June l, l965.

B. Upon application to the state engineer at any time and a proper showing of reasonable cause for delay or for nonuse or upon the state engineer finding that it is in the public interest, the state engineer may grant extensions of time, for a period not to exceed three years for each extension, in which to apply to beneficial use the water for which a permit to appropriate has been issued or a water right has vested, was appropriated or has been adjudicated.

C. Periods of nonuse when irrigated farm lands are placed under the acreage reserve program or conservation reserve program provided by the Food Security Act of l985, P.L. 99-l98, shall not be computed as part of the four-year forfeiture period.

D. Periods of nonuse when water rights are acquired and placed in a state engineer-approved water conservation program by an artesian conservancy district, conservancy district, an acequia or community ditch association organized pursuant to Chapter 73, Article 2 or 3 NMSA 1978, an irrigation district organized pursuant to Chapter 73, Articles 9 through 13 NMSA 1978 or the interstate stream commission shall not be computed as part of the four-year forfeiture statute.

E. A lawful exemption from the requirements of beneficial use, either by an extension of time or other statutory exemption, stops the running of the four-year period for the period of the exemption, and the period of exemption shall not be included in computing the four-year period.

F. Periods of nonuse when water rights are acquired by incorporated municipalities or counties for implementation of their water development plans or for preservation of municipal or county water supplies shall not be computed as part of the four-year forfeiture statute.

G. Periods of nonuse when the nonuser of acquired water rights is on active duty as a member of the armed forces of this country shall not be included in computing the four-year period.

H. The owner or holder of a valid water right or permit to appropriate waters for agricultural purposes appurtenant to designated or specified lands may apply the full amount of water covered by or included in that water right or permit to any part of the designated or specified tract without penalty or forfeiture."

HOUSE BILL 139, AS AMENDED

CHAPTER 135

RELATING TO THE INVESTMENT OF PUBLIC MONEY; PROVIDING FOR BUDGET AND PAYMENT OF ADMINISTRATIVE AND INVESTMENT EXPENSES OF THE INVESTMENT OFFICE FROM THE STATE PERMANENT FUNDS AND OTHER FUNDS MANAGED BY THE INVESTMENT OFFICE; AUTHORIZING THE INVESTMENT OFFICE TO USE INVESTMENT MANAGERS; AUTHORIZING THE STATE INVESTMENT OFFICER TO PROVIDE INVESTMENT SERVICES TO POLITICAL SUBDIVISIONS OF THE STATE AND THE NEW MEXICO FINANCE AUTHORITY; AMENDING 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 6-8-1 NMSA 1978 (being Laws 1957, Chapter 179, Section 1, as amended by Laws 1983, Chapter 301, Section 11 and also by Laws 1983, Chapter 306, Section 1) is amended to read:

"6-8-1. DEFINITIONS.--As used in Chapter 6, Article 8 NMSA 1978:

A. "secretary" means the secretary of finance and administration;

B. "department" means the department of finance and administration;

C. "land grant permanent funds" means those funds derived from lands under the direction, control, care and disposition of the commissioner of public lands conferred by Article 13, Sections 1 and 2 of the constitution of New Mexico; and

D. "council" means the state investment council."

Section 2

Section 2. Section 6-8-5 NMSA 1978 (being Laws 1957, Chapter 179, Section 5, as amended) is amended to read:

"6-8-5. BOND--STAFF--BUDGET.--

A. Before the state investment officer, or other responsible employee of the investment office, enters upon his duties, the secretary shall require an individual bond or include the state investment officer and other responsible employees under a blanket bond for an amount and for a coverage deemed best to protect the state's interest. The bond premiums shall be paid by the state.

B. The state investment officer shall annually prepare a budget for administering and investing all funds managed by the investment office, which shall be reviewed by the

council. Any funds provided for the operating budget of the investment office shall be appropriated from the assets of the land grant permanent funds, the severance tax permanent fund, funds available for investment pursuant to Subsection G of Section 6-8-7 NMSA 1978 or any other funds managed by the investment office, as authorized by law; however, in regard to the land grant permanent funds, appropriation shall be made from earnings on investments of the land grant permanent funds before distribution to the income funds during the period prior to the date the United States congress consents to the provisions of Constitutional Amendment 1 approved at the 1996 general election.

C. Amounts budgeted or appropriated from the land grant permanent funds and the severance tax permanent fund for the costs of administering and investing those funds shall be in addition to the amounts distributed to the beneficiaries of the land grant permanent funds and to the general fund from the severance tax permanent fund as provided by law; provided that amounts budgeted or appropriated from the land grant permanent funds shall be made from earnings on investments of the funds before distribution to the income funds during the period prior to the date the United States congress consents to the provisions of Constitutional Amendment 1 approved at the 1996 general election.

D. The state investment officer shall appoint all employees of the investment office."

Section 3

Section 3. Section 6-8-7 NMSA 1978 (being Laws 1957, Chapter 179, Section 7, as amended) is amended to read:

"6-8-7. POWERS AND DUTIES OF STATE INVESTMENT OFFICER--INVESTMENT POLICY--INVESTMENT MANAGERS.--

A. Subject to the limitations, conditions and restrictions contained in policy-making regulations or resolutions adopted by the council and subject to prior authorization by the council, the state investment officer has the power to make purchases, sales, exchanges, investments and reinvestments of the assets of all funds

administered under the supervision of the council. The state investment officer is charged with the duty of seeing that money invested is at all times handled in the best interests of the state.

B. Securities or investments purchased or held may be sold or exchanged for other securities and investments; provided, however, that no sale or exchange shall be at a price less than the going market at the time the securities or investments are sold or exchanged.

C. In purchasing bonds, the state investment officer shall require a certified or original written opinion of a reputable bond attorney or the attorney general of the state certifying the legality of the bonds to be purchased; provided, however, this written opinion may be the approving legal opinion ordinarily furnished with the bond issue.

D. The state investment officer shall formulate and recommend to the council for approval investment regulations or resolutions pertaining to the kind or nature of investments and limitations, conditions and restrictions upon the methods, practices or procedures for investment, reinvestment, purchase, sale or exchange transactions that should govern the activities of the investment office.

E. The council shall meet at least once each month, and as often as exigencies may demand, to consult with the state investment officer concerning the work of the investment office. The council shall have access to all files and records of the investment office and shall require the state investment officer to report on and provide information necessary to the performance of council functions. The council may hire one or more investment management firms to advise the council with respect to the council's overall investment plan for the investment of all funds managed by the investment office and pay reasonable compensation for such advisory services from the assets of the applicable funds, subject to budgeting and appropriation by the legislature. The terms of any such investment management services contract shall incorporate the statutory requirements for investment of funds under the council's jurisdiction.

F. For the purposes of the investment of all funds managed by the investment office, the state investment officer shall manage the funds on a total rate of return basis in a prudent manner, unless a higher standard of care is required by law. With the approval of the council, the state investment officer may employ investment management services to invest the funds and may pay reasonable compensation for investment management services from the assets of the applicable funds subject to budgeting and appropriation by the legislature.

G. For funds available for investment for more than one year, the state investment officer may contract with any state agency to provide investment advisory or investment management services, separately or through a pooled investment fund, provided the state agency enters into a joint powers agreement with the

council and that state agency pays at least the direct cost of such services. Notwithstanding any statutory provision governing state agency investments, the state investment officer may invest

funds available from a state agency pursuant to a joint powers agreement in any type of investment permitted for the land grant permanent funds under the same standard of care applicable to investments of the land grant permanent funds. In performing investment services for a state agency, the council and the

state investment officer are exempt from the New Mexico Securities Act of 1986. As used in this subsection, "state agency" means any branch, agency, department, board, instrumentality, institution or political subdivision of the state and the New Mexico finance authority."

Section 4

Section 4. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 146, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 9, 1997

CHAPTER 136

RELATING TO PUBLIC SCHOOL FINANCE; REPEALING THE REQUIREMENT THAT SCHOOL DISTRICTS EMPLOY DEPARTMENT-CERTIFIED NURSES.

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

Section 1

Section 1. Section 22-8-9 NMSA 1978 (being Laws 1967, Chapter 16, Section 63, as amended) is amended to read:

"22-8-9. BUDGETS--MINIMUM REQUIREMENTS.--

A. No budget for a school district shall be approved by the department that does not provide for:

(1) a school year consisting of at least one hundred eighty full instructional days or the equivalent thereof, exclusive of any release time for in-service training; or

(2) a variable school year consisting of a minimum number of instructional hours established by the state board; and

(3) a pupil-teacher ratio or class or teaching load as provided in Section 22-2-8.2 NMSA 1978.

B. The state board shall, by regulation, establish the requirements for a teaching day, the standards for an instructional hour and the standards for a full-time certified classroom instructor and for the equivalent thereof.

C. The local school board shall submit a plan for the implementation of an alternate school year to the state superintendent for his approval.

D. The provisions of Subsection C and Paragraph (2) of Subsection A of this section shall apply to school districts with a MEM of one thousand or fewer."

HOUSE BILL 287

CHAPTER 137

RELATING TO SOIL AND WATER CONSERVATION; AMENDING SECTIONS OF THE NMSA 1978 TO TRANSFER ADMINISTRATION OF THE SOIL AND WATER CONSERVATION DISTRICT ACT TO THE NEW MEXICO DEPARTMENT OF AGRICULTURE.

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

Section 1

Section 1. Section 9-5A-3 NMSA 1978 (being Laws 1987, Chapter 234, Section 3) is amended to read:

"9-5A-3. DEPARTMENT ESTABLISHED.--

A. There is created in the executive branch the "energy, minerals and natural resources department". The department shall be a cabinet department and shall include, but not be limited to, the following organizational units:

(1) the administrative services division;

(2) the state park and recreation division;

(3) the forestry division;

(4) the energy conservation and management division;

(5) the mining and minerals division; and

(6) the oil conservation division.

B. The state game commission is administratively attached to the department."

Section 2

Section 2. Section 9-5A-4 NMSA 1978 (being Laws 1987, Chapter 234, Section 4) is amended to read:

"9-5A-4. DIVISIONS--DUTIES.--In addition to the duties assigned to each division of the energy, minerals and natural resources department by the secretary of energy, minerals and natural resources:

A. the administrative services division shall provide clerical, recordkeeping and administrative support to the department in the areas of personnel, budget, procurement and contracting;

B. the energy conservation and management division shall plan, administer, review, provide technical assistance, maintain records and monitor state and federal energy conservation and alternative energy technology programs;

C. the forestry division shall enforce and administer all laws and regulations relating to forestry on lands within the state;

D. the mining and minerals division shall enforce and administer laws and regulations relating to mine safety, coal surface mine reclamation and abandoned mine lands reclamation;

E. the oil conservation division shall administer the laws and regulations relating to oil, gas and geothermal resources, except those laws specifically administered by another authority; and

F. the state park and recreation division shall develop, maintain, manage and supervise all state parks and state-owned or state-leased recreation areas."

Section 3

Section 3. Section 73-20-27 NMSA 1978 (being Laws 1965, Chapter 137, Section 3, as amended) is amended to read:

"73-20-27. DEFINITIONS.--As used in the Soil and Water Conservation District Act:

A. "district" means a soil and water conservation district, which is a governmental subdivision of the state, a public body corporate and politic, organized for the purposes, granted the powers and subject to the restrictions of the Soil and Water Conservation District Act;

B. "supervisor" means a member of the governing body of a district;

C. "committee" or "commission" means the soil and water conservation commission;

D. "agencies of the United States" includes the natural resources conservation service of the United States department of agriculture;

E. "landowner" includes resident and nonresident owners of natural resources as defined in the Soil and Water Conservation District Act;

F. "due notice" means the publication of the appropriate information in notice form in a newspaper or other written medium of general circulation within the affected geographical area at least twice with a period of ten or more days intervening between the first and last publication. If a newspaper of general circulation or other written medium of general circulation does not service the affected geographical area, due notice may be given by posting the appropriate information in notice form in six conspicuous public places where it is customary to post notices concerning county or municipal affairs within the affected geographical area;

G. "department" means the New Mexico department of agriculture;

H. "director" means the director of the department;

I. "natural resources" includes land, except the oil and gas and other minerals underlying the land, soil, water, vegetation, trees,

natural beauty, scenery and open space; human resources are included where appropriate; and

J. "board" means the board of regents of New Mexico state university."

Section 4

Section 4. Section 73-20-31 NMSA 1978 (being Laws 1978, Chapter 175, Section 1, as amended) is amended to read:

"73-20-31. POWERS AND DUTIES OF DEPARTMENT AND BOARD.--

A. The supervising officer of any state agency or institution of learning shall, within the limitations of his budget and the demands of his agency or institution, assign or detail staff or personnel, render special reports and undertake surveys or studies pertaining to soil and water conservation for the commission and the department as requested.

B. The department, with the advice of the commission, shall:

(1) assist districts in the development of district soil and water conservation programs and, from such programs, develop a soil and water conservation program for the state;

(2) provide information for district supervisors concerning the experience and activities of all districts and facilitate the exchange of experience and advice among districts;

(3) promote cooperation among districts and, by advice and consultation, assist in the coordination of district programs;

(4) secure and maintain the cooperation and assistance of state and federal agencies and seek to secure and maintain the cooperation and assistance of national, state and local organizations and groups interested or active in natural resource conservation and development;

(5) disseminate information throughout the state concerning district activities and programs; and

(6) encourage and, within budget limitations, render aid and assistance to district activities and facilitate and encourage the formation of new districts in areas where district organization is desirable.

C. The commission may, on its own initiative, furnish advice and recommendations to the department and the board concerning any matter that in its opinion has a significant impact on or otherwise substantially affects soil and water conservation."

Section 5

Section 5. Section 73-20-32 NMSA 1978 (being Laws 1973, Chapter 324, Section 4, as amended) is amended to read:

"73-20-32. ADDITIONAL DUTIES OF DEPARTMENT.--In addition to all other powers and duties of the department, it shall:

A. upon request and within budget limitations, provide land-use planning assistance in the areas of terrain management consisting of flood control, drainage, erosion and measures required for adapting proposed development to existing soil characteristics and topography; and

B. with the advice of the commission, divide the state into six soil and water conservation regions and assign each of the currently created soil and water conservation districts or those created in the future to one of the six geographical regions. Division and assignment may be amended from time to time with the advice of the commission as the boundaries of the districts alter or other conditions warrant."

Section 6

Section 6. Section 73-20-36 NMSA 1978 (being Laws 1978, Chapter 85, Section 1) is amended to read:

"73-20-36. SOIL AND WATER CONSERVATION DISTRICTS--MODIFICATION OF EXISTING DISTRICTS.--

A. Petitions for including additional land within an existing organized district may be filed with the department and shall be treated in the same manner as petitions for the creation of a proposed district. If, however, such a petition is signed by two-thirds or more of the owners of the additional land proposed to be included in the district, the department may enter its determinations without hearing or referendum. The commission shall advise the department on all petitions filed pursuant to this section.

B. Petitions for severing land from the defined geographical area of an existing organized district, or for its severance and inclusion within another existing organized district, may be filed with the department and may be treated in the same manner as petitions for the creation of a proposed district. If, however, the petition is signed by two-thirds or more of the owners of the land to be severed or is submitted by the boards of supervisors of each district affected, the department may enter its determinations without hearing or referendum.

C. Petitions for consolidating two or more districts or for separating an existing district into two or more districts may be filed with the department by the boards of supervisors of each district affected. After due notice, a public hearing shall be held in each district affected, and no action can be taken without the majority approval of the voters present at the hearing. If petitions have been filed pursuant to this subsection and approved as provided in the Soil and Water Conservation District Act, it shall not be necessary to obtain the consent of the landowners within the districts prior to the consolidation or division.

D. The department shall give written notice to the secretary of state of any modification in the defined geographical area of any existing organized district; the notice of modification shall describe and portray by map the modified geographical area. The secretary of state shall note, file and record each modification and shall issue, under state seal, a certificate of reorganization to each district affected. Certificates of reorganization shall have the same force and effect, and shall be accorded the same dignity, as the certificates they supersede.

E. In the event a supervisor of a district is disqualified from holding office by the modification of his district, he shall be deemed to have resigned, and his successor shall be appointed to serve the unexpired term by the remaining supervisors of the district. In the event two or more supervisors are disqualified from holding office by the modification of a district, their successors shall be appointed to serve the unexpired terms by the board."

Section 7

Section 7. Section 73-20-37 NMSA 1978 (being Laws 1965, Chapter 137, Section 11, as amended) is amended to read:

"73-20-37. DISTRICT SUPERVISORS--ELECTION AND APPOINTMENT--NEW DISTRICTS.--

A. The governing body of each district shall be composed of five supervisors who shall be elected; provided, however, two additional supervisors may be appointed to the governing body of each district by the board in accordance with the provisions of the Soil and Water Conservation District Act. The four elected supervisors of each district shall be land owners within the defined geographical area of their district. One elected supervisor shall be designated supervisor-at-large and may serve the district without qualification. A supervisor shall serve a term of three years and shall continue in office until his successor has been elected or appointed and has qualified. A vacant unexpired term of the office of supervisor shall be filled by appointment by the remaining supervisors of the district. Two or more vacant unexpired terms of the offices of supervisor, occurring simultaneously in the same district, shall be filled by appointment by the board.

B. Unless a different time is prescribed by the board, within thirty days following the issuance of a certificate of organization to the two interim supervisors of a district, nominating petitions proposing candidates for supervisors of the district may be filed with the department. Nominating petitions shall be signed by no fewer than ten owners of land situate within the district; landowners shall not be restricted in the number of nominating petitions they may subscribe. The department shall give due notice of election for the offices of five district supervisors. All owners of land situate within the district shall be eligible to vote. The board, with the advice of the commission, shall adopt and prescribe regulations governing the conduct of the election, shall determine voter eligibility and supervise the election and shall publish its results. The districts shall bear the expenses of elections.

C. In the first election of supervisors to serve a newly organized district, two supervisors shall be elected for terms of one year; two supervisors shall be elected for terms of two years; and the supervisor-at-large shall be elected for a term of three years. Thereafter, each elected supervisor shall serve a term of three years.

D. Appointed interim supervisors may continue to serve as appointed supervisors at the pleasure of the board or until their successors are otherwise appointed."

Section 8

Section 8. Section 73-20-38 NMSA 1978 (being Laws 1965, Chapter 137, Section 12, as amended) is amended to read:

"73-20-38. DISTRICT SUPERVISORS--ELECTION AND APPOINTMENT--ORGANIZED DISTRICTS.--

A. Successors to supervisors of organized districts whose terms end in a calendar year shall be elected during the period September 1 to December 15 of that year. Election dates shall be determined by the supervisors of the district and may concur with the time of annual meeting of district landowners. Elections shall be called, conducted and returned in the same manner as the first election of supervisors of a newly organized district; provided, however, that the powers conferred upon the board in conducting the first election of supervisors in a newly organized district shall apply to and be exercised by the supervisors of the organized district.

B. In a district election held during an annual meeting of district landowners, the nomination of a supervisor candidate may be made from the floor of the meeting as well as by nominating petition.

The district supervisors shall determine the results of a district election, shall certify and publish the results and shall give the department notice of their canvass within seven days.

C. In the first annual election of supervisors to serve an extant organized district, following the enactment of the Soil and Water Conservation District Act, two supervisors shall be elected for terms of one year, two supervisors shall be elected for terms of two years and the supervisor-at-large shall be elected for a term of three years. Thereafter, each elected supervisor shall serve a term of three years.

D. Regulations promulgated by the board, with the advice of the commission, and the election provisions of the Soil and Water Conservation District Act shall be exclusive in the conduct of district elections. The board may promulgate rules and regulations to carry out the provisions of the Soil and Water Conservation District Act.

E. Within forty days after an annual district election, the district supervisors shall submit to the department a list of five names of persons interested in the district and who by experience or training are qualified to serve as supervisors. The board, with the advice of the commission, may appoint two persons from the list submitted to serve as district supervisors if it is the determination of the board that the appointments are necessary or desirable and would benefit or facilitate the work and functions of the district. In the event a list is not submitted to the department by the district supervisors within forty days after an annual district election, the board, with the advice of the commission, may appoint at will two district supervisors qualified to serve by training or experience. Appointed district supervisors shall serve at the pleasure of the board and shall have the same powers and perform the same duties as elected supervisors. Successors to appointed supervisors, or replacement-appointed supervisors in the event of vacancy, shall be appointed by the board, with the advice of the commission, from a list of candidates or at will in accordance with the provisions of this subsection."

Section 9

Section 9. Section 73-20-41 NMSA 1978 (being Laws 1965, Chapter 137, Section 15, as amended) is amended to read:

"73-20-41. POWERS AND DUTIES OF DISTRICT SUPERVISORS.--

A. District supervisors may employ a secretary and such other agents, employees and technical or professional experts as they may from time to time require, and may determine qualifications, compensation and duties applicable to any agent, employee or expert engaged. District supervisors shall require and provide for the execution of a corporate surety bond in suitable penal sum for and to cover any person entrusted with the care or disposition of district funds or property. District supervisors may delegate their powers to one or more district supervisors or to one or more district employees, agents or experts.

B. District supervisors may call upon the district attorney of the judicial district within which all or a part of the district lands may be situate for legal services required by the district. District supervisors may invite the legislative body of any municipality or county situate within, near or comprising a part of the district to designate a representative to advise and consult with the supervisors on matters affecting property, water distribution or other matters of interest to the municipality or county.

C. District supervisors are authorized to adopt and promulgate rules and regulations necessary for the proper execution of district duties and activities. The supervisors shall:

(1) keep a full and accurate record of all district proceedings and of all resolutions, regulations and orders issued or adopted;

(2) provide for and submit to an annual audit of district accounts or receipts and disbursements, in the event district receipts total more than five thousand dollars ($5,000) annually;

(3) furnish to the department a complete report of district proceedings and activities during each fiscal year, including a financial report;

(4) furnish or make available to the department upon request, district files and copies of rules, regulations, orders, contracts, forms and other documents adopted or employed in conducting district activities; and

(5) call and give due notice of an annual meeting of the owners of land situate within the district to be held on a designated date within the period September 1 to December 15."

Section 10

Section 10. Section 73-20-49 NMSA 1978 (being Laws 1965, Chapter 137, Section 23, as amended) is amended to read:

"73-20-49. DISSOLUTION OF DISTRICTS.--

A. At any time five years after the organization of a district, any twenty-five landowners, situate within the district, may subscribe and file a petition with the department for the dissolution of the district. To assist it in its determinations, the commission may hold public hearings upon the petition. Within sixty days of its receipt of the petition, the department shall give due notice of referendum to adopt and

approve the petition of dissolution. The referendum shall be conducted with appropriate ballot and in substantially the same manner as a referendum adopting and approving the creation of a proposed district.

B. The department shall publish the results of the referendum and, if a majority of the votes cast at the referendum adopts the petition and approves the dissolution of the district, the department shall then determine whether the continued operation of the district within its defined geographical area is administratively practicable. In making its determination, the department shall consider:

(1) the attitude of the landowners lying within the district;

(2) the ratio of votes cast at the referendum to the number of eligible voters;

(3) the proportion of the total number of votes cast at the referendum to the number of votes cast in favor of the dissolution of the district;

(4) the approximate wealth and income of the landowners of the district; and

(5) the probable expense of carrying on natural resource conservation and development within the district.

C. In the event the department determines that the continued operation of the district is not administratively practicable, it shall enter and record its determination and shall certify its determination to the district supervisors. Upon receipt of the department's certification, the district supervisors shall terminate the affairs of the district; shall dispose of all district property at public auction; or by transfer to the board or to another district; and shall certify and deliver up the proceeds of any sale to be paid over to the board. The district supervisors shall file a verified application for the dissolution of the district with the secretary of state; the application shall be supported by a copy of the certificate of the department setting forth its determination that continued operation of the district is not administratively practicable and by a verified accounting of the disposition of district property and the proceeds from it. Upon receipt of a proper application, the secretary of state shall issue to the district supervisors a certificate of dissolution and shall record the certificate in an appropriate book of record in his office.

D. Upon the issuance of a certificate of dissolution by the secretary of state, the district shall dissolve and cease to exist, and all regulatory acts of the district supervisors shall have no further force or effect. The board shall be automatically substituted for the district as a party to all executory contracts and shall be entitled to enforce all rights and obligated to perform all duties thereunder to the same effect and in the same manner as the district.

E. Petitions for the dissolution of a district may not be accepted and shall not be considered by the department more often than once in any five-year period."

Section 11

Section 11. TEMPORARY PROVISION--TRANSFER.--On July 1, 1997, the soil and water conservation bureau of the forestry division of the energy, minerals and natural resources department is abolished. On that date, all functions, appropriations, money, equipment and records belonging to the bureau are transferred to the board of regents of New Mexico state university. On July 1, 1997, all existing rules and regulations, contracts and agreements in effect for the bureau shall be binding on the board of regents of New Mexico state university.

Section 12

Section 12. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 774

CHAPTER 138

RELATING TO PUBLIC SCHOOLS; INCREASING TO FOUR YEARS THE AMOUNT OF TIME A PROPERTY TAX MAY BE IMPOSED FOR CAPITAL IMPROVEMENTS IN A SCHOOL DISTRICT; AMENDING SECTIONS OF THE PUBLIC SCHOOL CAPITAL IMPROVEMENTS ACT.

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

Section 1

Section 1. Section 22-25-3 NMSA 1978 (being Laws 1975 (S.S.), Chapter 5, Section 3, as amended) is amended to read:

"22-25-3. AUTHORIZATION FOR LOCAL SCHOOL BOARD TO SUBMIT QUESTION OF CAPITAL IMPROVEMENTS TAX IMPOSITION.--Any local school board may adopt a resolution to submit to the qualified electors of the school district the question of whether a property tax should be imposed upon the net taxable value of property allocated to the school district under the Property Tax Code at a rate not to exceed that specified in the resolution for the purpose of capital improvements in the school district. The resolution shall:

A. identify the capital improvements for which the revenue proposed to be produced will be used;

B. specify the rate of the proposed tax, which shall not exceed two dollars ($2.00) on each one thousand dollars ($1,000) of net taxable value of property allocated to the school district under the Property Tax Code;

C. specify the date an election will be held to submit the question of imposition of the tax to the qualified electors of the district; and

D. limit the imposition of the proposed tax to no more than four property tax years."

Section 2

Section 2. Section 22-25-5 NMSA 1978 (being Laws 1975 (S.S.), Chapter 5, Section 5, as amended) is amended to read:

"22-25-5. CONDUCT OF ELECTION--NOTICE--BALLOT.--

A. An election on the question of imposing a tax under the Public School Capital Improvements Act may be held in conjunction with a regular school district election or may be conducted as or held in conjunction with a special school district election, but the election shall be held prior to July 1 of the property tax year in which the tax is proposed to be imposed. Conduct of the election shall be as prescribed in the School Election Law for regular and special school district elections.

B. The resolution required to be published as notice of the election under Section 1-22-4 or 1-22-5 NMSA 1978 shall include as the question to be submitted to the voters whether a property tax at a rate not to exceed the rate specified in the authorizing resolution should be imposed for the specified number of property tax years not exceeding four years upon the net taxable value of all property allocated to the

school district for the capital improvements specified in the authorizing resolution.

C. The ballot shall include the information specified in Subsection B of this section and shall present the voter the choice of voting "for the public school capital improvements tax" or "against the public school capital improvements tax"."

Section 3

Section 3. Section 22-25-8 NMSA 1978 (being Laws 1975 (S.S.), Chapter 5, Section 8, as amended) is amended to read:

"22-25-8. TAX TO BE IMPOSED FOR A MAXIMUM OF FOUR YEARS.--A tax imposed in a school district as a result of an election under the Public School Capital Improvements Act shall be imposed for one, two, three or four years commencing with the property tax year in which the election was held. The local school board may discontinue, by resolution, the Public School Capital Improvements Act tax levy at the end of the first or second year of the levy. The local school board shall direct that the Public School Capital Improvements Act tax levy be decreased by the amount required for any year in which the decrease is required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978."

HOUSE BILL 224

CHAPTER 139

RELATING TO ENVIRONMENTAL IMPROVEMENT; AMENDING SECTIONS OF THE ENVIRONMENTAL IMPROVEMENT ACT TO PROVIDE A PERMITTING PROCESS FOR ON-SITE LIQUID WASTE SYSTEMS; ENACTING PENALTIES.

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

Section 1

Section 1. Section 74-1-1 NMSA 1978 (being Laws 1971, Chapter 277, Section 1, as amended) is amended to read:

"74-1-1. SHORT TITLE.--Chapter 74, Article 1 NMSA 1978 may be cited as the "Environmental Improvement Act"."

Section 2

Section 2. Section 74-1-2 NMSA 1978 (being Laws 1971, Chapter 277, Section 2) is amended to read:

"74-1-2. PURPOSE OF ENVIRONMENTAL IMPROVEMENT ACT.--

The purpose of the Environmental Improvement Act is to create a department that will be responsible for environmental management and consumer protection in this state in order to ensure an environment that in the greatest possible measure will confer optimum health, safety, comfort and economic and social well-being on its inhabitants; will protect this generation as well as those yet unborn from health threats posed by the environment; and will maximize the economic and cultural benefits of a healthy people."

Section 3

Section 3. Section 74-1-3 NMSA 1978 (being Laws 1971, Chapter 277, Section 3, as amended) is amended to read:

"74-l-3. DEFINITIONS.--As used in the Environmental Improvement Act:

A. "board" means the environmental improvement board;

B. "department" or "environmental improvement department" means the department of environment;

C. "on-site liquid waste system" means a liquid waste system, or part thereof, serving a dwelling, establishment or group, and using a liquid waste treatment unit designed to receive liquid waste followed by either a soil treatment or other type of disposal system. "On-site liquid waste system" includes holding tanks and privies but does not include systems or facilities designed to receive or treat mine or mill tailings or wastes;

D. "person" means the state or any agency, institution or political subdivision thereof, any public or private corporation, individual, partnership, association or other entity and includes any officer or governing or managing body of any political subdivision or public or private corporation;

E. "residential on-site liquid waste system" means an on-site liquid waste system serving up to four dwelling units; and

F. "secretary" means the secretary of environment."

Section 4

Section 4. Section 74-1-4 NMSA 1978 (being Laws 1971, Chapter 277, Section 5, as amended) is amended to read:

"74-1-4. ENVIRONMENTAL IMPROVEMENT BOARD--CREATION--

ORGANIZATION.--

A. There is created the "environmental improvement board". The board shall consist of five members appointed by the governor, by and with the advice and consent of the senate. The members of the board shall be appointed for overlapping terms, with no term exceeding five years. No more than three members shall be appointed from any political party. At least a majority of the membership of the 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 board on issues related to the federal Clean Air Act or the Air Quality Control Act. Any vacancy occurring in the membership of the board shall be filled by appointment by the governor for the unexpired term.

B. The members of the board shall be reimbursed as provided in the Per Diem and Mileage Act.

C. The board shall elect from its membership a chairman, vice chairman and secretary and shall establish the tenure of these offices. The board shall convene upon the call of the chairman or a majority of its members."

Section 5

Section 5. Section 74-1-5 NMSA 1978 (being Laws 1971, Chapter 277, Section 6, as amended) is amended to read:

"74-1-5. ENVIRONMENTAL IMPROVEMENT BOARD--DUTIES.--The board shall promulgate all regulations applying to persons and entities outside of the department."

Section 6

Section 6. Section 74-1-6 NMSA 1978 (being Laws 1971, Chapter 277, Section 9, as amended) is amended to read:

"74-l-6. DEPARTMENT--POWERS.--The department shall have power to:

A. sue and be sued;

B. make contracts to carry out its delegated duties;

C. enter into agreements with environmental and consumer protection agencies of other states and the federal government pertaining to duties of the department;

D. enter into investigation and remediation agreements with persons potentially responsible for sites within New Mexico subject to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 and such agreements shall not duplicate or take any authority from the oil conservation commission;

E. serve as agent of the state in matters of environmental management and consumer protection not expressly delegated by law to another department, commission or political subdivision in which the United States is a party;

F. enforce the rules, regulations and orders promulgated by the board and environmental management and consumer protection laws for which the department is responsible by appropriate action in courts of competent jurisdiction;

G. on the same basis as any other person, recommend and propose regulations for promulgation by the board;

H. on the same basis as any other person, present data, views or arguments and examine witnesses and otherwise participate at all hearings conducted by the board or any other administrative agency with responsibility in the areas of environmental management or consumer protection, but shall not be given any special status over any other party; and

I. have such other powers as may be necessary and appropriate for the exercise of the powers and duties delegated to the department."

Section 7

Section 7. Section 74-1-7 NMSA 1978 (being Laws 1971, Chapter 277, Section 10, as amended) is amended to read:

"74-1-7. ENVIRONMENT DEPARTMENT--DUTIES.--

A. The department is responsible for environmental management and consumer protection programs. In that respect, the department shall maintain, develop and enforce regulations and standards in the following areas:

(1) food protection;

(2) water supply, including regulations establishing a reasonable system of fees for the provision of services by the department to public water supply systems, and water pollution as provided in the Water Quality Act;

(3) liquid waste, including exclusive authority to implement and administer an inspection and permitting program for on-site liquid waste systems;

(4) air quality management as provided in the Air Quality Control Act;

(5) radiation control as provided in the Radiation Pro

tection Act;

(6) noise control;

(7) nuisance abatement;

(8) vector control;

(9) occupational health and safety as provided in the Occupational Health and Safety Act;

(10) sanitation of public swimming pools and public baths;

(11) plumbing, drainage, ventilation and sanitation of public buildings in the interest of public health;

(12) medical radiation, health and safety certification and standards for radiologic technologists as provided in the Medical Radiation Health and Safety Act;

(13) hazardous wastes and underground storage tanks as provided in the Hazardous Waste Act; and

(14) solid waste as provided in the Solid Waste Act.

B. Nothing in Subsection A of this section imposes requirements for the approval of subdivision plats in addition to those required elsewhere by law. Nothing in Subsection A of this section preempts the authority of any political subdivision to approve subdivision plats."

Section 8

Section 8. Section 74-1-8 NMSA 1978 (being Laws 1971, Chapter 277, Section 11, as amended) is amended to read:

"74-1-8. ENVIRONMENTAL IMPROVEMENT BOARD--DUTIES.--

A. The board is responsible for environmental management and consumer protection. In that respect, the board shall promulgate regulations and standards in the following areas:

(1) food protection;

(2) water supply, including regulations establishing a reasonable system of fees for the provision of services by the department to public water supply systems;

(3) liquid waste, including exclusive authority to implement and administer an inspection and permitting program for on-site liquid waste systems;

(4) air quality management as provided in the Air Quality Control Act;

(5) radiation control as provided in the Radiation Protection Act;

(6) noise control;

(7) nuisance abatement;

(8) vector control;

(9) occupational health and safety as provided in the Occupational Health and Safety Act;

(10) sanitation of public swimming pools and public baths;

(11) plumbing, drainage, ventilation and sanitation of public buildings in the interest of public health;

(12) medical radiation, health and safety certification and standards for radiologic technologists as provided in the Medical Radiation Health and Safety Act;

(13) hazardous wastes and underground storage tanks as provided in the Hazardous Waste Act; and

(14) solid waste as provided in the Solid Waste Act.

B. Nothing in Subsection A of this section imposes requirements for the approval of subdivision plats in addition to those required elsewhere by law. Nothing in Subsection A of this section preempts the authority of any political subdivision to approve subdivision plats.

C. Fees collected pursuant to Paragraph (2) of Subsection A of this section shall be deposited in the water supply fund."

Section 9

Section 9. Section 74-1-8.1 NMSA 1978 (being Laws 1982, Chapter 73, Section 23, as amended) is amended to read:

"74-1-8.1. LEGAL ADVICE.--

A. In the exercise of any of its powers or duties, the board shall act with independent legal advice. The manner in which such advice is provided shall be determined by the board, but from among one of the following:

(1) the office of the attorney general;

(2) independent counsel hired by the board, whether full- or part-time; or

(3) another state agency whose function is sufficiently distinct from the department of environment to assure independent, impartial advice.

B. Notwithstanding the provisions of Subsection A of this section, attorneys from the department may act for the board in lawsuits filed against or on behalf of the board, and the attorney general may, at the request of the board, file and defend lawsuits on behalf of the board."

Section 10

Section 10. Section 74-1-10 NMSA 1978 (being Laws 1973, Chapter 340, Section 8) is amended to read:

"74-1-10. PENALTY.--

A. A person who violates any regulation of the board is guilty of a petty misdemeanor. This section does not apply to any regulation for which a criminal penalty is otherwise provided by law.

B. Whenever, on the basis of any information, the secretary determines that a person has violated, is violating or threatens to violate any provision of Paragraph (3) of Subsection A of Section 74-1-8 NMSA 1978 or any rule, regulation or permit condition adopted and promulgated thereunder, the secretary may:

(1) issue a compliance order stating with reasonable specificity the nature of the violation or threatened violation, requiring

compliance immediately or within a specified time period and assessing a civil penalty for any past or current violation, or both; or

(2) commence a civil action in district court for appropriate relief, including a temporary or permanent injunction.

C. An order issued pursuant to Subsection B of this section may include suspension or revocation of any permit issued by the department. Any penalty assessed in the order, except for residential on-site liquid waste systems, shall not exceed one thousand dollars ($1,000) for each violation. Any penalty assessed in the order for a residential on-site liquid waste system shall not exceed one hundred dollars ($100) for each violation. In assessing the penalty, the secretary shall take into account the seriousness of the violation and any good-faith efforts to comply with the applicable requirements.

D. If violator fails to take corrective actions within the time specified in the compliance order, the secretary shall:

(1) assess civil penalties of not more than one thousand dollars ($1,000) for each noncompliance with the order; and

(2) suspend or revoke any permit issued to the violator pursuant to Paragraph (3) of Subsection A of Section 74-1-8 NMSA 1978.

E. An order issued pursuant to this section shall become final unless, no later than thirty days after the order is served, the person named in the order submits a written request to the secretary for a hearing. Upon such a request, the secretary shall conduct a hearing. The secretary shall appoint an independent hearing officer to preside over the hearing. The hearing officer shall make and preserve a complete record of the proceedings and forward his recommendation based on the record to the secretary, who shall make the final decision.

F. In connection with any proceeding pursuant to this section, the secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents and may adopt and promulgate rules for discovery procedures.

G. Penalties collected pursuant to violations of rules, regulations or permit conditions adopted pursuant to Paragraph (3) of Subsection A of Section 74-1-8 NMSA 1978 shall be deposited in the state treasury to be credited to the general fund."

Section 11. A new section of Chapter 74, Article 1 NMSA 1978 is enacted to read:

"COUNTY OR MUNICIPAL AUTHORITY REGARDING ON-SITE LIQUID WASTE SYSTEM.--Nothing in Chapter 74, Article 1 NMSA 1978 limits or is intended to limit the authority of any county or municipality to adopt and

enforce requirements related to on-site liquid waste systems that are at least as stringent as those in that article; provided, however, that the county or municipality has, on staff or under contract, either a registered professional engineer with education or experience in sanitary engineering or a class II wastewater operator certified by the state of New Mexico."

HOUSE BILL 308, AS AMENDED

CHAPTER 140

RELATING TO CRIMINAL SENTENCING; PROVIDING THAT CERTAIN DEFENDANTS CONVICTED FOR TWO VIOLENT SEXUAL OFFENSES BE SENTENCED TO LIFE IMPRISONMENT WITHOUT POSSIBILITY OF PAROLE; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 31-18-25 NMSA 1978 (being Laws 1996, Chapter 79, Section 1) is amended to read:

"31-18-25. TWO VIOLENT SEXUAL OFFENSE CONVICTIONS--MANDATORY LIFE IMPRISONMENT--EXCEPTION.--

A. When a defendant is convicted of a second violent sexual offense, and each violent sexual offense conviction is part of a separate transaction or occurrence, and at least the second violent sexual offense conviction is in New Mexico, the defendant shall, in addition to the punishment imposed for the second violent sexual offense conviction, be punished by a sentence of life imprisonment. The life imprisonment sentence shall be subject to parole pursuant to the provisions of Section 31-21-10 NMSA 1978.

B. Notwithstanding the provisions of Subsection A of this section, when a defendant is convicted of a second violent sexual offense, and each violent sexual offense conviction is part of a separate transaction or occurrence, and the victim of each violent sexual offense was less than thirteen years of age at the time of the offense, and at least the second violent sexual offense conviction is in New Mexico, the defendant shall be punished by a sentence of life imprisonment without the possibility of parole.

C. The sentence of life imprisonment shall be imposed after a sentencing hearing, separate from the trial or guilty plea proceeding resulting in the second violent sexual offense conviction, pursuant to the provisions of Section 31-18-26 NMSA 1978.

D. For the purposes of this section, a violent sexual offense conviction incurred by a defendant before he reaches the age of eighteen shall not count as a violent sexual offense conviction.

E. When a defendant has a felony conviction from another state, the felony conviction shall be considered a violent sexual offense for the purposes of the Criminal Sentencing Act if the crime would be considered a violent sexual offense in New Mexico.

F. As used in the Criminal Sentencing Act, "violent sexual offense" means:

(1) criminal sexual penetration in the first degree, as provided in Subsection C of Section 30-9-11 NMSA 1978; or

(2) criminal sexual penetration in the second degree, as provided in Subsection D of Section 30-9-11 NMSA 1978."

Section 2

Section 2. Section 31-21-10 NMSA 1978 (being Laws 1980, Chapter 28, Section 1, as amended) is amended to read:

"31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

A. An inmate of an institution who was sentenced to life imprisonment as the result of the commission of a capital felony, who was convicted of three violent felonies and sentenced pursuant to Sections 31-18-23 and 31-18-24 NMSA 1978 or who was convicted of two violent sexual offenses and sentenced pursuant to Subsection A of Section 31-18-25 NMSA 1978 and Section 31-18-26 NMSA 1978 becomes eligible for a parole hearing after he has served thirty years of his sentence. Before ordering the parole of an inmate sentenced to life imprisonment, the board shall:

(1) interview the inmate at the institution where he is committed;

(2) consider all pertinent information concerning the inmate, including:

(a) the circumstances of the offense;

(b) mitigating and aggravating circumstances;

(c) whether a deadly weapon was used in the commission of the offense;

(d) whether the inmate is a habitual offender;

(e) the reports filed under Section

31-21-9 NMSA 1978; and

(f) the reports of such physical and mental examinations as have been made while in prison;

(3) make a finding that a parole is in the best interest of society and the inmate; and

(4) make a finding that the inmate is able and willing to fulfill the obligations of a law-abiding citizen.

If parole is denied, the inmate sentenced to life imprisonment shall again become entitled to a parole hearing at two-year intervals. The board may, on its own motion, reopen any case in which a hearing has already been granted and parole denied.

B. Unless the board finds that it is in the best interest of society and the parolee to reduce the period of parole, a person who was convicted of a capital felony shall be required to undergo a minimum period of parole of five years. During the period of parole, the person shall be under the guidance and supervision of the board.

C. An inmate who was convicted of a first, second or third degree felony and who has served the sentence of imprisonment imposed by the court in a corrections facility designated by the corrections department shall be required to undergo a two-year period of parole. An inmate who was convicted of a fourth degree felony and who has served the sentence of imprisonment imposed by the court in a corrections facility designated by the corrections department shall be required to undergo a one-year period of parole. During the period of parole, the person shall be under the guidance and supervision of the board.

D. Every person while on parole shall remain in the legal custody of the institution from which he was released, but shall be

subject to the orders of the board. The board shall furnish to each inmate as a prerequisite to his release under its supervision a written statement of the conditions of parole that shall be accepted and agreed to by the inmate as evidenced by his signature affixed to a duplicate copy to be retained in the files of the board. The board shall also require as a prerequisite to release the submission and approval of a parole plan. If an inmate refuses to affix his signature to the written statement of the conditions of his parole or does not have an approved parole plan, he shall not be released and shall remain in the custody of the corrections facility in which he has served his sentence, excepting parole, until such time as the period of parole he was required to serve, less meritorious deductions, if any, expires, at which time he shall be released from that facility without parole, or until such time that he evidences his acceptance and agreement to the conditions of parole as required or receives approval for his parole plan or both. Time served from the date that an inmate refuses to accept and agree to the conditions of parole or fails to receive approval for his parole plan shall reduce the period, if any, to be served under parole at a later date. If the district court has ordered that the inmate make restitution to a victim as provided in Section 31-17-1 NMSA 1978, the board shall include restitution as a condition of parole. The board shall also personally apprise the inmate of the conditions of parole and his duties relating thereto.

E. When a person on parole has performed the obligations of his release for the period of parole provided in this section, the board shall make a final order of discharge and issue him a certificate of discharge.

F. Pursuant to the provisions of Section 31-18-15 NMSA 1978, the board shall require the inmate as a condition of parole:

(1) to pay the actual costs of his parole services to the adult probation and parole division of the corrections department for deposit to the corrections department intensive supervision fund not exceeding one thousand twenty dollars ($1,020) annually to be paid in monthly installments of not less than fifteen dollars ($15.00) and not more than eighty-five dollars ($85.00), subject to modification by the adult probation and parole division on the basis of changed financial circumstances; and

(2) to reimburse a law enforcement agency or local crime stopper program for the amount of any reward paid by the agency or program for information leading to his arrest, prosecution or conviction.

G. The provisions of this section shall apply to all inmates except geriatric, permanently incapacitated and terminally ill inmates eligible for the medical and geriatric parole program as provided by the Parole Board Act."

Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 311, AS AMENDED

CHAPTER 141

RELATING TO INSURANCE; ENACTING THE DOMESTIC ABUSE INSURANCE PROTECTION ACT; PROHIBITING INSURERS FROM DISCRIMINATING AGAINST PERSONS ON THE BASIS OF DOMESTIC ABUSE; PROVIDING PENALTIES; 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 New Mexico Insurance Code is enacted to read:

"SHORT TITLE.--Sections 1 through 10 of this act may be cited as the "Domestic Abuse Insurance Protection Act"."

Section 2

Section 2. A new section of the New Mexico Insurance Code is enacted to read:

"PURPOSE OF ACT.--The purpose of the Domestic Abuse Insurance Protection Act is to prohibit insurers from unlawfully discriminating on the basis of domestic abuse by using the fact of domestic abuse or the insurer's determination of

a person's abuse status as an insurance criterion or rating factor. The Domestic Abuse Insurance Protection Act protects victims of domestic abuse, domestic abuse shelters and others from being unlawfully discriminated against in insurance matters."

Section 3

Section 3. A new section of the New Mexico Insurance Code is enacted to read:

"DEFINITIONS.--As used in the Domestic Abuse Insurance Protection Act:

A. "abuse-related medical condition" means a medical condition sustained by a victim of domestic abuse that arises in whole or in part out of an act or pattern of abuse;

B. "abuse status" means the fact or the determination by the insurer that a person is a victim of domestic abuse, irrespective of whether the person has sustained abuse-related medical conditions;

C. "confidential abuse information" means information about acts of domestic abuse or abuse status, the work or home address or telephone number of a victim of domestic abuse or the status of an applicant or insured as a family member, employer or associate of a victim of domestic abuse or a person with whom an applicant or insured is known to have a direct, close personal, family or abuse-related counseling relationship;

D. "domestic abuse" means an act of abuse against a person, an abuse-related medical condition suffered by a person or the abuse status of a person, including a minor, that was caused by a family member or a current or former household member, intimate partner or caretaker, including the following:

(1) attempting to cause or intentionally, knowingly or recklessly causing bodily injury to, physical harm to, severe emotional distress to, psychological trauma to or sexual assault on or attempting to rape or raping another person;

(2) knowingly engaging in a course of conduct or repeatedly committing acts, including harassment or stalking, that are intended to or would cause a reasonable person, or do cause a person, to feel terrorized or seriously threatened that death, bodily harm, sexual assault, confinement or restraint may result;

(3) subjecting another person to false imprisonment; or

(4) attempting to cause or intentionally, knowingly or recklessly causing damage to property for the purpose of intimidating or attempting to control the behavior of another person;

E. "insured" means an individual named on a policy as the one with legal rights to the benefits provided by the policy, except for life insurance, for which "insured" means the individual whose life is covered by the policy. For group insurance, "insured" includes an individual who is a beneficiary covered by a group policy. For any insurance policy, "insured" does not include a person who commits an act of domestic abuse;

F. "insurer" means every person engaged as principal or indemnitor, surety or contractor in the business of entering into contracts of insurance, including life insurance, health insurance, automobile insurance, disability insurance and property and casualty insurance, and includes the insurance services offered by fraternal benefit societies, nonprofit health care plans, health maintenance organizations, prepaid dental services organizations, motor clubs, agents, brokers, solicitors, adjusters and all other persons engaged in a business that is now or later becomes subject to the superintendent's supervision pursuant to the Insurance Code, as well as all alien and foreign insurers delivering or issuing for delivery in New Mexico a certificate or other evidence of insurance coverage;

G. "person" means an individual or entity;

H. "policy" means a contract of insurance, certificate, indemnity, suretyship or annuity issued by an insurer, including endorsements or riders to an insurance policy or contract, and includes a contract, certificate or agreement offered by an insurer to provide, deliver, arrange for, pay for or reimburse any of the costs of insurance services. As applied to a health plan, "policy" includes a plan that is accident only, credit health, dental, vision, medicare supplement or long-term care insurance, coverage issued as a supplement to liability insurance, short-term or catastrophic health insurance plan and a plan that pays on a cost-incurred basis; and

I. "victim of domestic abuse" means a person against whom domestic abuse is directed."

Section 4

Section 4. A new section of the New Mexico Insurance Code is enacted to read:

"UNFAIR DISCRIMINATION ON THE BASIS OF A PERSON'S ABUSE STATUS PROHIBITED.--

A. An insurer or any person employed by or contracting with an insurer shall not engage in an unfair discriminatory act or

practice against a person on the basis of a person's abuse status, including:

(1) denying, refusing to issue, renew or reissue or canceling or otherwise terminating a policy, restricting or excluding coverage or benefits of a policy or charging a higher premium for a policy on the basis of a person's abuse status;

(2) terminating group health coverage for a victim of domestic abuse because coverage was originally issued in the name of an alleged abuser who has divorced, separated from or lost custody of a victim of domestic abuse or because the alleged abuser's coverage has terminated voluntarily or involuntarily. Nothing in this paragraph prohibits an insurer from requiring a victim of domestic abuse to pay the full premium for health insurance coverage or from requiring as a condition of coverage that a victim of domestic abuse reside or work within the insurer's service area, if the requirements are applied to all insureds. The insurer may terminate group health coverage for a victim of domestic abuse after the continuation coverage required by this subsection has been in force for eighteen months if the insurer offers conversion to an equivalent individual plan. The continuation coverage required in this subsection may be satisfied by coverage that is provided under the Consolidated Omnibus Budget Reconciliation Act of 1985 to a victim of domestic abuse and is not intended to be in addition to coverage provided under that act;

(3) disclosing or transferring confidential abuse information when the insurer or its employee or contractor has information in its possession that clearly indicates that the applicant or insured is a subject of domestic abuse. The provisions of this paragraph do not prohibit disclosure of information:

(a) to a victim of domestic abuse or an individual specifically designated in writing by the victim, and nothing in this section prohibits a victim of domestic abuse from obtaining the victim's own insurance records;

(b) to a health care provider for the direct provision of health care services;

(c) to a licensed physician identified and designated by the victim of domestic abuse;

(d) pursuant to an order of the superintendent or a court of competent jurisdiction, or as otherwise required by law;

(e) when necessary for a valid business purpose to transfer information that includes confidential abuse information that cannot reasonably be segregated without undue hardship or that is relevant to processing a claim, provided the recipient has agreed to be bound by the provisions of the Domestic Abuse Insurance Protection Act in all respects and to be subject to enforcement of that act in the courts of this state, and the information is disclosed or transferred only: 1) to a reinsurer that seeks to indemnify or indemnifies all or part of a policy covering a victim of domestic abuse and that cannot underwrite or satisfy its obligations under the reinsurance agreement without the information; 2) to a party to a proposed or consummated sale, transfer, merger or consolidation of all or part of the business of the insurer; 3) to medical or claims personnel contracting with the insurer, its parent or affiliated companies that have service agreements with the insurer, but only when necessary to process an application or claim, perform the insurer's duties under the policy or protect the safety or privacy of a victim of domestic abuse; or 4) with respect to address and telephone number, to entities with which the insurer transacts business when the business cannot be transacted without the address or telephone number;

(f) to an attorney who needs the information to represent the insurer effectively, provided the insurer notifies the attorney of its obligations under the Domestic Abuse Insurance Protection Act and requires that the attorney exercise due diligence to protect confidential abuse information consistent with the attorney's obligation to represent the insurer;

(g) to the policy owner or assignee, in the course of delivery of the policy, if the policy contains information about abuse status; or

(h) to any other entities deemed appropriate by the superintendent; or

(4) requesting information about an applicant's or insured's abuse status, or making use of this information, however obtained, except:

(a) for the limited purpose of complying with legal obligations;

(b) when verifying a person's claim to be a victim of domestic abuse or to be suffering from an abuse-related medical condition; or

(c) when cooperating with a victim of domestic abuse in seeking protection from abuse or facilitating the treatment of an abuse-related medical condition.

B. An insurer may deny a claim when the damage or loss is the result of intentional conduct by a named insured who commits an act of domestic abuse, except that the insurer shall make a payment on such a claim to an innocent insured victim of domestic abuse to the extent of that insured's interest in the property and within the limits of coverage where the damage was proximately related to and in furtherance of domestic abuse. An insurer paying such a claim for property damage shall be subrogated to the rights of the innocent insured claimant to recover for any damages paid by the insurance.

C. The provisions of this section apply to and protect the following applicants for insurance or insured persons, excluding a person who commits an act of domestic abuse, from an unfair discriminatory act or practice on the basis of any person's abuse status:

(1) a victim of domestic abuse;

(2) a person that provides shelter, counseling or protection to victims of domestic abuse;

(3) a person who employs or is employed by a victim of domestic abuse;

(4) a person with whom an applicant or insured is known to have a direct, close personal, family or abuse-related counseling relationship;

(5) a beneficiary of an insurance contract; or

(6) a participant in an insurance plan.

D. Nothing in the Domestic Abuse Insurance Protection Act prohibits a life insurer from declining to issue a life insurance policy if the applicant or prospective owner of the policy is or would be designated as a beneficiary of the policy and if:

(1) the applicant or prospective owner of the policy lacks an insurable interest in the insured;

(2) the applicant or prospective owner of the policy is known, on the basis of medical, police or court records, to have committed an act of domestic abuse against the proposed insured; or

(3) the insured or prospective insured is a victim of domestic abuse, and that person, or a person who has assumed the care of that person if a minor or incapacitated, has objected to the issuance of the policy on the ground that the policy would be issued to or for the direct or indirect benefit of the abuser.

E. An insurer shall not be civilly or criminally liable for the death of or injury to an insured resulting from an action taken in a good faith effort to comply with the requirements of the Domestic Abuse Insurance Protection Act. The provisions of this subsection do not, however, prevent an action by the superintendent to investigate a violation of that act or to assert any other claims authorized by law.

F. Nothing in the Domestic Abuse Insurance Protection Act prohibits an insurer from asking about a medical condition, claims history or other underwriting information or from using that information to underwrite or to carry out its duties under the policy, even if the information is related to a condition or event that the insurer knows or has reason to know is abuse-related.

G. An insurer shall not be liable for a violation of the Domestic Abuse Insurance Protection Act by a person who is a contractor with the insurer unless the insurer directed the act or omission that constitutes the violation."

Section 5

Section 5. A new section of the New Mexico Insurance Code is enacted to read:

"JUSTIFICATION OF ADVERSE INSURANCE UNDERWRITING DECISIONS.--An insurer that takes an underwriting action that adversely affects a victim of domestic abuse on the basis of a medical condition, claims history or other underwriting information that the insurer knows is abuse-related shall explain the reason for its action to the applicant or insured in writing and, upon request, shall be able to demonstrate that its action and any applicable plan provision:

A. does not treat abuse status as a medical condition or underwriting criterion;

B. is otherwise permissible by law and applies in the same manner and to the same extent to all applicants and insureds with a similar condition or claims history without regard to whether the condition, history or claim is abuse-related; and

C. is based on a determination, made in conformance with sound actuarial principles and supported by reasonable statistical evidence, or related to actual or reasonably anticipated experience, that there is a correlation between the medical condition, claims history or other underwriting information and a material increase in insurance risk."

Section 6

Section 6. A new section of the New Mexico Insurance Code is enacted to read:

"INSURANCE COMPANY PROCEDURES TO PROTECT THE SAFETY AND PRIVACY OF VICTIMS OF DOMESTIC ABUSE.--The superintendent, in consultation with public safety officials who specialize in domestic abuse matters or with a recognized domestic abuse advocacy group, shall adopt regulations that specify procedures to be followed by an insurer's employees, contractors, agents and brokers for the purpose of protecting the safety and privacy of victims of domestic abuse involved in an insurance action, including claims investigation and subrogation."

Section 7

Section 7. A new section of the New Mexico Insurance Code is enacted to read:

"RULES AND REGULATIONS.--The superintendent may adopt, in accordance with Section 59A-2-9 NMSA 1978, rules and regulations necessary to administer provisions of the Domestic Abuse Insurance Protection Act."

Section 8

Section 8. A new section of the New Mexico Insurance Code is enacted to read:

"LAWFUL POLICY TERMS AND CONDITIONS PRESERVED.--Nothing in the Domestic Abuse Insurance Protection Act shall be construed to alter, modify or prohibit the application of any policy provision that excludes coverage for intentional or criminal acts or any other policy conditions, exclusions or limitations that are clearly stated in the policy and that are not in violation of any provisions of the Domestic Abuse Insurance Protection Act."

Section 9. A new section of the New Mexico Insurance Code is enacted to read:

"APPLICABILITY.--The provisions of the Domestic Abuse Insurance Protection Act apply to all insurers as defined in that act, including the following:

A. fraternal benefit societies pursuant to Chapter 59A, Article 44 NMSA 1978;

B. health maintenance organizations and their promoters, sponsors, directors, officers, employees, agents, solicitors and other representatives pursuant to Chapter 59A, Article 46 NMSA 1978;

C. health care plans and their promoters, sponsors, directors, officers, employees, agents, solicitors and other representatives pursuant to Chapter 59A, Article 47 NMSA 1978;

D. prepaid dental plan organizations and their sponsors, directors, officers, personnel and representatives and member contracts pursuant to Chapter 59A, Article 48 NMSA 1978; and

E. motor clubs and their sponsors, directors, officers, representatives, personnel and operations pursuant to Chapter 59A, Article 50 NMSA 1978."

Section 10

Section 10. A new section of the New Mexico Insurance Code is enacted to read:

"CIVIL ADMINISTRATIVE PENALTY--SUPERINTENDENTS ORDERS.--

A. In lieu of the civil administrative penalty provided for in Subsection B of Section 59A-1-18 NMSA 1978, and except as otherwise provided in this section, a separate civil administrative penalty may be assessed for a second or subsequent violation of the Domestic Abuse Insurance Protection Act. That administrative penalty shall be not over ten thousand dollars ($10,000) for each violation, except that if the violation is to be found willful and intentional, the penalty may be up to twenty thousand dollars ($20,000) for each violation. Every administrative penalty shall be imposed by written order of the superintendent made after hearing held as provided in Chapter 59A, Article 4 NMSA 1978.

B. A monetary penalty imposed may be in addition to any applicable suspension, revocation or denial of a license or certificate of authority.

C. The superintendent may issue any order he deems necessary or appropriate to prevent or correct any violation, including a first-

time violation, of the Domestic Abuse Insurance Protection Act, except the initial order on a first-time violation may not require a suspension, revocation or denial of a license or certificate of authority. If, however, that initial order of the superintendent is violated, he may then impose the monetary penalty authorized in this section in addition to any applicable suspension, revocation or denial of a license or certificate of authority or take any other action authorized in the Insurance Code."

Section 11

Section 11. Section 59A-16-20 NMSA 1978 (being Laws 1984, Chapter 127, Section 286, as amended) is amended to read:

"59A-16-20. UNFAIR CLAIMS PRACTICES DEFINED AND PROHIBITED.--Any and all of the following practices with respect to claims, by an insurer or other person, knowingly committed or performed with such frequency as to indicate a general business practice, are defined as unfair and deceptive practices and are prohibited:

A. misrepresenting to insureds pertinent facts or policy provisions relating to coverages at issue;

B. failing to acknowledge and act reasonably promptly upon communications with respect to claims from insureds arising under policies;

C. failing to adopt and implement reasonable standards for the prompt investigation and processing of insureds' claims arising under policies;

D. failing to affirm or deny coverage of claims of insureds within a reasonable time after proof of loss requirements under the policy have been completed and submitted by the insured;

E. not attempting in good faith to effectuate prompt, fair and equitable settlements of an insured's claims in which liability has become reasonably clear;

F. failing to settle all catastrophic claims within a ninety-day period after the assignment of a catastrophic claim number when a catastrophic loss has been declared;

G. compelling insureds to institute litigation to recover amounts due under policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds when such insureds have made claims for amounts reasonably similar to amounts ultimately recovered;

H. attempting to settle a claim by an insured for less than the amount to which a reasonable person would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;

I. attempting to settle claims on the basis of an application that was altered without notice to, or knowledge or consent of, the insured, his representative, agent or broker;

J. failing, after payment of a claim, to inform insureds or beneficiaries, upon request by them, of the coverage under which payment has been made;

K. making known to insureds or claimants a practice of insurer of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

L. delaying the investigation or payment of claims by requiring an insured, claimant or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

M. failing to settle an insured's claims promptly where liability has become apparent under one portion of the policy coverage in order to influence settlement under other portions of the policy coverage;

N. failing to promptly provide an insured a reasonable explanation of the basis relied on in the policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement; or

O. violating a provision of the Domestic Abuse Insurance Protection Act."

Section 13

Section 13. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BUSINESS AND INDUSTRY

COMMITTEE SUBSTITUTE FOR

HOUSE BILL 346, AS AMENDED

CHAPTER 142

RELATING TO MUNICIPALITIES; ALLOWING CERTAIN MUNICIPALITIES TO CONDUCT AN ELECTION PRIOR TO CHANGING THE ZONING OR USE OF CERTAIN AREAS.

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

Section 1

Section 1. A new section of the Municipal Code is enacted to read:

"CERTAIN MUNICIPALITIES--CHANGING THE ZONING OR USE OF CERTAIN AREAS--ELECTION ALLOWED.--A municipality that has a population of one thousand five hundred or less at the last federal decennial census and that is partially bordered, at the time of that census, by federal land managed by the United States forest service, may change the zoning or use of any land acquired by first submitting the question to the voters at a general election or at a special election called for that purpose if the acquired land:

A. was acquired by the municipality from or with the permission of the United States forest service;

B. lies adjacent to the municipality's geographical boundary; and

C. is zoned or used at the time of acquisition for recreation, school sites, greenbelt or buffer land."

HOUSE BILL 411, AS AMENDED

CHAPTER 143

RELATING TO WINE EXCISE TAX; AMENDING SECTIONS OF THE NMSA 1978.

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, cider 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) "cider" means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe apples that contains not less than one-half of one percent of alcohol by volume and not more than seven percent of alcohol by volume;

(4) "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

(5) "wine" includes the words "fruit juices" and means alcoholic beverages, other than cider, 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. "microbrewer" means any person who produces fewer 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 fewer than three hundred seventy-five 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 microbrewer and sold in this state, provided that proof is furnished to the department that the beer was manufactured or produced by a microbrewer, twenty-five cents ($.25) per gallon;

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 liters but less than three hundred seventy-five thousand liters; and

G. on cider, forty-one cents ($.41) per gallon."

Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 498, AS AMENDED

CHAPTER 144

RELATING TO DRINKING WATER FACILITIES; CREATING A REVOLVING LOAN FUND; ENACTING THE DRINKING WATER STATE REVOLVING LOAN FUND ACT; AUTHORIZING ISSUANCE OF DRINKING WATER BONDS BY THE NEW MEXICO FINANCE AUTHORITY; AMENDING A CERTAIN SECTION 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 9 of this act may be cited as the "Drinking Water State Revolving Loan Fund Act".

Section 2

Section 2. PURPOSE.--The purpose of the Drinking Water State Revolving Loan Fund Act is to provide local authorities in New Mexico with low-cost financial assistance in the construction and rehabilitation of necessary drinking water facilities through the creation of a self-sustaining revolving loan program so as to improve and protect drinking water quality and public health.

Section 3

Section 3. DEFINITIONS.--As used in the Drinking Water State Revolving Loan Fund Act:

A. "authority" means the New Mexico finance authority;

B. "department" means the department of environment;

C. "drinking water facility construction project" means the acquisition, design, construction, improvement, expansion, repair or rehabilitation of all or part of any structure, facility or equipment necessary for a drinking water system or water supply systems;

D. "drinking water supply facility" means any structure, facility or equipment necessary for a drinking water system or water supply system;

E. "financial assistance" means loans, the purchase or refinancing of debt obligation of a local authority at an interest rate that is less than or equal to the market interest rate in any case in which a debt obligation is incurred after July 1, 1993, loan guarantees, bond insurance or security for revenue bonds issued by the authority;

F. "fund" means the drinking water state revolving loan fund;

G. "local authority" means any municipality, county, incorporated county, sanitation district, water and sanitation district or any similar district, water cooperative or association or any similar organization, or any other agency created pursuant to a joint powers agreement acting on behalf of any entity listed in this subsection with a publicly owned drinking water system or water supply system which qualifies as community water system or nonprofit noncommunity system

as defined by the Safe Drinking Water Act. "Local authority" does not include systems owned by federal agencies;

H. "operate and maintain" means to perform all necessary activities, including the replacement of equipment or appurtenances, to assure the dependable and economical function of a drinking water facility in accordance with its intended purpose; and

I. "Safe Drinking Water Act" means the federal Safe Drinking Water Act as amended in 1996 and its subsequent amendments or successor provisions.

Section 4

Section 4. FUND CREATED--ADMINISTRATION.--

A. There is created in the authority a revolving loan fund to be known as the "drinking water state revolving loan fund", which shall be administered by the authority. The authority is authorized to establish procedures required to administer the fund in accordance with the Safe Drinking Water Act and state laws. The authority and the department shall, whenever possible, coordinate application procedures and funding cycles with the New Mexico Community Assistance Act.

B. The following shall be deposited directly in the fund:

(1) grants from the federal government or its agencies allotted to the state for capitalization of the fund;

(2) funds as appropriated by the legislature to implement the provisions of the Drinking Water State Revolving Loan Fund Act or to provide state matching funds that are required by the terms of any federal grant under the Safe Drinking Water Act;

(3) loan principal, interest and penalty payments if required by the terms of any federal grant under the Safe Drinking Water Act;

(4) any other public or private money dedicated to the fund; and

(5) revenue transferred from other state revolving funds.

C. Money in the fund is appropriated for expenditure by the authority in a manner consistent with the terms and conditions of the

federal capitalization grants and the Safe Drinking Water Act and may be used:

(1) to provide loans for the construction or rehabilitation of drinking water facilities;

(2) to buy or refinance the debt obligation of a local authority, if combined with a new project, at an interest rate that is less than or equal to the market interest rate in any case in which a debt obligation is incurred after July 1, 1993;

(3) to guarantee or purchase insurance for obligations of local authorities to improve credit market access or reduce interest rates;

(4) to provide loan guarantees for similar revolving funds established by local authorities; and

(5) to provide a source of revenue or security for the repayment of principal and interest on bonds issued by the authority if the proceeds of the bonds are deposited in the fund or if the proceeds of the bonds are used to make loans to local authorities to the extent provided in the terms of the federal grant.

D. If needed to cover administrative expenses, pursuant to procedures established by the authority, the authority may impose and collect a fee from each local authority that receives financial assistance from the fund, which fee shall be used solely for the costs of administering the fund and which fee shall be kept outside the fund.

E. Money not currently needed for the operation of the fund or otherwise dedicated may be invested pursuant to the New Mexico Finance Authority Act and all interest earned on such investments shall be credited to the fund. Money remaining in the fund at the end of the fiscal year shall not revert to the general fund but shall accrue to the credit of the fund.

F. The authority shall maintain full authority for the operation of the fund in accordance with applicable federal and state law, including, but not limited to, in cooperation with the department, ensuring the loan recipients are on the state priority list or otherwise satisfy the Safe Drinking Water Act requirements.

G. The authority shall establish fiscal controls and accounting procedures that are sufficient to assure proper accounting for fund payments, disbursements and balances and shall provide, in

cooperation with the department, a biannual report and an annual independent audit on the fund to the governor and to the United States environmental protection agency as required by the Safe Drinking Water Act.

Section 5

Section 5. LOAN PROGRAM-- ADMINISTRATION.--

A. The authority shall establish a program to provide financial assistance from the fund to local authorities, individually or jointly, for acquisition, construction or modification of drinking water facilities. The authority is authorized to enter into memoranda of understanding, contracts and other agreements to carry out the provisions of the Drinking Water State Revolving Loan Fund Act, including but not limited to memoranda of understanding, contracts and agreements with federal agencies, the department, local authorities and other parties.

B. The department shall adopt, by regulation, a system for the ranking of drinking water facility construction projects requesting financial assistance and for the development of a priority list which will be part of the annual intended use plan, as required by the Safe Drinking Water Act.

C. The department shall adopt regulations or internal procedures addressing the mechanism for the preparation of the annual intended use plan and the content of such plan and shall prepare such plan, with the assistance of the authority, as required by the Safe Drinking Water Act and the capitalization grant agreement.

The department shall review all proposals for drinking water facility construction projects, including, but not limited to, project plans and specifications for compliance with the requirements of the Safe Drinking Water Act and the requirements of state laws and regulations governing the construction and operation of drinking water supply facilities. The department also shall determine whether a local authority has demonstrated adequate technical and managerial capability to operate the drinking water supply facility for its useful life in compliance with the requirements of the Safe Drinking Water Act and with the requirements of state laws and regulations governing the operation of drinking water supply facilities.

D. The department and the authority shall enter into an agreement for the purpose of describing and allocating duties and responsibilities with respect to monitoring the construction of drinking

water facility construction projects that have been provided financial assistance pursuant to the provisions of the Drinking Water State Revolving Loan Fund Act to ensure compliance with the requirements of the Safe Drinking Water Act and with the requirements of state laws and regulations governing construction and operation of drinking water supply facilities.

E. The department shall adopt regulations or internal procedures establishing the criteria and method for the distribution of annual capitalization grant funds between the fund and the nonproject activities (set-asides) allowed by the Safe Drinking Water Act and for the description in the intended use plan and annual report of the financial programmatic status of the nonproject activities (set-asides) allowed by the Safe Drinking Water Act.

F. The authority, with the assistance of the department, shall establish procedures to identify affordability criteria for a disadvantaged community and to extend a program to assist such communities.

G. The department shall set up separate accounts outside the fund to use for nonproject (set-asides) activities authorized under the Safe Drinking Water Act, Sections 1452 (g) and 1452 (k), and the authority shall set up a separate account outside the fund for administration of the fund. The department shall also provide the additional match for Safe Drinking Water Act, Section 1452 (g) (2) activities.

H. The department shall prepare and submit applications for capitalization grants to the United States environmental protection agency as required by the Safe Drinking Water Act.

Section 6

Section 6. FINANCIAL ASSISTANCE--CRITERIA.--

A. Financial assistance shall be provided only to local authorities that:

(1) meet the requirements for financial capability set by the authority to assure sufficient revenues to operate and maintain the drinking water facility for its useful life and to repay the financial assistance;

(2) appear on the priority list for the fund, developed and maintained by the department, regardless of rank on such list;

(3) are considered by the authority and the department ready to proceed with the project;

(4) demonstrate adequate technical and managerial capability to operate the drinking water facility for its useful life; and

(5) meet other requirements established by the authority and state laws, including, but not limited to, procurement, recordkeeping and accounting.

B. Loans from the fund shall be made by the authority only to local authorities that establish one or more dedicated sources of revenue to repay the money received from the fund and to provide for operation, maintenance and equipment replacement expenses of the drinking water facility proposed for funding.

C. The authority, with assistance from the department, shall establish procedures addressing methods to provide financial assistance to local authorities in accordance with the criteria set forth in the Safe Drinking Water Act, Section 1452 (a) (3).

D. Each loan made by the authority shall provide that repayment of the loan shall begin not later than one year after completion of construction of the drinking water facility for which the loan was made and shall be repaid in full no later than twenty years after completion of the construction, except in the case of a disadvantaged community in which case the authority may extend the term of the loan, as long as the extended term:

(1) terminates not later than the date that is thirty years after the date of project completion; and

(2) does not exceed the expected design life of the project.

E. Financial assistance may be made with an annual interest rate which is less than a market rate as determined by procedures established by the authority and reported annually in the intended use plan prepared by the department, with the assistance of the authority.

F. Financial assistance pursuant to the Drinking Water State Revolving Loan Fund Act shall not be given to a local authority, if the authority determines that the financial assistance is for a drinking water facility to be constructed in fulfillment or partial fulfillment of requirements made of a subdivider under the provisions of the Land Subdivision Act or the New Mexico Subdivision Act.

G. Financial assistance may be made to local authorities that employ or contract with a registered professional engineer to provide and be responsible for engineering services on the drinking water facility. Such services, if the authority determines such services are needed, may include, but are not limited to, an engineering report, facility plans, environmental evaluations, construction contract documents, supervision of construction and start-up services.

H. Financial assistance shall be made only for eligible items as described by authority procedures and as identified pursuant to the Safe Drinking Water Act.

Section 7

Section 7. DEPARTMENT DUTIES--POWERS.--

A. The department with the approval of the governor and as authorized in the intended use plan may transfer up to one-third of a wastewater facility construction loan fund capitalization grant to the drinking water state revolving loan fund; provided the Wastewater Facility Construction Loan Act is amended to allow for such transfer. This provision is available one year after the receipt of the first full capitalization grant for the Drinking Water State Revolving Loan Fund Act and will expire with the capitalization grant of the year 2002. Before the department makes the transfer, the department shall:

(1) outline the transfer in the applicable intended use plans for both the drinking water state revolving loan fund and the wastewater facility construction loan fund; and

(2) report the intended transfer to the legislature.

B. The department in the annual intended use plan shall certify to the United States environmental protection agency the progress made regarding operator certification and capacity development programs as they relate to the receipt of capitalization grants available from the environmental protection agency under the Safe Drinking Water Act.

Section 8

Section 8. AUTHORITY DUTIES--POWERS.--

A. The authority with the approval of the governor and as authorized in the intended use plan may transfer up to one-third of a drinking water state revolving loan fund capitalization grant to the wastewater facility construction loan fund. This provision is available one year after the receipt of the first full capitalization grant and will expire with the capitalization grant of the year 2002. Before the authority makes the transfer, the authority shall:

(1) outline the transfer in the applicable intended use plans for both the drinking water state revolving loan fund and the wastewater facility construction loan fund; and

(2) report the intended transfer to the legislature.

B. The authority will have the power:

(1) to foreclose upon or attach any drinking water facility, property or interest in the facility pledged, mortgaged or otherwise available as security for a project financed in whole or in part pursuant to the Drinking Water State Revolving Loan Fund Act in the event of a default by a local authority;

(2) to acquire and hold title to or leasehold interest in real and personal property and to sell, convey or lease that property for the purpose of satisfying a default or enforcing the provisions of a loan agreement; and

(3) to enforce its rights by suit or mandamus or may utilize all other available remedies under state law in the event of default by a local authority.

C. The authority will have the power to issue bonds or refunding bonds pursuant to the New Mexico Finance Authority Act and the Drinking Water State Revolving Loan Fund Act when the authority determines that a bond issue is required or desirable to implement the provisions of the Drinking Water State Revolving Loan Fund Act.

D. As security for the payment of the principal and interest on bonds issued by the authority, the authority is authorized to pledge, transfer and assign:

(1) any obligations of each local authority, payable to the authority;

(2) the security for the local authority obligations;

(3) any grant, subsidy or contribution from the United States or any of its agencies or instrumentalities; or

(4) any income, revenues, funds or other money of the authority from any other source appropriated or authorized for use for the purpose of implementing the provisions of the Drinking Water State Revolving Loan Fund Act, including the fund.

E. The bonds and other obligations issued by the authority shall be issued and delivered in accordance with the provisions of the New Mexico Finance Authority Act and may be sold at any time the authority determines appropriate. The authority may apply the proceeds of the sale of the bonds to:

(1) the purposes of the Drinking Water State Revolving Loan Fund Act or the purposes for which the fund may be used;

(2) the payment of interest on bonds issued by the authority for a period not to exceed three years from the date of issuance of the bonds; and

(3) the payment of all expenses, including publication and printing charges, attorney fees, financial advisory and underwriter fees and premiums or commissions that the authority determines are necessary or advantageous in connection with the recommendation, advertisement, sale, creation and issuance of bonds.

F. In the event that funds are not available for a loan for a drinking water facility project when application is made, in order to accelerate the completion of any drinking water facility project, the local authority may, with the approval of the authority, obligate such local authority to provide local funds to pay that portion of the cost of the drinking water facility project that the authority agrees to make available by loan, and the authority may reimburse the amount expended on its behalf by the local authority.

G. Authority members or employees and any person executing bonds issued pursuant to the New Mexico Finance Authority Act and Drinking Water State Revolving Loan Fund Act shall not be liable personally on such bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

H. All bonds, notes and certificates issued by the authority shall be special obligations of the authority, payable solely from the revenue, income, fees or charges that may, pursuant to the provisions of the New Mexico Finance Authority Act and the Drinking Water State Revolving Loan Fund Act, be pledged to the payment of such obligations, and the bonds, notes or certificates shall not create an obligation, debt or liability of the state. No breach of any pledge, obligation or agreement of the authority shall impose a pecuniary liability upon the state or a charge upon its general credit or taxing power.

Section 9

Section 9. AGREEMENT OF THE STATE NOT TO LIMIT OR ALTER RIGHTS OF OBLIGEES.--The state hereby pledges to and agrees with the holders of any bonds or other obligations issued under the Drinking Water State Revolving Loan Fund Act and with those parties that enter into contracts or agreements with the department or with the authority pursuant to the provisions of that act, that the state shall not limit, alter, restrict or impair any rights vested in the authority to fulfill the terms of agreements made with the holders of bonds or other obligations issued pursuant to the Drinking Water State Revolving Loan Fund Act and with the parties who may enter into contracts with a local authority, the department or the authority pursuant to the Drinking Water State Revolving Loan Fund Act, and that the state shall not limit, alter, restrict or impair the rights vested in a local authority or in the department or the authority to fulfill the terms of contracts made with the department or the authority and with parties who enter into contracts with such local authorities. The state further agrees that it shall not in any way impair the rights or remedies of the holders of such bonds or other obligations of such parties until such bonds and other obligations, together with interest thereon, with interest on any unpaid installment of interest and all costs and expense in connection

with any action or proceeding by or on behalf of such holders, are fully met and discharged and such contracts are fully performed on the part of the authority, the department or the local authorities. Nothing in this subsection precludes such limitation or alteration if and when adequate provision is made by law for the protection of the holders of bonds or other obligations issued by the authority or those entering into such contracts with the authority, or the authority or the department under any contract with a local authority. The authority or the department may include this pledge and undertaking for the state in such bonds or other obligations and in such contracts.

Section 10. COUNTY OR MUNICIPAL AUTHORITY REGARDING THE ENVIRONMENT.--Nothing in the Drinking Water State Revolving Loan Fund Act limits or is intended to limit any state, county or municipal statute, ordinance or regulation regarding the environment or the protection of health and safety.

Section 11. Section 6-21-6.1 NMSA 1978 (being Laws 1994, Chapter 145, Section 2, as amended) 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. The bonds may be issued in installments or at one time by the authority in amounts authorized by law. The net proceeds may be used for purposes of the Wastewater Facility Construction Loan Act, the Rural Infrastructure Act, the Solid Waste Act or the Drinking Water State Revolving Loan Fund Act.

B. Public projects funded pursuant to the Wastewater Facility Construction Loan Act, the Rural Infrastructure Act the Solid Waste Act or the Drinking Water State Revolving Loan Fund 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;

(3) the solid waste facility grant fund for purposes of the Solid Waste Act; or

(4) the drinking water state revolving loan fund for purposes of the Drinking Water State Revolving Loan Fund 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."

HOUSE BILL 592, AS AMENDED

CHAPTER 145

RELATING TO LAND; AMENDING SECTION 16-2-11 NMSA 1978 (BEING LAWS 1935, CHAPTER 57, SECTION 11, AS AMENDED) TO MAKE CHANGES IN THE LAW RELATING TO ACQUISITION OF LANDS FOR PARK AND RECREATIONAL PURPOSES AND TO RESTRICT THE USE OF THE TERMS "STATE PARK" OR "STATE RECREATIONAL AREA".

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

Section 1

Section 1. Section 16-2-11 NMSA 1978 (being Laws 1935, Chapter 57, Section 11, as amended) is amended to read:

"16-2-11. ACQUISITION OF LANDS FOR PARK AND RECREATIONAL PURPOSES--CRITERIA.--

A. The state is authorized to acquire lands or interests in lands for state park or state recreational purposes by gift, donation, devise or purchase. Acquired lands or interests in lands shall be held for the use of the state to

develop, maintain and operate them as state parks or state recreational

areas. In acquiring real property or any interest in real property, the power of eminent domain shall not be used. The criteria

for acquisition and development shall be those specified in Subsections B through G of this section.

B. Sites that may be designated as state parks or state recreational areas shall be only

those:

(1) having a diversity of resources, including areas of scientific, aesthetic, geologic, natural or historic value;

(2) providing recreational opportunities significant enough to assure patronage from a region or preferably from the state as a whole; and

(3) conforming to the state comprehensive outdoor recreation plan.

C. Lands designated for acquisition or development as state parks or state recreational areas shall be those that:

(1) are adjacent to existing parks or recreational areas and are necessary for successful park or recreational area protection and development;

(2) help meet recreation and open space demands of metropolitan area residents by emphasizing park or recreational areas within easy access of population centers;

(3) preserve the most significant examples of New Mexico natural scenic landscape; and

(4) meet the pressure on primary vacation regions not adequately supplied with public recreation opportunities.

D. Lands that are acquired or developed as state parks or state recreational areas shall be managed and developed according to the following objectives:

(1) outdoor recreation shall be recognized as the dominant or primary resources management objective;

(2) physical development shall promote the outdoor recreation objective through the use of proper design, materials and construction to enhance and promote the use and enjoyment of the recreational resources in the area;

(3) within economical limits, state parks or state recreational facilities shall be landscaped and developed to achieve an environment that is aesthetically pleasing, ecologically functional and complementary to the native environment;

(4) use periods for parks or recreational facilities shall be extended by providing a variety of facilities that will attract visitors during all seasons of the year; and

(5) all significant historic structures contained in state parks or state recreational areas shall be, within economical limits, reconstructed, restored or stabilized to provide for continued user benefit.

E. Factors to be taken into consideration when lands are considered for acquisition or development as state parks or state recreational areas are:

(1) the character of the land resources, such as soil, vegetation, topography and water, that affects the suitability of the lands for development as parks or recreational areas;

(2) facilities development to meet the average and slightly higher than average demands rather than the peak demands of summer and the holiday weekends;

(3) development priority based upon demonstrated use and demand, balance and distribution of existing facilities and the availability of lands suitable for development; and

(4) resources protection shall also be considered a priority if the resources need urgent attention, but the priority shall be determined by the relative value of the resources involved.

F. The cost of lands to be proposed for acquisition or development as state parks or state recreational areas should be reasonable, with consideration given to the recreational value of the land on which the state park or state recreational area is to be located. No property shall be purchased that involves commitments, privileges or conditions to any private interest, except that property may be purchased that has restrictions limiting its use to that of a state park or state recreational area.

G. All lands considered for acquisition or development as state parks or state recreational areas shall undergo a feasibility study prior to acquisition or development. Ongoing projects that have already

received an appropriation at the effective date of this section are exempted from the requirements of this section. Feasibility studies shall include:

(1) a determination that the proposed area meets the criteria set forth in this section;

(2) an estimate of the total development cost, including land acquisition, planning and construction and recommendations for methods of financing the development costs;

(3) an estimate of the annual costs for operation and maintenance;

(4) an estimate of demand and a projection of visitor use for the proposed area; and

(5) an analysis of the proposed area as it relates to plans or development by other governmental agencies or the private sector in adjacent areas.

H. The state is authorized, upon the execution of a written agreement between the director of the state park and recreation division and the department, service or agency of the United States having jurisdiction of lands of the United States, to develop, protect, maintain and operate in accordance with the agreement federally owned lands as state parks or state recreational areas, but the state may not acquire

the fee title to or a permanent right in the lands pursuant to such an agreement.

I. The designation of sites as suitable for state parks or recreation areas, the designation of certain lands for acquisition or development, the consideration of lands for acquisition or studying the feasibility of acquisition or development of lands shall not create a right of action on the part of any person to force action by the state park and recreation division or the state.

J. Any acquisition of land or any interest in land for state park or recreation purposes shall be approved by the legislature prior to the execution of a written agreement binding the state to expenditure of funds for acquisition or development of state parks or recreation areas.

K. Only lands or interests in lands acquired or retained in accordance with the provisions of this section and operated pursuant to

the authority of the state park and recreation division may use the designation of "state park" or "state recreational area"."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 227

CHAPTER 146

RELATING TO WORKERS' COMPENSATION; AMENDING THE GROUP SELF-INSURANCE ACT TO PERMIT ALTERNATIVE PREMIUM PAYMENT PLANS; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 52-6-19 NMSA 1978 (being Laws 1986, Chapter 22, Section 93, as amended) is amended to read:

"52-6-l9. PREMIUM PAYMENT--RESERVES.--

A. Each group shall establish to the satisfaction of the director a premium payment plan that shall include:

(1) an initial payment by each member of at least twenty-five percent of that member's annual premium before the start of the group's fund year; and

(2) payment of the balance of each member's annual premium in monthly or quarterly installments during that fund year.

B. Upon approval by the director, a group may establish an alternative premium payment plan that shall include:

(1) provision by each member of premium security by surety bond in an amount equal to at least twenty-five percent of the member's annual premium; provided that the surety bond shall be in a form acceptable to the group, shall be issued by a corporate surety company authorized to transact business in this state and shall be effective before the start of the group's fund year; and

(2) payment by each member of the member's annual premium in monthly or quarterly installments during the group's fund year.

C. Each group shall establish and maintain actuarially ap

propriate loss reserves that shall include reserves for:

(1) known claims and associated expenses; and

(2) claims incurred but not reported and associated expenses.

D. Each group shall establish and maintain bad debt reserves based on the historical experience of the group or other groups."

Section 2

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

HOUSE BILL 330, WITH EMERGENCY

SIGNED APRIL 9, 1997

CHAPTER 147

RELATING TO AGRICULTURE; CREATING THE NEW MEXICO SHEEP AND GOAT COUNCIL; ESTABLISHING MEMBERSHIP, POWERS AND DUTIES; AUTHORIZING AN ASSESSMENT; 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 "New Mexico Sheep and Goat Act".

Section 2

Section 2.--DEFINITIONS.--As used in the New Mexico Sheep and Goat Act:

A. "board" means the New Mexico livestock board;

B. "council" means the New Mexico sheep and goat council;

C. "department" means the New Mexico department of agriculture;

D. "director" means the director of the New Mexico department of agriculture;

E. "handler" means any producer, processor, distributor or other person engaged in handling, marketing or dealing in sheep or haired goats or their products; and

F. "producer" means any person engaged in the business of raising, breeding, feeding or growing sheep or haired goats.

Section 3

Section 3. SHEEP AND GOAT COUNCIL CREATED--ELECTION--VACANCIES--EX-OFFICIO MEMBERS.--

A. There is created the "New Mexico sheep and goat council", consisting of seven members. Members shall be elected by producers from nominations made to the director by producers or producer organizations.

B. The initial members of the council shall be elected as follows:

(1) two members for one-year terms;

(2) two members for two-year terms; and

(3) three members for three-year terms.

C. Thereafter, each member shall be elected for a term ending three years from the date of expiration of the term for which his predecessor was elected, except in case of a vacancy, when the appointee shall serve the unexpired part of the term of the member whom he replaces. Vacancies shall be filled by appointment by the director from nominations made by producers and producer organizations. The director shall serve as an ex-officio, nonvoting member of the council.

Section 4

Section 4. COUNCIL MEMBER QUALIFICATIONS.--

A. Each member of the council shall have the following qualifications, which shall continue during his term of office:

(1) be actively engaged in sheep or goat production; or

(2) be in some branch of the sheep or haired goat business and during his entire term receive a substantial portion of his income from the sheep or haired goat business.

B. Members of the council shall be elected according to the following plan: two producers from northern New Mexico in areas north of interstate 40, four producers from southern New Mexico in areas south of interstate 40 and one handler of sheep or haired goats or their products.

Section 5

Section 5. OFFICERS--MEETINGS--EXPENSES.--The council shall elect annually a chairman, vice chairman and such other officers as it deems necessary from among its members. The council shall meet at least once each six months and at such other times as it may be called by the chairman. The council may provide rules for reimbursement of members' expenses while on official business of the council, but such reimbursement shall in no case exceed the provisions of the Per Diem and Mileage Act. Council members shall receive no other compensation, perquisite or allowance.

Section 6

Section 6. DUTIES--POWERS.--

A. The council shall:

(1) conduct marketing programs, including promotion, education and research, promoting sheep and haired goat products;

(2) submit to the director a detailed annual budget for the council on a fiscal-year basis and provide a copy of the budget upon request to any person who has paid an assessment or made a contribution under the New Mexico Sheep and Goat Act;

(3) bond officers and employees of the council who receive and disburse council funds;

(4) keep detailed and accurate records for all receipts and disbursements, have those records audited annually and keep the audit available for inspection in the council office;

(5) establish procedures for the adoption of regulations that will provide for input from producers;

(6) determine and publish each year the assessment rates to be collected by the board; and

(7) employ staff not to exceed three persons.

B. The council may:

(1) contract for scientific research to discover and improve the commercial value of sheep and haired goats and products thereof;

(2) disseminate information showing the value of sheep and haired goats and products for any purpose for which they may be found useful and profitable;

(3) fund programs to enhance the efficiencies of sheep and haired goat production;

(4) make grants to research agencies for financing studies or for the purchase or acquisition of facilities necessary to carry out the purposes of the council as authorized by the New Mexico Sheep and Goat Act;

(5) cooperate with any local, state or national organizations or agencies, whether created by law or voluntary, engaged in work or activities similar to that of the council, and enter into contracts with those organizations or agencies and expend funds in connection therewith for carrying on joint programs;

(6) study federal and state legislation with respect to tariffs, duties, reciprocal trade agreements, import quotas and other matters concerning the effect on the sheep and haired goat industry and represent and protect the interests of the industry with respect to any legislation or proposed legislation or executive action that may affect that industry;

(7) enter into contracts that it deems appropriate to the carrying out of the purposes of the council as authorized by the New Mexico Sheep and Goat Act;

(8) sue and be sued as a council without individual liability for acts of the council within the scope of the powers conferred upon it by the New Mexico Sheep and Goat Act;

(9) appoint subordinate officers and employees of the council and prescribe their duties and fix their compensation;

(10) adopt regulations for the exercise of its powers and duties. A copy of all council regulations shall be filed with the department; and

(11) cooperate with other state councils or agencies in the collection of assessments.

Section 7

Section 7. FUNDING.--In order to accomplish the purposes of the New Mexico Sheep and Goat Act, the council is empowered to:

A. receive any funds that may be returned to the New Mexico sheep and haired goat industry as its share of assessments collected by a national sheep promotion research and information board or any similar entity;

B. accept grants, donations, contributions or gifts from any source for expenditure for any purpose consistent with the powers and duties conferred on the council; and

C. receive any other funds that may be authorized by law.

Section 8

Section 8. ASSESSMENTS.--There is levied and imposed upon all sheep and haired goats involved in a transfer of ownership in the state an assessment to be called the "council assessment". The council assessment is to be fixed by the council at a rate not more than seventy-five cents ($.75) per head. The board shall collect this council assessment at the same time and in the same manner as the fee charged for the state inspection required upon the movement of those sheep and haired goats. The board shall not deliver the certificate of inspection or permit the sheep or haired goats to move until all fees have been paid. The proceeds of the council assessment shall be remitted by the board to the council at the end of each month along with information that will allow the council to make necessary refunds. At the request of the board, the council

shall reimburse the board for the reasonable and necessary expenses incurred for such collections and information not to exceed four percent of collections on those sheep and haired goats involved in a transfer of ownership.

Section 9

Section 9. REFUNDS.--Any person who has paid a council assessment is entitled to a refund of the amount paid by making written application for the refund to the council. The application form shall be returned within thirty days after the inspection was made giving rise to the council assessment and shall contain enough detail to enable the council to find the record of payment. Refunds shall be made within thirty days of the date of the application unless the proceeds and the necessary information have not been received by the council, in which case the refund shall be made within fifteen days after receipt of the proceeds and necessary information. The form shall be provided by the board at the time of inspection.

Section 10

Section 10. DISPOSITION OF FUNDS.--

A. All funds received by the council shall be received and disbursed directly by the council. Such funds shall be audited in accordance with the provisions of the Audit Act. The council is not required to submit vouchers, purchase orders or contracts to the department of finance and administration as otherwise required by Section 6-5-3 NMSA 1978.

B. The council shall issue warrants against funds of the council in payment of its lawful obligations. The council shall provide its own warrants, purchase orders and contract forms as well as other supplies and equipment. All warrants shall be signed by a council member and one other person designated by the council.

C. The council shall designate banks where its funds are to be deposited, provided such banks have been qualified as depository banks for state funds.

Section 11

Section 11. PROCUREMENT CODE--PERSONNEL ACT--EXEMPTIONS--TORT CLAIMS ACT.--The council is exempt from the provisions of the Procurement Code and the Personnel Act. The council members and employees shall be subject to the Tort Claims Act and shall be provided all insurance and self-insurance coverage provided by the risk management division of the general services department.

CHAPTER 148

RELATING TO OPEN MEETINGS; REVISING ENFORCEMENT PROVISIONS OF THE OPEN MEETINGS ACT.

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

Section 1

Section 1. Section 10-15-3 NMSA 1978 (being Laws 1974, Chapter 91, Section 3, as amended) is amended to read:

"10-15-3. INVALID ACTIONS--STANDING.--

A. No resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be valid unless taken or made at a meeting held in accordance with the requirements of Section 10-15-1 NMSA 1978. Every resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be presumed to have been taken or made at a meeting held in accordance with the requirements of Section 10-15-1 NMSA 1978.

B. All provisions of the Open Meetings Act shall be enforced by the attorney general or by the district attorney in the county of jurisdiction. However, nothing in that act shall prevent an individual from independently applying for enforcement through the district courts, provided that the individual first provides written notice of the claimed violation to the public body and that the public body has denied or not acted on the claim within fifteen days of receiving it. A public meeting held to address a claimed violation of the Open Meetings Act shall include a summary of comments made at the meeting at which the claimed violation occurred.

C. The district courts of this state shall have jurisdiction, upon the application of any person to enforce the purpose of the Open Meetings Act, by injunction, mandamus or other appropriate order. The court shall award costs and reasonable attorney fees to any person who is successful in bringing a court action to enforce the provisions of the Open Meetings Act. If the prevailing party in a legal action brought under this section is a public body defendant, it shall be awarded court costs.

A public body defendant that prevails in a court action brought under this section shall be awarded its reasonable attorney fees from

the plaintiff if the plaintiff brought the action without sufficient information and belief that good grounds supported it.

D. No section of the Open Meetings Act shall be construed to preclude other remedies or rights not relating to the question of open meetings."

HOUSE BILL 590, AS AMENDED

CHAPTER 149

RELATING TO CRIMES; AMENDING SECTION 16-2-32 NMSA 1978 (BEING LAWS 1935, CHAPTER 57, SECTION 19, AS AMENDED) TO MAKE CHANGES IN THE EXISTING LAWS CREATING CRIMES AND ESTABLISHING PENALTIES FOR ACTS COMMITTED IN STATE PARK AND RECREATION AREAS.

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

Section 1

Section 1. Section 16-2-32 NMSA 1978 (being Laws 1935, Chapter 57, Section 19, as amended) is amended to read:

"16-2-32. CRIMINAL OFFENSES--PENALTY.--A person who commits any of the following acts is guilty of a petty misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978:

A. cut, break, injure, destroy, take or remove a tree, shrub, timber, plant or natural object in any state park and recreation area, except in areas designated by the secretary and permitted by regulations adopted by the secretary, such regulations shall only permit the removal of a tree, shrub, timber, plant or natural object for scientific study or for non-commercial use by an individual as a souvenir, the quantity of material authorized for removal from any area shall be strictly regulated by park personnel in order to minimize resource damage;

B. kill, cause to be killed or pursue with intent to kill a bird or animal in a state park and recreation area, except in areas designated by the secretary and except in conformity with the provisions of general law and the regulations of the state game commission;

C. take a fish from the waters of a state park and recreation area, except in conformity with the provisions of general law and the regulations of the state game commission;

D. willfully mutilate, injure, deface or destroy any guidepost, notice, tablet, fence, enclosure or work that is for the protection or ornamentation of a state park and recreation area;

E. light a fire in a state park and recreation area, except in those places authorized for fires by the secretary or willfully or carelessly permit any fire which is authorized and that he has lighted or caused to be lighted or under his charge to spread or extend to or burn the shrubbery, trees, timber, ornaments or improvements in a state park and recreation area or leave a campfire that he has lighted or that has been left in his charge unattended by a competent person without extinguishing it;

F. place in a state park and recreation area or affix to an object in a state park and recreation area a word, character or device designed to advertise a business, profession, article, thing, exhibition, matter or event without a written license from the secretary permitting him to do it; or

G. violate a rule or regulation adopted by the secretary pursuant to the provisions of Chapter 16, Article 2 NMSA 1978."

Section 2

Section 2. Section 9-5A-3 NMSA 1978 (being Laws 1987, Chapter 234, Section 3) is amended to read:

9-5A-3. DEPARTMENT ESTABLISHED.--

A. There is created in the executive branch the energy, minerals and natural resources department. The department shall be a cabinet department and shall include, but not be limited to, the following organizational units:

(1) the administrative services division;

(2) the state parks division;

(3) the forestry division which shall include a soil and water conservation bureau;

(4) the energy conservation and management division;

(5) the mining and minerals division; and

(6) the oil conservation division.

B. The state game commission is administratively attached to the department.

Section 3

Section 3. A new section of the Energy, Minerals and Natural Resources Department Act is enacted to read:

STATE PARKS DIVISION DESIGNATION.--As used in the NMSA 1978, state park and recreation division means the state parks division of the energy, minerals and natural resources department.

HOUSE BILL 209, AS AMENDED

CHAPTER 150

RELATING TO THE VOLUNTEER FIREFIGHTERS RETIREMENT FUND; AMENDING CERTAIN SECTIONS OF THE NMSA 1978 TO INCREASE FUNDING AND ALTER METHODS OF FILING SERVICE CREDITS; MAKING AN APPROPRIATION.

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

Section 1

Section 1. Section 10-11A-3 NMSA 1978 (being Laws 1983, Chapter 263, Section 3, as amended) is amended to read:

"10-11A-3. VOLUNTEER FIREFIGHTERS RETIREMENT FUND--CREATION--TRANSFER OF FUNDS FROM THE FIRE PROTECTION FUND.--

A. There is created the "volunteer firefighters retirement fund" in the state treasury. All annuities and benefits in lieu of annuities shall be paid from the fund as provided in the Volunteer Firefighters Retirement Act.

B. Beginning in fiscal year 1998, the state treasurer shall transfer annually on or before the last day of July seven hundred fifty thousand dollars ($750,000) plus an additional two hundred fifty thousand dollars ($250,000) for fiscal year 1998 plus an additional two hundred fifty thousand dollars ($250,000) for fiscal year 1999 plus an additional five hundred thousand dollars ($500,000) for fiscal year 2000 from the fire protection fund to the credit of the volunteer firefighters retirement fund."

Section 2

Section 2. Section 10-11A-6 NMSA 1978 (being Laws 1983, Chapter 263, Section 6) is amended to read:

"10-11A-6. DETERMINATION OF SERVICE CREDIT.--

A. A member may claim one year of service credit for each year in which a fire department certifies that the member:

(1) attended seventy-five percent of all scheduled fire drills;

(2) attended seventy-five percent of all scheduled business meetings; and

(3) participated in at least fifty percent of all emergency response calls for which the fire department held him responsible to attend.

B. The chief of each fire department shall submit to the association by March 31 of each year the records of attendance of members for emergency response calls, fire drills and business meetings during the preceding calendar year; provided, he shall:

(1) submit such records on forms provided by the association;

(2) acknowledge the truth of the records under oath before a notary public; and

(3) have the notarized forms signed by the mayor, if distributions from the fire protection fund for the fire department are made to an incorporated municipality, or the chairman of the county commission, if distributions from the fire protection fund for the fire department are made to an independent fire district."

HOUSE BILL 623, AS AMENDED

CHAPTER 151

RELATING TO MOTOR VEHICLES; ESTABLISHING REQUIREMENTS FOR SUN SCREENING MATERIAL; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; PROVIDING PENALTIES.

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

Section 1

Section 1. Section 66-3-846 NMSA 1978 (being Laws 1978, Chapter 35, Section 152) is amended to read:

"66-3-846. WINDSHIELDS MUST BE UNOBSTRUCTED AND EQUIPPED WITH WIPERS--WINDOWS MUST BE TRANSPARENT--EXCEPTION.--

A. No person shall drive any motor vehicle with any sign, poster or other nontransparent material upon or in the front windshield, windows to the immediate right and left of the driver or in the rearmost window if the latter is used for driving visibility, except as provided in Section 66-3-846.1 NMSA 1978. The rearmost window is not necessary for driving visibility where outside rearview mirrors are attached to the vehicle.

B. The windshield on every motor vehicle except a motorcycle shall be equipped with a device for cleaning rain, snow or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.

C. Every windshield wiper upon a motor vehicle shall be maintained in good working order."

Section 2

Section 2. A new section of the Motor Vehicle Code, Section 66-3-846.1 NMSA 1978, is enacted to read:

"66-3-846.1. SUN SCREENING MATERIAL ON WINDSHIELDS AND WINDOWS--REQUIREMENTS--VIOLATION--PENALTY.--

A. A person shall not operate on any street or highway a motor vehicle that is registered or required to be registered in this state if that motor vehicle has a sun screening material on the windshield or any window that does not comply with the requirements of this section.

B. Except as otherwise provided in this section, a sun screening material:

(1) when used in conjunction with the windshield, shall be nonreflective, shall not be red, yellow or amber in color and shall be used only along the top of the windshield, not extending downward beyond the ASI line or more than five inches from the top of the windshield, whichever is closer to the top of the windshield; and

(2) when used in conjunction with the safety glazing materials of the side wings or side windows located at the immediate right and left of the driver, the side windows behind the driver and the rearmost window shall be nonreflective, shall have a light transmission of not less than twenty percent and shall be used only on the windows of a motor vehicle equipped with one right and one left outside rearview mirror.

C. Each manufacturer shall:

(1) certify to the division that a sun screening material used by that manufacturer is in compliance with the nonreflectivity and light transmission requirements of this section;

(2) provide a label not to exceed one and one-half square inches in size that:

(a) is installed permanently and legibly between the sun screening material and each glazing surface to which it is applied;

(b) contains the manufacturer's name, the date that the sun screening material was manufactured and the percentage of light transmission; and

(c) is placed in the left lower corner of each glazing surface when facing the motor vehicle from the outside; and

(3) include instructions with the sun screening material for proper installation, including the affixing of the label specified in this subsection.

D. No person shall:

(1) offer for sale or for use any sun screening material for motor vehicle use not in compliance with this section; or

(2) install any sun screening material on motor vehicles intended for operation on any street or highway without permanently affixing the label specified in Subsection C of this section.

E. The provisions of this section do not apply to a motor vehicle registered in this state in the name of a person, or the person's legal guardian, who has an affidavit signed by a physician or an optometrist licensed to practice in this state that states that the person has a physical condition that makes it necessary to equip the motor vehicle with sun screening material that is in violation of this section. The affidavit shall be in the possession of the person with such a physical condition, or the person's legal guardian, at all times while being transported in the motor vehicle.

F. The light transmission requirement of this section does not apply to windows behind the driver on truck tractors, buses, recreational vehicles multipurpose passenger vehicles and motor homes. The provisions of this section shall not apply to motor vehicle glazing which complies with federal motor vehicle standards.

G. The provisions of this section do not apply to motor vehicles that have sun screening material on the windshield or any window prior to the effective date of this section.

H. As used in this section:

(1) "light transmission" means the ratio of the amount of total light that passes through a product or material, expressed in percentages, to the amount of the total light falling on the product or material;

(2) "manufacturer" means any person engaged in the manufacturing or assembling of sun screening products or materials designed to be used in conjunction with motor vehicle glazing materials for the purpose of reducing the effects of the sun;

(3) "nonreflective" means designed to absorb light rather that to reflect it; and

(4) "sun screening material" means any film material, substance, device or product that is designed to be used in conjunction

with motor vehicle safety glazing materials for reducing the effects of the sun.

I. Any person who violates any provision of this section is guilty of a petty misdemeanor and upon conviction shall be punished by a fine of not more than seventy-five dollars ($75.00)."

Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 649, AS AMENDED

CHAPTER 152

RELATING TO EMERGENCY MANAGEMENT; CHANGING THE DEFINITION OF ORPHAN HAZARDOUS MATERIALS TO INCLUDE SUBSTANCES USED IN THE MANUFACTURE OF ILLEGAL CONTROLLED SUBSTANCES.

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

Section 1

Section 1. Section 74-4B-3 NMSA 1978 (being Laws 1983, Chapter 80, Section 3, as amended) is amended to read:

"74-4B-3. DEFINITIONS.--As used in the Emergency Management Act:

A. "accident" means an event involving hazardous materials that may cause injury to persons or damage to property or release hazardous materials to the environment;

B. "administrator" means the hazardous materials emergency response administrator;

C. "board" means the hazardous materials safety board;

D. "chief" means the chief of the New Mexico state police;

E. "commission" means the state emergency response commission;

F. "department" means the department of public safety;

G. "emergency management" means the ability to prepare for, respond to, mitigate, recover and restore the scene of an institutional, industrial, transportation or other accident;

H. "first responder" means the first law enforcement officer or other public service provider with a radio-equipped vehicle to arrive at the scene of an accident;

I. "hazardous materials" means hazardous substances, radioactive materials or a combination of hazardous substances and radioactive materials;

J. "hazardous substances" means flammable solids, semisolids, liquids or gases; poisons; corrosives; explosives; compressed gases; reactive or toxic chemicals; irritants; or biological agents, but does not include radioactive materials;

K. "orphan hazardous materials" means hazardous substances, radioactive materials, a combination of hazardous substances and radioactive materials or substances used in the manufacture of controlled substances in violation of the Controlled Substances Act where an owner of the substances or materials cannot be identified;

L. "plan" means the statewide hazardous materials emergency response plan;

M. "radioactive materials" means any material or combination of materials that spontaneously emits ionizing radiation. Materials in which the estimated specific activity is not greater than 0.002 microcuries per gram of material are not considered to be radioactive materials unless determined to be so by the hazardous and radioactive materials bureau of the water and waste management division of the department of environment for purposes of emergency response pursuant to the Emergency Management Act;

N. "responsible state agency" means an agency designated in Subsection D of Section 74-4B-5 NMSA 1978 with responsibility for managing a certain type of accident or performing certain functions at the scene of such accident;

O. "secretary" means the secretary of public safety; and

P. "task force" means the emergency management task force."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 719, AS AMENDED

CHAPTER 153

RELATING TO CRIMINAL PROCEDURE; PROVIDING FOR HEARINGS TO DETERMINE IF A PERSON WHO IS COMMITTED PURSUANT TO A DETERMINATION OF INCOMPETENCY IS MENTALLY RETARDED; ENACTING A NEW SECTION OF THE NMSA 1978.

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

Section 1

Section 1. A new Section 31-9-1.6 NMSA 1978 is enacted to read:

"31-9-1.6. HEARING TO DETERMINE MENTAL RETARDATION.--

A. Upon motion of the defense requesting a ruling, the court shall hold a hearing prior to one year after a defendant was determined to be incompetent to stand trial.

B. If the court finds, by a preponderance of the evidence, that the defendant is mentally retarded, then no later than one year from the court's initial determination that the defendant is incompetent to stand trial, the department shall perform an evaluation to determine whether the defendant presents a likelihood of serious harm to himself or a likelihood of serious harm to others.

C. If the department evaluation results in a finding that the defendant presents a likelihood of serious harm to himself or a likelihood of serious harm to others, within sixty days of the department's evaluation the department:

(1) shall commence proceedings pursuant to Chapter 43, Article 1 NMSA 1978 if the defendant was charged with first degree homicide, first degree sexual penetration, criminal sexual contact of a minor or arson in the initial proceedings, and the court presiding over the initial proceedings shall enter a finding that the respondent presents a likelihood of harm to others; or

(2) may commence proceedings pursuant to Chapter 43, Article 1 NMSA 1978 if the defendant was charged with any crime other than first degree homicide, first degree sexual penetration, criminal sexual contact of a minor or arson in the initial proceedings from which he was referred pursuant to this section to the department.

D. The criminal charges shall be dismissed without prejudice after the hearing pursuant to Chapter 43, Article 1 NMSA 1978 or upon expiration of fourteen months from the court's initial determination that the defendant is incompetent to stand trial.

E. As used in this section, "mentally retarded" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior. An intelligence quotient of seventy or below on a reliably administered intelligence quotient test shall be presumptive evidence of mental retardation."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 765

CHAPTER 154

RELATING TO PER DIEM AND MILEAGE OF LEGISLATIVE MEMBERS; AMENDING CERTAIN SECTIONS OF THE NMSA 1978 TO COMPLY WITH ARTICLE 4, SECTION 10 OF THE CONSTITUTION OF NEW MEXICO.

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

Section 1

Section 1. Section 2-1-8 NMSA 1978 (being Laws 1955, Chapter 2, Section 1, as amended) is amended to read:

"2-1-8. SESSION PER DIEM AND MILEAGE OF MEMBERS.--Each member of the legislature shall receive per diem at the internal revenue service maximum federal per diem rate for the city of Santa Fe for each day's attendance during each session of the legislature and the internal revenue service standard mileage rate for each mile traveled in going to and returning from the seat of government by the usual traveled route, once each session as defined by Article 4, Section 5 of the constitution of New Mexico."

Section 2

Section 2. Section 2-1-9 NMSA 1978 (being Laws 1971, Chapter 1, Section 11, as amended) is amended to read:

"2-1-9. OUT-OF-STATE TRAVEL--IN-STATE TRAVEL.--

A. Out-of-state travel of members, officers and employees of the legislative branch of government shall be exempt from approval by any member of the executive branch.

B. Members of the legislature serving on official business for interim committees shall receive per diem at the internal revenue service per diem rate as provided in Section 2-1-8 NMSA 1978 each day served, including travel time, and the cost of public transportation by the shortest, most direct route or mileage for each mile traveled by privately owned automobiles at the internal revenue service standard mileage rate or by privately owned aircraft at the air mileage rate set out by the regulations governing the Per Diem and Mileage Act adopted by the department of finance and administration on official business of the committees within the state, by the shortest, most direct route.

C. Reimbursement for out-of-state travel on committee business shall be as follows:

(1) the cost of the tickets on public transportation by the shortest, most direct route; or

(2) mileage at the same rates established for in-state travel if private automobiles or airplanes are used, based on official mileage by the shortest, most direct route;

(3) per diem for the number of days spent in travel and on committee business; and

(4) in no event, however, shall the reimbursement for out-of-state travel exceed the dollar amount that would be due if the

member had used first class public air transportation by the shortest, most direct route."

HOUSE BILL 600

CHAPTER 155

REPEALING SECTION 68-2-18 NMSA 1978 (BEING LAWS 1967, CHAPTER 208, SECTION 5, AS AMENDED) WHICH CREATES THE EMERGENCY FIRE SUPPRESSION FUND.

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

Section 1

Section 1. REPEAL.--Section 68-2-18 NMSA 1978 (being Laws 1967, Chapter 208, Section 5, as amended) is repealed.

HOUSE BILL 636

Approved April 9, 1997

CHAPTER 156

RELATING TO SECURITIES; AMENDING CERTAIN PROVISIONS OF THE NEW MEXICO SECURITIES ACT OF 1986.

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

Section 1

Section 1. Section 58-13B-2 NMSA 1978 (being Laws 1986, Chapter 7, Section 2, as amended) is amended to read:

"58-13B-2. DEFINITIONS.--As used in the New Mexico Securities Act of 1986:

A. "affiliate" means a person who directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person;

B. "broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. Broker-dealer does not include:

(1) a sales representative;

(2) an issuer, except when effecting transactions other than with respect to its own securities;

(3) a depository institution when acting on its own account or when exercising trust or fiduciary powers permitted for a depository institution pursuant to applicable state or federal laws and regulations providing for the organization, operation, supervision and examination of the depository institution; or

(4) any other person as the director by rule or order designates;

C. "control person" means an officer, director, managing partner or trustee, manager of a limited liability company or person of similar status or function or any security holder who owns beneficially or of record ten percent or more of any class of securities of an issuer;

D. "depository institution":

(1) means:

(a) a person that is organized, chartered or holding an authorization certificate under the laws of a state or of the United States that authorizes the person to receive deposits, including a savings, share, certificate or deposit account, is regulated, supervised and examined for the protection of depositors by an official or agency of a state or the United States and is insured by the federal depository insurance corporation, the federal savings and loan insurance corporation or the national credit union share insurance fund; and

(b) a trust company or other institution that is authorized by federal or state law to exercise fiduciary powers of the type a national bank is permitted to exercise under the authority of the comptroller of the currency and is regulated, supervised and examined by an official or agency of a state or the United States; and

(2) does not include an insurance company or other organization primarily engaged in the insurance business or a Morris plan bank, industrial loan company or a similar bank or company;

E. "director" means the director of the securities division of the regulation and licensing department;

F. "division" means the securities division of the regulation and licensing department;

G. "federal covered security" means any security described as a "covered security" in the federal Securities Act of 1933, except that, prior to October 11, 1999, a security that would otherwise qualify as a federal covered security for which the correct fee has not been paid as required by the New Mexico Securities Act of 1986 shall not be a federal covered security, if such deficiency is not remedied within twenty days of the date of notice of the deficiency;

H. "filed" means the receipt of a document or application by the director or by the authorized representative of the director at the principal office of the director;

I. "financial or institutional investor" means any of the following, whether acting for itself or others in a fiduciary capacity, other than as an agent:

(1) a depository institution;

(2) an insurance company;

(3) a separate account of an insurance company;

(4) an investment company as defined in the Investment Company Act of 1940;

(5) an employee pension, profit-sharing or benefit plan, if:

(a) the plan has total assets in excess of five million dollars ($5,000,000); or

(b) investment decisions are made by a plan fiduciary, as defined in the Employee Retirement Income Security Act of 1974, which is either a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, a depository institution or an insurance company;

(6) a business development company as defined by the Investment Company Act of 1940;

(7) a small business investment company licensed by the United States small business administration under Section 301(c) or (d) of the Small Business Investment Act of 1958; or

(8) any other financial or institutional investor as the director by rule or order designates;

J. "fraud", "deceit" and "defraud" are not limited to common-law fraud or deceit;

K. "guaranteed" means guaranteed as to payment of principal, interest and dividends;

L. "insured" means insured as to payment of principal, interest and dividends;

M. "investment adviser":

(1) means a person who, for compensation, engages in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities; and

(2) does not include:

(a) an investment adviser representative;

(b) a depository institution when acting on its own account or when exercising trust or fiduciary powers permitted for such depository institutions under applicable state or federal laws and regulations providing for the organization, operation, supervision and examination of such depository institution;

(c) a lawyer, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of the person's profession;

(d) a broker-dealer whose performance of the investment advisory services is solely incidental to the conduct of business as a broker-dealer and who receives no special compensation for the investment advisory services;

(e) a publisher, employee or columnist of a newspaper, news magazine or business or financial publication, or an owner, operator, producer or employee of a cable, radio or television network, station or production facility if, in either case, the financial or business news published or disseminated is made available to the general public and the content does not consist of rendering advice on the basis of the specific investment situation of each client; or

(f) any other person as the director by rule or order designates;

N. "investment adviser representative" means a natural person other than an investment adviser who, whether as an employee or in the form of a professional corporation is under the direct supervision of an investment adviser and engages in the business of advising others as to the value of securities or about the advisability of investing in, purchasing or selling

securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities;

O. "issuer" means a person that issues or proposes to issue a security, except that:

(1) in respect to the issuer of a collateral trust certificate, voting trust certificate, certificate of deposit for a security or share in an investment company without a board of directors or persons performing similar functions, "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued;

(2) in respect to the issuer of an equipment trust certificate, including a conditional sales contract, or similar security serving the same purpose, "issuer" means the person to whom the equipment or property is or is to be leased or conditionally sold; and

(3) in respect to the issuer of an interest in oil, gas or other mineral rights "issuer" means the owner of an interest in such a right, whether whole or fractional, who creates interests for the purposes of sale;

P. "non-issuer transaction" means a transaction not directly or indirectly for the benefit of the issuer;

Q. "person" means a legal entity;

R. "price amendment" means the amendment to a registration statement filed under the Securities Act of 1933 or, if no amendment is filed, the prospectus or prospectus supplement filed under the Securities Act of 1933, that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices and other matters dependent upon the offering price;

S. "promoter" includes:

(1) a person who, acting alone or in concert with one or more other persons, takes the entrepreneurial initiative in founding or organizing the business or enterprise of an issuer;

(2) an officer or director or person of similar status or function owning any securities of an issuer or any security holder who owns, beneficially or of record, ten percent or more of any class of securities of the issuer if the officer, director, person of similar status or security holder acquires any of those securities in a transaction which does not possess the indicia of arm's-length bargaining or which is otherwise unfair to the issuer; or

(3) a member of the immediate family of a person described in Paragraph (1) or (2) of this subsection if the family member

received the securities in a transaction that does not possess the indicia of arm's-length bargaining or which is otherwise unfair to the issuer;

T. the following words and phrases have the indicated meanings:

(1) "sale" or "sell" includes every contract of sale, contract to sell or other disposition of a security or interest in a security for value;

(2) "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value;

(3) "offer to purchase" includes every attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value;

(4) a security given or delivered with, or as a bonus on account of, a purchase of securities or other item is considered to constitute part of the subject of the purchase and to have been offered and sold for value;

(5) a gift of assessable stock is deemed to involve an offer and sale; and

(6) a sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, or a sale or offer of a security that gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is deemed to include an offer of the other security;

U. the terms defined in Subsection T of this section do not include the creation of security interest or a loan of a security; a stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend and each stockholder may elect to take the dividend in cash, property or stock; or an act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in exchange and partly for cash, but the terms contained in this subsection are within the meaning of Subsection T of this section for the purpose of Section 58-13B-30 NMSA 1978;

V. "sales representative" means an individual other than a broker-dealer, whether as an employee or in the form of a professional corporation, authorized to act and acting for a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is a sales representative only if that person otherwise comes within the definition;

W. "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Company Act of 1940", "Investment Advisers Act of 1940", "Employee Retirement Income Security Act of 1974", "National Housing Act" and "Commodity Exchange Act" mean the federal statutes of those names as amended before or after the effective date of the New Mexico Securities Act of 1986;

X. unless the context requires otherwise, "security" means a note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; any limited partnership interest; any interest in a limited liability company; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; any interest in oil, gas or other mineral rights; any put, call, straddle or option entered into on a national securities exchange relating to foreign currency; any put, call, straddle or option on any security, certificate of deposit or group or index of securities, including any interest therein or based on the value thereof; or, in general, any interest or instrument commonly known as a security or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include landowner royalties in the production of oil, gas or other minerals created through the execution of a lease of the lessor's mineral interest;

Y. "self-regulatory organization" means a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, a national securities association of brokers and dealers registered under Section 15A of the Securities Exchange Act of 1934, a clearing agency registered under Section 17A of that act and the municipal securities rulemaking board established under Section 15B(b)(1) of that act ;

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

AA. "underwriter" means any person who has purchased from an issuer with the intent to offer or sell a security or to distribute any security, or participates or has a direct or indirect participation in any the undertaking, or participates or has a participation in the direct or indirect underwriting of any the undertaking; but the term does not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission. As used in this subsection, the term "issuer" includes, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer."

Section 2

Section 2. Section 58-13B-5 NMSA 1978 (being Laws 1986, Chapter 7, Section 5) is amended to read:

"58-13B-5. INVESTMENT ADVISER AND INVESTMENT ADVISER REPRESENTATIVE LICENSING.--

A. It is unlawful for any person to transact business in this state as an investment adviser or investment adviser representative unless:

(1) the person is licensed or exempt from licensing under the New Mexico Securities Act of 1986;

(2) the person is registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940 and the person has filed the documents and paid the fees described in Subsection (C) of that section;

(3) the person is an investment adviser representative employed by, supervised by or associated with an investment adviser described in Paragraph (2) of this subsection and the person has no place of business in this state;

(4) the person is excepted from the definition of investment adviser under Section 202(a)(11) of the Investment Advisers Act of 1940; or

(5) the person is an investment adviser representative employed by, supervised by or associated with a person described in Paragraph (4) of this subsection.

B. It is unlawful for an investment adviser to employ or contract with, in connection with any of the investment adviser's investment adviser activities in this state, any person who is suspended or barred from association with a broker-dealer or investment adviser by the director. Upon request from an investment adviser and for good cause shown, the director by order may waive the prohibition of this subsection with respect to a person who has been suspended or barred.

C. Except with respect to investment advisers whose only clients are those described in Subsection A of Section 58-13B-6 NMSA 1978, it is unlawful for any person who is registered or required to be registered under Section 203 of the Investment Advisers Act of 1940 as an investment adviser to conduct advisory business in this state unless such person files such documents filed with the United States securities and exchange commission with the director as the director may by rule or by order require, and a fee and consent to service of process, as the director, by rule or by order, may require. Until October 11, 1999 the director may require any person who is required to pay a fee pursuant to this subsection and who fails or refuses to pay such fee to be licensed as an investment adviser."

Section 3

Section 3. Section 58-13B-6 NMSA 1978 (being Laws 1986, Chapter 7, Section 6) is amended to read:

"58-13B-6. EXEMPT INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES.--The following investment advisers and investment adviser representatives are exempt from the licensing requirements of Section 58-13B-5 NMSA 1978:

A. an investment adviser who is registered as an investment adviser under the Investment Advisers Act of 1940 or an investment adviser who is registered under the laws of the state where its principal place of business is located if:

(1) its only clients in this state are other investment advisers, broker-dealers or financial or institutional investors; or

(2) the investment adviser has no place of business in this state and the investment adviser during any twelve consecutive months has fewer than six clients other than those specified in Paragraph (1) of this subsection, who are residents of New Mexico;

B. investment adviser representatives if the investment adviser by whom they are employed is exempt under Subsection A of this section; and

C. other investment advisers and investment adviser representatives the director by rule or order exempts."

Section 4

Section 4. Section 58-13B-7 NMSA 1978 (being Laws 1986, Chapter 7, Section 7) is amended to read:

"58-13B-7. PROOF OF EXEMPTION.--

A. If, at any time, the director has reason to believe that any person claiming to be exempt from, or otherwise not subject to, licensing as a broker-dealer, sales representative, investment adviser or investment adviser representative under Section 58-13B-4 or 58-13B-6 NMSA 1978 is not entitled to that exemption or is otherwise required to be licensed, the director may, by written notice, require that person to:

(1) file a consent to service of process in accordance with Section 58-13B-50 NMSA 1978; and

(2) furnish evidence satisfactory to the director confirming that the person is exempt under Section 58-13B-4 or 58-13B-6 NMSA 1978 or is otherwise not subject to licensure or, if satisfactory evidence is not or cannot be furnished, the director may require that person to be licensed as a broker-

dealer, sales representative, investment adviser or investment adviser representative.

B. It is unlawful for any person notified pursuant to Subsection A of this section to initiate any further business transactions in this state as a broker-dealer, sales representative, investment adviser or investment adviser representative until evidence satisfactory to the director is furnished or the person becomes licensed as a broker-dealer, sales representative, investment adviser or investment adviser representative. The provisions of Section 58-13B-53 NMSA 1978 shall govern all subsequent proceedings pursuant to this subsection.

C. The director may examine the records or require copies to be provided to him of any broker-dealer, sales representative, investment adviser or investment adviser representative to whom the director proposes to issue or has issued a notice pursuant to Subsection A of this section."

Section 5

Section 5. Section 58-13B-13 NMSA 1978 (being Laws 1986, Chapter 7, Section 13) is amended to read:

"58-13B-13. POST-LICENSING REQUIREMENTS.--

A. The director shall by rule require:

(1) a licensed broker-dealer to maintain:

(a) minimum net capital not to exceed the limitations of Section 15 of the Securities Exchange Act of 1934; and

(b) a prescribed ratio between net capital and aggregate indebtedness. The minimum net capital and net capital to aggregate indebtedness ratio may vary with type or class of broker-dealer; and

(2) a licensed investment adviser to maintain a minimum net worth not to exceed the limitations of Section 222 of the Investment Advisers Act of 1940.

B. If a licensed broker-dealer or investment adviser knows or has reasonable cause to know that any requirement imposed on it under Subsection A of this section is not being met, it shall promptly notify the director of its current financial condition.

C. The director may by rule require the furnishing of a fidelity bond from a broker-dealer, sales representative, investment adviser or investment adviser representative.

D. A licensed broker-dealer or investment adviser shall file financial and other reports as the director determines by rule or order are necessary.

E. Unless the director adopts by rule a special reporting requirement, compliance with the financial reporting requirements of the Securities Exchange Act of 1934, in the case of a broker-dealer, or the Investment Advisers Act of 1940, in the case of an investment adviser, shall satisfy the requirements with regard to the filing of financial reports pursuant to Subsection D of this section.

F. A licensed broker-dealer, sales representative, investment adviser or investment adviser representative shall make and maintain records as the director determines by rule are necessary or appropriate.

G. Compliance with the record-keeping requirements of the Securities Exchange Act of 1934, in the case of a broker-dealer, or the Investment Advisers Act of 1940, in the case of an investment adviser, shall satisfy the requirements of Subsection F of this section. Compliance by an investment adviser, if registered or licensed pursuant to the laws of the state where it maintains its principal place of business, with the record-keeping requirements of that state also satisfies the requirements of Subsection F of this section.

H. Required records may be maintained in computer or microfilm format or any other form of data storage, provided that the records are readily accessible to the director.

I. Required records shall be preserved for five years unless the director by rule specifies either a longer or shorter period for a particular type or class of records.

J. If the information contained in a document filed with the director as part of the application for licensing or under this section, except information the director by rule or order excludes, is or becomes inaccurate or incomplete in a material respect, the licensed person shall promptly file correcting information, unless notification of termination has been given under Subsection E or G of Section 58-13B-11 NMSA 1978."

Section 6

Section 6. Section 58-13B-20 NMSA 1978 (being Laws 1986, Chapter 7, Section 20) is amended to read:

"58-13B-20. REGISTRATION REQUIREMENT.--It is unlawful for a person to offer to sell or sell any security in New Mexico unless:

A. the security is registered under the New Mexico Securities Act of 1986;

B. the security or transaction is exempt under that act; or

C. the security is a federal covered security."

Section 7

Section 7. Section 58-13B-24 NMSA 1978 (being Laws 1986, Chapter 7, Section 24, as amended) is amended to read:

"58-13B-24. PROVISIONS APPLICABLE TO REGISTRATION GENERALLY.--

A. A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made or a registered broker-dealer.

B. If a registration statement is withdrawn before the effective date or a pre-effective stop order is entered pursuant to Section 58-13B-25 NMSA 1978, the director shall retain the fee set forth in this subsection. Except as provided in Subsection C of this section, a person filing a registration statement shall pay a filing fee of:

(1) one-tenth of one percent of the maximum aggregate offering price at which the registered securities are to be offered in New Mexico, but not less than three hundred fifty dollars ($350) or more than two thousand five hundred dollars ($2,500); or

(2) three hundred fifty dollars ($350) if the person is a corporate issuer or a person acting on behalf of a corporate issuer and is claiming an exemption from the registration requirements of federal law regarding small corporate offerings pursuant to Rule 504 of Regulation D (17 CFR 230.504).

C. An open-end management company or a face amount certificate company as defined in the federal Investment Company Act of 1940 may register an indefinite amount of securities under a registration statement. The registrant shall pay:

(1) a fee of five hundred dollars ($500) at the time of filing; and

(2) within sixty days after the registrant's fiscal year during which its registration statement is effective, a fee of two thousand dollars ($2,000) or file a report on a form the director by rule adopts, specifying its sale of securities to persons in this state during the fiscal year and pay a fee of one-tenth of one percent of the aggregate sale price of the securities sold to persons in the state, but the latter fee shall not be less than three hundred fifty dollars ($350) or more than two thousand five hundred dollars ($2,500).

D. Except as permitted otherwise by Subsection C of this section, a registration statement must specify the amount of securities to be offered in New Mexico and:

(1) the states in which a registration statement or similar document in connection with the offering has been or is to be filed; and

(2) any adverse order, judgment or decree entered by the securities agency or administrator in any state or by a court or the securities and exchange commission in connection with the offering.

E. A document filed under the New Mexico Securities Act of 1986 or a predecessor act, within five years before the filing of a registration statement, may be incorporated by reference in the registration statement if the document is currently accurate.

F. The director by rule or order may permit the omission of an item of information or document from a registration statement.

G. In the case of a non-issuer offering, the director may not require information under Section 58-13B-23 NMSA 1978 or Subsection M of this section unless it is known to the person filing the registration statement or to the persons on whose behalf the offering is to be made, or can be furnished by them without unreasonable effort or expense.

H. In the case of a registration under Section

58-13B-22 or 58-13B-23 NMSA 1978 by an issuer who has no public market for its shares and no significant earnings from continuing operations during the last five years or any shorter period of its existence, the director by rule or order may require as a condition of registration that the following securities be deposited in escrow for not more than three years:

(1) a security issued to a promoter, control person or affiliate within the three years immediately before the offering or to be issued to such persons for a consideration substantially less than the offering price; and

(2) a security issued to a promoter, control person or affiliate for a consideration other than cash, unless the registrant demonstrates that the value of the noncash consideration received in exchange for the security is substantially equal to the offering price for the security.

The director by rule or order may determine the conditions of an escrow required under this subsection, but the director may not reject a depository solely because of location in another state.

I. The director by rule or order may require as a condition of registration under Section 58-13B-22 or 58-13B-23 NMSA 1978 that the proceeds from the sale of the registered security in New Mexico be impounded until the issuer receives a specified amount from the sale of the security. The

director by rule or order may determine the conditions of an impoundment arrangement required under this subsection, but thr director may not reject a depository soley because of its location in another state.

J. If a security is registered pursuant to Section 58-13B-21 or 58-13B-22 NMSA 1978, the prospectus filed under the Securities Act of 1933 shall be delivered to each purchaser in accordance with the prospectus delivery requirements of the Securities Act of 1933. With respect to a security registered under Section 58-13B-21 or 58-13B-22 NMSA 1978, the director by rule or order may require the delivery of other material documents or information to each purchaser concurrent with or prior to the delivery of the prospectus.

K. If a security is registered pursuant to Section 58-13B-23 NMSA 1978, an offering document containing information the director by rule or order designates shall be delivered to each purchaser with or before the earliest of:

(1) the first written offer made to the purchaser by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by it as a participant in the distribution;

(2) confirmation of a sale made by or for the account of a person named in Paragraph (1) of this subsection;

(3) payment pursuant to a sale; or

(4) delivery pursuant to a sale.

L. A registration statement remains effective for one year after its effective date unless the director by rule or order extends the period of effectiveness. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of a non-issuer transaction while the registration statement is effective, unless the director by rule or order provides otherwise. A registration statement may not be withdrawn after its effective date if any of the securities registered have been sold in New Mexico, unless the director by rule or order provides otherwise. No registration statement is effective while a stop order is in effect under Subsection A of Section 58-13B-25 NMSA 1978.

M. During the period that an offering is being made pursuant to an effective registration statement, the director by rule or order may require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.

N. A registration statement filed under Section 58-13B-21 or 58-13B-22 NMSA 1978 may be amended after its effective date to increase the securities specified to be offered and sold. The amendment becomes effective

upon filing of the amendment and payment of an additional filing fee which shall be three times the fee otherwise payable, calculated in the manner specified in Subsection B of this section, with respect to the additional securities to be offered and sold. The effectiveness of the amendment relates back to the date or dates of sale of the additional securities being registered.

O. A registration statement filed under Section 58-13B-23 NMSA 1978 may be amended after its effective date to increase the securities specified to be offered and sold, provided that the public offering price and underwriters' discounts and commissions are not changed from the respective amounts of which the director was informed. The amendment becomes effective when the director so orders and relates back to the date of sale of the additional securities being registered. A person filing an amendment shall pay an additional filing fee which shall be three times the fee otherwise payable, calculated in the manner specified in Subsection B of this section, with respect to the additional securities to be offered and sold.

P. Pursuant to Section 106(c) of the federal Secondary Mortgage Market Enhancement Act of 1984, any securities which are offered and sold pursuant to Section 4 (5) of the Securities Act of 1933 or that are mortgage-related securities, as that term is defined in Section 3 (a) (41) of the Securities Exchange Act of 1934, being 15 U.S.C. 78c (a) (41), are required to comply with all applicable registration and qualification requirements of the New Mexico Securities Act of 1986 and the rules under that act and shall not be treated as obligations issued by the United States for purposes of that act.

Q. The director, by rule or by order, may require the filing of any or all of the following items with respect to a federal covered security under Section 18(b)(2) of the Securities Act of 1933:

(1) prior to the initial offer of such federal covered security in New Mexico, all documents that are part of a current federal registration statement filed with the United States securities and exchange commission under the Securities Act of 1933, together with a consent to service of process signed by the issuer and with a notification fee in an amount equal to that which the person would have paid to register or claim an appropriate exemption if the security were not a federal covered security;

(2) after the initial offer of such federal covered security in New Mexico, all documents that are part of an amendment to a current federal registration statement filed with the United States securities and exchange commission under the Securities Act of 1933; or

(3) if the person is paying a notification fee calculated according to the terms of Subsection C of this section, an annual or periodic report of the value of such federal covered securities offered or sold in New Mexico.

R. With respect to any security that is a federal covered security under Section 18(b)(4)(D) of the federal Securities Act of 1933, the director, by

rule or by order, may require the issuer to file, no later than fifteen days after the first sale of the federal covered security in New Mexico, a notice containing the information required by SEC Form D and a consent to service of process signed by the issuer, together with a notification fee in the amount of three hundred fifty dollars ($350).

S. The director, by rule or by order, may require the filing of any document filed with the United States securities and exchange commission under the federal Securities Act of 1933 with respect to a federal covered security under Section 18(b)(3) or (4) of the federal Securities Act of 1933, together with a fee to be determined by the director.

T. The director may issue a stop order suspending the offer and sale of a federal covered security, except a federal covered security under Section 18(b)(1) of the Securities Act of 1933, if he finds that:

(1) the order is in the public interest; and

(2) there is a failure to comply with any condition established under this section.

U. The director, by rule or otherwise, may waive any or all of the provisions of this section."

Section 8

Section 8. Section 58-13B-28 NMSA 1978 (being Laws 1986, Chapter 7, Section 28, as amended) is amended to read:

"58-13B-28. PROVISIONS APPLICABLE TO EXEMPTIONS GENERALLY.--

A. The director by order may deny or revoke an exemption specified in Section 58-13B-26 or 58-13B-27 NMSA 1978 with respect to a specific security or transaction if the director reasonably believes, after inquiry, that there is about to be or has been a violation of the New Mexico Securities Act of 1986 and that the action is necessary or appropriate for the protection of investors. Following entry of any such order, the procedures set forth in Section 58-13B-53 NMSA 1978 shall be followed. No order under this subsection may operate retroactively.

B. In any civil, criminal or administrative proceeding under that act, the burden of proving an exemption or an exception from a definition or status as a federal covered security is upon the person claiming it.

C. The director may by rule require notice of filing for any exemption contained in Section 58-13B-26 or 58-13B-27 NMSA 1978, and may require payment of a fee not to exceed three hundred fifty dollars ($350) for any such notice of filing, except that no fee shall be required for filing a

notice of exemption pursuant to Subsection K of Section 58-13B-27 NMSA 1978 of that act.

D. The director is authorized to promulgate by rule a limited offering transactional exemption which shall further the objectives of compatibility with the exemptions from securities registration authorized by Section 19(c)(3)(C) of the Securities Act of 1933 and uniformity among the states. Such exemption shall be subject to such restrictions as to number of purchasers, investor suitability, disclosure of investment information and other restrictions as the director may determine are necessary for the protection of investors. The director may impose conditions with respect to persons or issuers who by reason of prior misconduct will not be eligible to utilize this exemption. Any person claiming this exemption shall file notice with the director of such claim and shall pay a fee of three hundred fifty dollars ($350).

E. The director by rule may exempt any other class of securities or transactions from Sections 58-13B-20 and 58-13B-29 NMSA 1978. Exemptions shall be subject to restrictions and conditions imposed by rule as the director may determine are necessary for the protection of investors."

Section 9

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 658

Approved April 9, 1997

CHAPTER 157

RELATING TO CRIMES; REMOVING THE TIME LIMITATION FOR PROSECUTION, TRIAL OR PUNISHMENT OF CAPITAL AND FIRST DEGREE FELONIES.

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

Section 1

Section 1. Section 30-1-8 NMSA 1978 (being Laws 1963, Chapter 303, Section 1-8, as amended) is amended to read:

"30-1-8. TIME LIMITATIONS FOR COMMENCING PROSECUTION.--No person shall be prosecuted, tried or punished in any court of this state unless the indictment is found or information or complaint is filed therefor within the time as provided:

A. for a second degree felony, within six years from the time the crime was committed;

B. for a third or fourth degree felony, within five years from the time the crime was committed;

C. for a misdemeanor, within two years from the time the crime was committed;

D. for a petty misdemeanor, within one year from the time the crime was committed;

E. for any crime against or violation of the revenue laws of this state of Section 51-1-38 NMSA 1978, within three years from the time the crime was committed;

F. for any crime not contained in the Criminal Code, or where a limitation is not otherwise provided for, within three years from the time the crime was committed; and

G. for a capital felony or a first degree violent felony, no limitation period shall exist and prosecution for these crimes may commence at any time after the occurrence of the crime."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 720, AS AMENDED

Approved April 9, 1997

CHAPTER 158

RELATING TO VEHICLE REGISTRATION; PERMITTING VETERANS WHO ARE BONA FIDE PURPLE HEART MEDAL RECIPIENTS TO RECEIVE TWO SPECIAL REGISTRATION PLATES AT NO FEE.

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

Section 1

Section 1. 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 for up to two vehicles 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. A person who is eligible for special registration plates 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 special registration plates pursuant to only one of those sections, the choice of which shall be made by the veteran.

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."

HB 813

Approved April 9, 1997

CHAPTER 159

RELATING TO PROPERTY TAXES; PROVIDING FOR THE APPOINTMENT OF ALTERNATES ON COUNTY VALUATION PROTESTS BOARDS

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

Section 1. Section 7-38-25 NMSA 1978 (being Laws 1973, Chapter 258, Section 65, as amended) is amended to read:

"7-38-25. COUNTY VALUATION PROTESTS BOARDS--

CREATION--DUTIES--FUNDING.--

A. There is created in each county a "county valuation protests board". Each board shall consist of three voting members. Three alternates shall also be appointed to serve as voting members in the absence of a voting member. Voting members and alternates shall be appointed as follows:

(1) one member and one alternate shall be a qualified elector of the county and shall be appointed by the board of county commissioners for a term of two years;

(2) one member and one alternate shall be a qualified elector of the county, shall have demonstrated experience in the field of valuation of property and shall be appointed by the board of county commissioners for a term of two years; and

(3) one member and one alternate shall be a property appraisal officer employed by the department, assigned by the director and shall be the chairman of the board.

B. Members of the board and alternates appointed under Paragraph (1) or (2) of Subsection A of this section shall not hold any elective public office during the term of their appointment nor shall any such member or alternate be employed by the state, a political subdivision or a school district during the term of his appointment.

C. Vacancies occurring on the board shall be filled by the authority making the original appointment and shall be for the unexpired term of the vacated membership.

D. The county valuation protests board shall hear and decide protests of determinations made by county assessors and protested under Section 7-38-24 NMSA 1978.

E. Members of the board and alternates when serving as voting members appointed under Paragraphs (1) and (2) of Subsection A of this section shall be paid as independent contractors at the rate of eighty dollars ($80.00) a day for each day of actual service. The payment of board members and alternates and all other actual and direct expenses incurred in connection with protest hearings shall be paid by the department."

HOUSE BILL 912
Approved April 9, 1997

CHAPTER 160

RELATING TO FINANCIAL INSTITUTIONS; AMENDING SECTION 58-9-8.1 NMSA 1978 (BEING LAWS 1979, CHAPTER 190, SECTION 5, AS AMENDED) TO ALLOW TRUST COMPANIES TO HAVE BRANCH OFFICES THROUGHOUT THE STATE.

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

Section 1

Section 1. Section 58-9-8.1 NMSA 1978 (being Laws 1979, Chapter 190, Section 5, as amended) is amended to read:

"58-9-8.1. PRINCIPAL AND BRANCH OFFICES.--

A. A trust company may establish its principal office in any county.

B. A trust company actively engaged in trust business may establish one or more branch offices subject to the restrictions in Subsection D of this section and after obtaining the approval of the director as provided in Subsection C of this section.

C. A trust company seeking to establish a branch office shall submit an application, together with an investigation fee of two hundred dollars ($200), to the director. After considering the financial condition of the trust company, the adequacy of its capital structure, its future earnings and prospects, the general character of its management and any other matter he deems relevant, the director may approve the application if he finds:

(1) that the establishment of the branch will meet the needs and promote the convenience of the community to be served; 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 the trust company.

D. Except as provided in Subsection G of this section, branch offices shall be operated as branches of and under the name of the parent trust company and under the control and direction of the board of directors and executive officers of the parent trust company.

E. The provisions of this section shall not apply to branch offices in existence on the effective date of this section.

F. For the purposes of this section, "branch office" means an office, other than a principal office, used for the conduct of trust business and includes any additional house, office, agency or place of business which is open to the public for the conduct of such business and further includes any office connected to the principal office by subterranean or overhead passageways through which trust company personnel may pass.

G. The furnishing of trust services by a trust company affiliate of a bank holding company in the building in which any banking subsidiary of the bank holding company has its principal office or a manned branch office shall not constitute the operation of a branch office as prohibited by this section. As used in this subsection:

(1) "banking subsidiary" means a bank eighty percent or more of the voting shares of which are owned by the bank holding company; and

(2) "affiliate", with respect to a bank holding company, means any company eighty percent or more of the voting shares of which are owned by the bank holding company.

H. Copies of all records of accounts may be maintained at the principal office of the trust company or may be maintained at a branch office of the trust company where the accounts are administered, if appropriate safety and security is provided.

I. Nonprofit corporations shall be exempt from the requirements of this section."

HOUSE BILL 954

Approved April 9, 1997

CHAPTER 161

RELATING TO LOCAL GOVERNMENT FINANCES; ENACTING A NEW SECTION OF THE NMSA 1978; PROVIDING FOR DISPOSITION OF PUBLIC MONEY BY A MUNICIPALITY OR VILLAGE HAVING NO BANKING FACILITY.

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

Section 1

Section 1. A new section of Chapter 6, Article 6 NMSA 1978 is enacted to read:

"RECEIPTS OF PUBLIC MONEY--DISPOSITION BY CERTAIN MUNICIPALITIES.--For any municipality or village having within its boundaries no suitable banking facility in which to deposit collected receipts of public money, such municipality or village shall deposit receipts within a period not to exceed five days from the date of collection, provided the municipality or village adopts a reasonable administrative policy approved by the local government division of the department of finance and administration establishing procedures for the safeguarding of the public funds prior to deposit."

HOUSE BILL 989, AS AMENDED

Approved April 9, 1997

CHAPTER 162

RELATING TO PROPERTY TAXATION; AMENDING SECTION 7-36-20 NMSA 1978 (BEING LAWS 1973, CHAPTER 258, SECTION 21, AS AMENDED) PERTAINING TO VALUATION OF LAND USED PRIMARILY FOR AGRICULTURAL PURPOSES.

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

Section 1

Section 1. Section 7-36-20 NMSA 1978 (being Laws 1973, Chapter 258, Section 21, as amended) is amended to read:

"7-36-20. SPECIAL METHOD OF VALUATION--LAND USED PRIMARILY FOR AGRICULTURAL PURPOSES.--

A. The value of land used primarily for agricultural purposes shall be determined on the basis of the land's capacity to produce agricultural products. Evidence of bona fide primary agricultural use of land for the tax year preceding the year for which determination is made of eligibility for the land to be valued under this section creates a presumption that the land is used primarily for agricultural purposes during the tax year in which the determination is made. If the land was valued under this section in one or more of the three tax years preceding the year in which the determination is made and the use of the land has not changed since the most recent valuation under this section, a presumption is created that the land continues to be entitled to that valuation.

B. For the purpose of this section, "agricultural use" means the use of land for the production of plants, crops, trees, forest products, orchard crops, livestock, poultry or fish. The term also includes the use of land that meets the requirements for payment or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government.

C. The department shall adopt regulations for determining whether or not land is used primarily for agricultural purposes.

D. The department shall adopt regulations for determining the value of land used primarily for agricultural purposes. The regulations shall:

(1) specify procedures to use in determining the capacity of land to produce agricultural products and the derivation of value of the land based upon its production capacity;

(2) establish carrying capacity as the measurement of the production capacity of land used for grazing purposes, develop a system of determining carrying capacity through the use of an animal unit concept and establish carrying capacities for the land in the state classified as grazing land;

(3) provide for the consideration of determinations of any other governmental agency concerning the capacity of the same or similar lands to produce agricultural products;

(4) assure that land determined under the regulations to have the same or similar production capacity shall be valued uniformly throughout the state; and

(5) provide for the periodic review by the department of determined production capacities and capitalization rates used for determining annually the value of land used primarily for agricultural purposes.

E. All improvements, other than those specified in Section 7-36-15 NMSA 1978, on land used primarily for agricultural purposes shall be valued separately for property taxation purposes and the value of these improvements shall be added to the value of the land determined under this section.

F. The owner of the land must make application to the county assessor in a tax year in which the valuation method of this section is first claimed to be applicable to the land or in a tax year

immediately subsequent to a tax year in which the land was not valued under this section. Application shall be made under oath, shall be in a form and contain the information required by department regulations and must be made no later than the last day of February of the tax year. Once land is valued under this section, application need not be made in subsequent tax years as long as there is no change in the use of the land.

G. The owner of land valued under this section shall report to the county assessor whenever the use of the land changes so that it is no longer being used primarily for agricultural purposes. This report shall be made on a form prescribed by department regulations and shall be made by the last day of February of the tax year immediately following the year in which the change in the use of the land occurs.

H. Any person who is required to make a report under the provisions of Subsection G of this section and who fails to do so is personally liable for a civil penalty in an amount equal to the greater of twenty-five dollars ($25.00) or twenty-five percent of the difference between the property taxes ultimately determined to be due and the property taxes originally paid for the tax year or years for which the person failed to make the required report."

Section 2

Section 2. APPLICABILITY.--The provisions of this act apply to the 1998 and subsequent property tax years.

HOUSE BILL 1112

Approved April 9, 1997

CHAPTER 163

RELATING TO CRIMINAL LAW; REVISING THE ELEMENTS OF THE CRIMINAL OFFENSE OF ABUSE OF A CHILD; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 30-6-1 NMSA 1978 (being Laws 1973, Chapter 360, Section 10, as amended) is amended to read:

"30-6-1. ABANDONMENT OR ABUSE OF A CHILD.--

A. As used in this section:

(1) "child" means a person who is less than eighteen years of age;

(2) "neglect" means that a child is without proper parental care and control of subsistence, education, medical or other care or control necessary for his well-being because of the faults or habits of his parents, guardian or custodian or their neglect or refusal, when able to do so, to provide them; and

(3) "negligently" refers to criminal negligence and means that a person knew or should have known of the danger involved and acted with a reckless disregard for the safety or health of the child.

B. Abandonment of a child consists of the parent, guardian or custodian of a child intentionally leaving or abandoning the child under circumstances whereby the child may or does suffer neglect. Whoever commits abandonment of a child is guilty of a misdemeanor, unless the abandonment results in the child's death or great bodily harm, in which case he is guilty of a second degree felony.

C. Abuse of a child consists of a person knowingly, intentionally or negligently, and without justifiable cause, causing or permitting a child to be:

(1) placed in a situation that may endanger the child's life or health;

(2) tortured, cruelly confined or cruelly punished; or

(3) exposed to the inclemency of the weather.

Whoever commits abuse of a child which does not result in the child's death or great bodily harm is, for a first offense, guilty of a third degree felony and for second and subsequent offenses is guilty of a second degree felony. If the abuse results in great bodily harm or death to the child, he is guilty of a first degree felony."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 935

Approved April 9, 1997

CHAPTER 164

CHANGING THE PURPOSE FOR WHICH A 1995 GENERAL FUND CAPITAL OUTLAY APPROPRIATION WAS MADE.

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

Section 1

Section 1. 1995 CAPITAL OUTLAY PROJECT--CHANGING PURPOSE.--The general fund appropriation in Subsection VVV of Section 33 of Chapter 222 of Laws 1995 for the Eubank elementary school shall be used to make improvements to the northwest parking lot at the Eubank elementary school in Albuquerque in Bernalillo county.

HOUSE BILL 980

Approved April 9, 1997

CHAPTER 165

RELATING TO LAW ENFORCEMENT; AMENDING A SECTION OF THE NMSA 1978 TO INCLUDE CONSERVATION OFFICERS OF THE DEPARTMENT OF GAME AND FISH IN THE DEFINITION OF PEACE OFFICER.

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

Section 1

Section 1. Section 29-4A-3 NMSA 1978 (being Laws 1995, Chapter 59, Section 3) is amended to read:

"29-4A-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 or a conservation officer of the department of game and fish as used in Chapter 17 NMSA 1978 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."

HOUSE BILL 1010

Approved April 9, 1997

CHAPTER 166

RELATING TO THE NEW MEXICO FINANCE AUTHORITY; PROVIDING LEGISLATIVE AUTHORIZATION FOR MAKING LOANS FOR CAPITAL PROJECTS FROM THE PUBLIC PROJECT REVOLVING FUND; 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 make loans from the public project revolving fund to the following qualified entities for the following public projects on terms and conditions established by the authority:

A. to the Capitan-Carrizozo natural gas association for a natural gas utility project;

B. to the city of Clovis for a special events center project and a manufacturing facility project;

C. to the village of Eagle Nest for a water and wastewater study project;

D. to the Eldorado water and sanitation district for a water system project;

E. to the city of Espanola for a water and wastewater infrastructure project and an industrial building facility project and related street improvements;

F. to McKinley county for a regional juvenile detention center project and a multipurpose recreational facility project;

G. to the city of Raton for a welcome center facility project;

H. to the city of Rio Rancho for a wastewater project;

I. to the Sierra Vista hospital joint powers commission, comprised of the city of Truth or Consequences, the village of Williamsburg and Sierra county, and any individual member of the joint powers commission for a hospital project;

J. to the town of Springer for an electric distribution system project;

K. to the Twining water and sanitation district for a wastewater project;

L. to the Bluewater water and sanitation district for a wastewater project;

M. to the east Aztec water association for a water system project;

N. to the Jicarilla Apache tribe for a building project;

O. to the Lincoln county solid waste authority for a solid waste equipment project;

P. to the village of Magdalena for an airport facility project;

Q. to the northwest New Mexico regional solid waste authority for a solid waste equipment project;

R. to the south San Isidro mutual domestic water consumers association for a water system project;

S. to the New Mexico second judicial district metropolitan court for a land acquisition and courthouse project;

T. to the Tunnel Springs water association for a water system project;

U. to the interstate stream commission for a hydrographic survey

project;

V. to the state park and recreation division of the energy, minerals and natural resources department for the following projects:

(1) statewide Americans with Disabilities Act of 1990 compliance modification;

(2) statewide vault toilet construction;

(3) statewide park furnishings and equipment;

(4) statewide access gates and vehicular controls;

(5) statewide playground replacements and improvements;

(6) statewide water and wastewater facility improvements;

(7) statewide park staff modular residences;

(8) statewide campsite modernization;

(9) maintenance facility replacement for Leasburg;

(10) campground renovation for Coyote Creek;

(11) campground renovations and erosion control for Hyde Memorial;

(12) pond restoration for Oasis;

(13) visitor center and maintenance facility for Rockhound;

(14) vault toilet installation for Elephant Butte;

(15) Americans with Disabilities Act of 1990 accessible restroom for Oliver Lee;

(16) Bell point and Cove campground road improvements for Conchas;

(17) workshop and residence renovation for Santa Rosa;

(18) Paseo del Rio restroom replacement for Elephant Butte;

(19) maintenance facility expansion for Coyote Creek;

(20) staff residence renovation for Caballo;

(21) restroom replacement for Caballo;

(22) northern campground utility extensions for Navajo;

(23) restroom replacement for Storrie;

(24) nocturnal exhibit renovation for Living Desert;

(25) restroom replacement for Ute;

(26) office and maintenance facility renovation for Coronado; and

(27) landscape renovation for the Santa Fe river;

W. to the city of Albuquerque for a street, sidewalk, curb, storm drainage, water, sanitary sewer and utility improvement project known as special assessment district no. 224;

X. to the city of Albuquerque for a street, sidewalk, curb, storm drainage, water, sanitary sewer and utility improvement project known as special assessment district no. 222;

Y. to the city of Moriarty for a water system acquisition, water rights acquisition and a municipal water system improvement project;

Z. to the Alamo Navajo school board, incorporated, for an early childhood development center building project;

AA. to the city of Grants for a land acquisition and business industrial park building project;

BB. to Roosevelt county for a clinic and a hospital facility project;

CC. to the Rio Chama gas users association for a natural gas system;

DD. to the village of Magdalena for the renovation of the bureau of Indian affairs dormitory; and

EE. to the Navajo Nation for the development of a potato processing plant and for necessary infrastructure for that plant.

Section 2

Section 2. FEDERAL FUNDS.--Should the state park and recreation division of the energy, minerals and natural resources department secure federal funds to pay for the cost of a project or for the cost of a portion of a project listed in Subsection V of Section 1 of this act, then the division may expend the funds originally authorized for the project for an alternate state park improvement project included in the division's capital improvement plan.

Section 3

Section 3. SEVERABILITY.--If any part or application of this act is invalid, the remainder of its application to other situations or persons shall not be affected.

Section 4

Section 4. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 1176, AS AMENDED

WITH EMERGENCY CLAUSE

Approved April 9, 1997

CHAPTER 167

RELATING TO PUBLIC POST-SECONDARY EDUCATION; PROHIBITING THE CREATION OF NEW FOUR-YEAR STATE EDUCATIONAL INSTITUTIONS; AMENDING CERTAIN SECTIONS OF THE BRANCH COMMUNITY COLLEGE LAWS TO AUTHORIZE

CERTAIN INSTITUTIONS TO INITIATE THE ESTABLISHMENT OF BRANCH COMMUNITY COLLEGES; REQUESTING A STUDY; 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 Chapter 21, Article 1 NMSA 1978 is enacted to read:

"LEGISLATIVE FINDINGS--PROHIBITION.--

A. The legislature finds that the state currently has six four-year universities established by the constitution of New Mexico. The legislature has authorized these institutions to create branches of their institutions in conjunction with local school districts. The legislature also finds that proliferation of four-year post-secondary educational institutions is not in the best interest of the state and shall not be funded by the legislature unless specifically authorized by law, but that state universities should be allowed to initiate the creation of branch community colleges.

B. Effective July 1, 1997, no new public four-year post-secondary educational institution shall be created or established except as specifically authorized by law."

Section 2

Section 2. Section 21-14-2 NMSA 1978 (being Laws 1963, Chapter 162, Section 2, as amended) is amended to read:

"21-14-2. ESTABLISHMENT AUTHORIZED--BOARD METHOD--PARENT INSTITUTION METHOD--DETERMINATION OF NEED--AGREEMENTS.--

A. A branch community college may be established in a school district upon the showing of need by the local board of education. A branch community college may be established to include more than one school district, in which instance the boards of education shall act as a single board and, if the branch community college is established, shall continue to act as a single board unless a successor board is established as provided in Section 21-14-2.1 NMSA 1978. As used in Chapter 21, Article 14 NMSA 1978, "board" means either the local school board or the combined local school boards acting as a single

board of the school district or the board of the branch community college elected pursuant to Section 21-14-2.1 NMSA 1978.

B. A public post-secondary educational baccalaureate degree-granting institution established in Article 12, Section 11 of the constitution of New Mexico may initiate the establishment of a branch community college by contacting a local school board or a number of local school boards and offer to serve as a parent institution for a branch community college district created pursuant to Chapter 21, Article 14 NMSA 1978.

C. The duties of the board are to:

(1) initiate and conduct the survey provided for in Subsection D of this section;

(2) if the board has initiated the establishment of the branch community college, select the parent institution;

(3) request approval of the branch community college from the commission on higher education;

(4) enter into written agreements with the board of regents of the parent institution, subject thereafter to biennial review by all parties concerned and to the review and commentary of the commission on higher education;

(5) act in an advisory capacity to the board of regents of the parent institution in all matters relating to the conduct of the branch community college;

(6) approve an annual budget for the branch community college for recommendation to the board of regents of the parent institution;

(7) certify to the board of county commissioners the tax levy; and

(8) conduct the election for tax levies for the branch community college.

D. Upon evidence of a demand for a branch community college, the board shall cause a survey to be made. The commission on higher education shall develop criteria for the establishment of a branch community college, and no branch community college shall be established without the written authorization of the commission.

E. If need is established, the board, in accordance with the commission on higher education criteria for initiating a branch community college program, shall consult with the board of regents of the higher education institution selected or proposing to be the parent institution, and, if the board and the board of regents agree to conduct a branch community college in the area, they shall transmit a proposal to establish a branch community college to the commission. The commission shall evaluate the need and shall notify the board and the board of regents of approval or disapproval of the proposal.

F. If the proposal is approved, the board and the board of regents of the parent institution shall enter into a written agreement, which shall include provisions for:

(1) the higher education institution to have full authority and responsibility in relation to all academic matters;

(2) the higher education institution to honor all credits earned by students as though they were earned on the parent campus;

(3) the course of study and program offered;

(4) the cooperative use of physical facilities and teaching staff;

(5) consideration of applications of local qualified people before employing teachers of the local school system; and

(6) the detailed agreement of financing and financial control of the branch community college.

G. The agreement shall be binding upon both the board and the board of regents of the parent institution; however, it may be terminated by mutual consent or it may be terminated by either board upon six months' notice. However, if the branch community college has outstanding bonds, either tax or revenue, neither the board nor the board of regents may terminate the agreement until the outstanding bonds are retired, except as provided by Section 21-13-24.1 NMSA 1978. This provision shall apply to all agreements in existence between the branch community college and the board of regents of the parent institution.

H. All taxes levied to pay for principal and interest on bonds of the branch community college shall be in addition to the taxes levied for operating, maintaining and providing facilities for the branch

community college pursuant to Section 21-14-6 NMSA 1978 and shall not be limited by the tax limitation found in that section.

I. For the purpose of relating branch community colleges to existing laws, branch community college districts or branch community colleges shall not:

(1) be considered a part of the uniform system of free public schools pursuant to Article 12, Section 1 and Article 21, Section 4 of the constitution of New Mexico;

(2) benefit from the permanent school fund and from the current school fund under Article 12, Sections 2 and 4 of the constitution of New Mexico;

(3) be subject, except as it relates to technical and vocational education, to the control, management and direction of the state board of education under Article 12, Section 6 of the constitution of New Mexico; and

(4) be considered school districts insofar as the restrictions of Article 9, Section 11 of the constitution of New Mexico are concerned.

J. All elections held pursuant to the branch community college laws shall be as follows:

(1) the board calling the election shall give notice of the election in a newspaper of general circulation in the branch community 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;

(2) the election shall be conducted and canvassed in the same manner as municipal school district elections unless otherwise provided in the branch community college laws; and

(3) any person or corporation may institute in the district court of any county in which the branch community college district affected lies an action or suit to contest the validity of any proceedings held under the branch community college laws, but no such suit or action shall be maintained unless it is instituted within ten days after the issuance by the proper officials of a certificate or notification of the results of the election and the canvassing of the election returns by the board.

K. The tax rolls of the school districts comprising the branch community college district shall be adopted as the tax rolls of the branch community college district.

L. A public post-secondary educational institution established in Article 12, Section 11 of the constitution of New Mexico desiring to initiate the establishment of a branch community college shall comply with all procedures set forth in the Branch Community College Act for establishing two-year community colleges."

Section 3

Section 3. TEMPORARY PROVISION--STUDY.--The commission on higher education shall study the feasibility and benefit to the state of the creation or establishment of learning centers or similar educational entities operated for the purpose of brokering post-secondary educational services to communities in the state. The study should include the development of any criteria necessary for the establishment of learning centers or entities and appropriate establishment and operation procedures if such centers are created. The commission shall make its recommendations to the legislature and the governor before the second session of the forty-third legislature.

HOUSE EDUCATION COMMITTEE

SUBSTITSUTE FOR HOUSE BILL 1132

Approved April 9, 1997

CHAPTER 168

RELATING TO HEALTH; PROVIDING FOR AN INDIVIDUAL'S RIGHT TO MAKE HEALTH-CARE DECISIONS; PROVIDING GUIDELINES FOR ADVANCE HEALTH-CARE DIRECTIVES; 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 24-7A-1 NMSA 1978 (being Laws 1995, Chapter 182, Section 1) is amended to read:

"24-7A-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 24-7A-11 NMSA 1978;

D. emancipated minor means a person between the ages of sixteen and eighteen who has been married, who is on active duty in the armed forces or who has been declared by court order to be emancipated;

E. "guardian" means a judicially appointed guardian or conservator having authority to make a health-care decision for an individual;

F. "health care" means any care, treatment, service or procedure to maintain, diagnose or otherwise affect an individual's physical or mental condition;

G. "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;

(3) directions relating to life-sustaining treatment, including withholding or withdrawing life-sustaining treatment and the termination of life support; and

(4) directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care;

H. "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;

I. "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;

J. "individual instruction" means an individual's direction concerning a health-care decision for the individual, made while the individual has capacity;

K. "life-sustaining treatment" means any medical treatment or procedure without which the individual is likely to die within a relatively short time, as determined to a reasonable degree of medical certainty by the primary physician;

L. "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;

M. "physician" means an individual authorized to practice medicine or osteopathy;

N. "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;

O. "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;

P. "principal" means an adult or emancipated minor who, while having capacity, has made a power of attorney for health care by which he delegates his right to make health-care decisions for himself to an agent;

Q. "qualified health-care professional" means a health-care provider who is a physician, physician assistant, nurse practitioner, nurse, psychologist or social worker;

R. "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;

S. "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;

T. "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;

U. "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; and

V. "ward" means an adult or emancipated minor for whom a guardian has been appointed."

Section 2

Section 2. Section 24-7A-3 NMSA 1978 (being Laws 1995, Chapter 182, Section 3) is amended to read:

"24-7A-3. REVOCATION OF ADVANCE HEALTH-CARE DIRECTIVE.--

A. An individual, while having capacity, may revoke the designation of an agent either by a signed writing or by personally informing the supervising health-care provider. If the individual cannot sign, a written revocation must be signed for the individual and be witnessed by two witnesses, each of whom has signed at the direction and in the presence of the individual and of each other.

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 3

Section 3. Section 24-7A-4 NMSA 1978 (being Laws 1995, Chapter 182, Section 4) is amended to read:

"24-7A-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 cross out, complete or modify all or any part of it. You are free to use a different form. If you use this form, be sure to sign it and date it.

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 life-sustaining treatment, 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. If I initial 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 cross out any wording you do not want.

(6) END-OF-LIFE DECISIONS: If I am unable to make or communicate decisions regarding my health care, and IF (i) I have an incurable or irreversible condition that will result in my death within a relatively short time, OR (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, THEN 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 initialed below in **one** of the following three boxes:

[ ] (a) I CHOOSE NOT To Prolong Life

I do not want my life to be prolonged.

[ ] (b) I CHOOSE To Prolong Life

I want my life to be prolonged as long as possible within the limits of generally accepted health-care standards.

[ ] (c) I CHOOSE To Let My Agent Decide

My agent under my power of attorney for heath care may make life-sustaining treatment decisions for me.

(7) ARTIFICIAL NUTRITION AND HYDRATION: If I have chosen above NOT to prolong life, I also specify by marking my initials below:

[ ] I DO NOT want artificial nutrition OR

[ ] I DO want artificial nutrition.

[ ] I DO NOT want artificial hydration unless required for my comfort OR

[ ] I DO want artificial hydration.

(8) RELIEF FROM PAIN: Regardless of the choices I have made in this form and except as I state in the following space, I direct that the best medical care possible to keep me clean, comfortable and free of pain or discomfort be provided at all times so that my dignity is maintained, even if this care 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 either 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 4

Section 4. Section 24-7A-5 NMSA 1978 (being Laws 1995, Chapter 182, Section 5) is amended to read:

"24-7A-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 24-7A-11 NMSA 1978 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 assumption of authority as promptly as practicable to the patient, to members of the patient's family specified in Subsection B of this section who can be readily contacted and to the supervising health-care provider.

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 shall not be made solely on the basis of the patients pre-existing physical or medical condition or pre-existing or projected disability.

H. A health-care decision made by a surrogate for a patient is effective without judicial approval.

I. A patient, at any time, may disqualify any person, 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.

J. Unless related to the patient by blood, marriage or adoption, a surrogate may not be an owner, operator or employee of a health-care institution at which the patient is receiving care.

K. 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 5

Section 5. Section 24-7A-7 NMSA 1978 (being Laws 1995, Chapter 182, Section 7) is amended to read:

"24-7A-7. OBLIGATION 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 supervising health-care provider who makes or is informed of a determination that a patient lacks or has recovered capacity or that another condition exists that 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 health-care institution providing care to a patient shall comply:

(1) before and after the patient is determined to lack capacity, with an individual instruction of the patient made while the patient had capacity;

(2) with a reasonable interpretation of that instruction made by a person then authorized to make health-care decisions for the patient; and

(3) with a health-care decision for the patient that 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 health-care institution that 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 health-care 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 health-care 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 health-care 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 health-care institution that is willing to comply with the instruction or decision.

H. A health-care provider or health-care 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 6

Section 6. Section 24-7A-10 NMSA 1978 (being Laws 1995, Chapter 182, Section 10) is amended to read:

"24-7A-10. STATUTORY DAMAGES.--

A. A health-care provider or health-care institution that intentionally violates the Uniform Health-Care Decisions Act is subject to liability to the aggrieved individual for damages of five thousand dollars ($5,000) or actual damages resulting from the violation, whichever is greater, plus reasonable attorney 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 give or revoke an advance health-care directive is subject to liability to that individual for damages of five thousand dollars ($5,000) or actual damages resulting from the action, whichever is greater, plus reasonable attorney 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 7

Section 7. Section 24-7A-11 NMSA 1978 (being Laws 1995, Chapter 182, Section 11) is amended to read:

"24-7A-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 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 24-7A-14 NMSA 1978.

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 8

Section 8. Section 24-7A-13 NMSA 1978 (being Laws 1995, Chapter 182, Section 13) is amended to read:

"24-7A-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 health-care institution to provide health care contrary to generally accepted health-care standards applicable to the health-care provider or health-care 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 admitted to a mental health-care institution."

Section 9

Section 9. Section 24-7A-14 NMSA 1978 (being Laws 1995, Chapter 182, Section 14) is amended to read:

"24-7A-14. JUDICIAL RELIEF.--On petition of a patient, the patient's agent, guardian or surrogate, a health-care provider or health-care institution involved with the patient's care, an individual described in Subsection B or C of Section 24-7A-5 NMSA 1978, 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 10

Section 10. Section 24-7A-16 NMSA 1978 (being Laws 1995, Chapter 182, Section 16) is amended to read:

"24-7A-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 that is in effect before July 1, 1995.

C. Any advance directive, durable power of attorney for heath care decisions, living will, right-to-die statement or declaration or similar document that is executed in another state or jurisdiction in compliance with the laws of that state or jurisdiction shall be deemed valid and enforceable in this state to the same extent as if it were properly made in this state."

Section 11

Section 11. Section 30-47-8 NMSA 1978 (being Laws 1990, Chapter 55, Section 8) is amended to read:

"30-47-8. TREATMENT IN COMPLIANCE WITH THE UNIFORM HEALTH-CARE DECISIONS ACT.--

A. Nothing in the Resident Abuse and Neglect Act shall be construed to preclude health care in accordance with the Uniform Health-Care Decisions Act, and it shall be an affirmative defense to any charge brought under the Resident Abuse and Neglect Act that the acts complained of were in accordance with the Uniform Health-Care Decisions Act.

B. To establish an affirmative defense under Subsection A of this section, the person shall show substantial compliance with the provisions of the Uniform Health-Care Decisions Act."

Section 12

Section 12. Section 45-5-312 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-312, as amended) is amended to read:

"45-5-312. GENERAL POWERS AND DUTIES OF THE LIMITED GUARDIAN AND GUARDIAN.--

A. If the court enters judgment pursuant to Subsection C of Section 45-5-304 NMSA 1978, it shall appoint a limited guardian if it determines that the incapacitated person is able to manage some but

not all aspects of his personal care. The court shall specify those powers that the limited guardian shall have and may further restrict each power so as to permit the incapacitated person to care for himself commensurate with his ability to do so. A person for whom a limited guardian has been appointed retains all legal and civil rights except those that have been specifically granted to the limited guardian by the court. The limited guardian shall exercise his supervisory powers over the incapacitated person in a manner that is the least restrictive form of intervention consistent with the order of the court.

B. A guardian of an incapacitated person has the same powers, rights and duties respecting the incapacitated person that a parent has respecting his unemancipated minor child, except that a guardian is not legally obligated to provide from his own funds for the incapacitated person and is not liable to third persons for acts of the incapacitated person solely by reason of the guardianship. In particular and without qualifying the foregoing, a guardian or his replacement has the following powers and duties, except as modified by order of the court:

(1) to the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the incapacitated person, a guardian is entitled to custody of the incapacitated person and may establish the incapacitated person's place of abode within or without New Mexico;

(2) if entitled to custody of the incapacitated person, a guardian shall make provision for the care, comfort and maintenance of the incapacitated person and, whenever appropriate, arrange for his training and education. He shall take reasonable care of the incapacitated person's clothing, furniture, vehicles and other personal effects and commence conservatorship proceedings if other property of the incapacitated person is in need of protection;

(3) if no agent is entitled to make health-care decisions for the incapacitated person under the provisions of the Uniform Health-Care Decisions Act, then the guardian shall make health-care decisions for the incapacitated person in accordance with the provisions of that act. In exercising health-care powers, a guardian may consent or withhold consent that may be necessary to enable the incapacitated person to receive or refuse medical or other professional care, counsel, treatment or service. That decision shall be made in accordance with the values of the incapacitated person, if known, or the best interests of the incapacitated person if the values are not known;

(4) if no conservator for the estate of the incapacitated person has been appointed, the guardian may institute proceedings to compel any person under a duty to support the incapacitated person or to pay sums for the welfare of the incapacitated person; and

(5) the guardian shall exercise his supervisory powers over the incapacitated person in a manner that is least restrictive of his personal freedom and consistent with the need for supervision.

C. Any guardian of an incapacitated person for whom a conservator also has been appointed shall control the care and custody of the incapacitated person and is entitled to receive reasonable sums for his services and for room and board furnished to the incapacitated person. The guardian may request the conservator to expend the incapacitated person's estate by payment to third persons or institutions for the incapacitated person's care and maintenance."

Section 13

Section 13. A new section of the Uniform Health-Care Decisions Act is enacted to read:

"DECISIONS FOR UNEMANCIPATED MINORS.--

A. Except as otherwise provided by law, a parent or guardian of an unemancipated minor may make that minor's health-care decisions.

B. A parent or guardian of an unemancipated minor shall have the authority to withhold or withdraw life-sustaining treatment for the unemancipated minor, subject to the provisions of this section and the standards for surrogate decision making for adults provided for in the Uniform Health-Care Decisions Act.

C. Subject to the provisions of Subsection B of this section, if an unemancipated minor has capacity sufficient to understand the nature of that unemancipated minor's medical condition, the risks and benefits of treatment and the contemplated decision to withhold or withdraw life-sustaining treatment, that unemancipated minor shall have the authority to withhold or withdraw life-sustaining treatment.

D. For purposes of Subsection C of this section, a determination of the mental and emotional capacity of an unemancipated minor shall be determined by two qualified health-care professionals, one of whom shall be the unemancipated minor's primary

physician and the other of whom shall be a physician that works with unemancipated minors of the minor's age in the ordinary course of that physician's health-care practice. If the unemancipated minor lacks capacity due to 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.

E. If the unemancipated minor's primary physician has reason to believe that a parent or guardian of an unemancipated minor, including a non-custodial parent, has not been informed of a decision to withhold or withdraw life-sustaining treatment, the primary physician shall make reasonable efforts to determine if the uninformed parent or guardian has maintained substantial and continuous contact with the unemancipated minor and, if so, shall make reasonable efforts to notify that parent or guardian before implementing a decision.

F. If there is disagreement regarding the decision to withhold or withdraw life-sustaining treatment for an unemancipated minor, the provisions of Section 24-7A-11 NMSA 1978 shall apply.

G. For purposes of this section, "unemancipated minor" means a person at or under the age of fifteen."

Section 14. A new section of the Uniform Health-Care Decisions Act is enacted to read:

"PROHIBITED PRACTICE.--

A. No insurer or other provider of benefits regulated by the New Mexico Insurance Code or a state agency shall require a person to execute or revoke an advance health-care directive as a condition for membership in, being insured for or receiving coverage or benefits under an insurance contract or plan.

B. No insurer may condition the sale, procurement or issuance of a policy, plan, contract, certificate or other evidence of coverage, or entry into a pension, profit-sharing, retirement, employment or similar benefit plan, upon the execution or revocation of an advance health-care directive; nor shall the existence of an advance health-care directive modify the terms of an existing policy, plan, contract, certificate or other evidence of coverage of insurance.

C. The provisions of this section shall be enforced by the superintendent of insurance under the New Mexico Insurance Code."

Section 15

Section 15. REPEAL.--Sections 24-7-1 through 24-7-10 and 45-5-106 NMSA 1978 (being Laws 1977, Chapter 287, Sections 1 through 8, Laws 1984, Chapter 99, Section 6, Laws 1977, Chapter 287, Sections 9 and 10, and Laws 1993, Chapter 301, Section 27, as amended) are repealed.

Section 16

Section 16. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 1202, AS AMENDED

Aprroved April 9, 1997

CHAPTER 169

RELATING TO ECONOMIC DEVELOPMENT; PROVIDING FOR THE CONFIDENTIALITY OF PROPRIETARY INFORMATION OBTAINED BY THE ECONOMIC DEVELOPMENT DEPARTMENT.

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

Section 1

Section 1. Section 9-15-10 NMSA 1978 (being Laws 1983, Chapter 297, Section 10, as amended) is amended to read:

"9-15-10. ORGANIZATIONAL UNITS OF DEPARTMENT--POWERS AND DUTIES SPECIFIED BY LAW--ACCESS TO INFORMATION.--Those organizational units of the department and the officers of those units specified by law shall have all of the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary, and he shall retain the final decision-making authority and responsibility for the administration of any such laws as provided in Subsection B of Section 9-15-6 NMSA 1978. The department shall have access to all records, data and information of other state departments, agencies and institutions, including its own organizational units, not specifically held confidential by law. Any information obtained by the department that is proprietary technical information or related to the possible relocation or expansion of a business shall be deemed confidential and withheld from inspection pursuant to the Inspection of Public Records Act."

HOUSE BILL 1208, AS AMENDED
Approved April 9, 1997

CHAPTER 170

MAKING AN APPROPRIATION TO THE DRINKING WATER STATE REVOLVING LOAN FUND FOR DRINKING WATER SYSTEM FINANCING; DECLARING AN EMERGENCY.

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

Section 1

Section 1. APPROPRIATION.--Pursuant to Section 6-21-6.1 NMSA 1978, two million six hundred thousand dollars ($2,600,000) is appropriated from the public project revolving fund to the drinking water state revolving loan fund to carry out the purposes of the Drinking Water State Revolving Loan Fund Act. Any unexpended or unencumbered balance remaining at the end of fiscal year 1998 shall not revert to the general fund.

Section 2

Section 2. CONTINGENT EFFECTIVE DATE.--The provisions of this act are contingent upon the enactment of a bill passed by the first session of the forty-third legislature and signed into law enacting the Drinking Water State Revolving Loan Fund Act and establishing the drinking water state revolving loan fund.

Section 3

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

HOUSE BILL 1277, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 9, 1997

CHAPTER 171

RELATING TO PUBLIC PURCHASING; 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. A new Section 13-1-40.1 NMSA 1978 is enacted to read:

"Section 13-1-40.1. DEFINITION--CONSTRUCTION MANAGEMENT AND CONSTRUCTION MANAGER.--

A. "Construction management" means consulting services related to the process of management applied to a public works project for any duration from conception to completion of the project for the purpose of controlling time, cost and quality of the project.

B. "Construction manager" means a person who acts as an agent of the state agency or local public body for construction management, for whom the state agency or local public body shall assume all the risks and responsibilities."

Section 2

Section 2. Section 13-1-76 NMSA 1978 (being Laws 1984, Chapter 65, Section 49, as amended) is amended to read:

"13-1-76. DEFINITION--PROFESSIONAL SERVICES.--"Professional services" means the services of architects, archeologists, engineers, surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified public accountants, registered public accountants, lawyers, psychologists, planners, researchers, construction managers and other persons or businesses providing similar professional services, which may be designated as such by a determination issued by the state purchasing agent or a central purchasing office."

Section 3

Section 3. A new Section 13-1-100.1 NMSA 1978 is enacted to read:

"13-1-100.1. CONSTRUCTION CONTRACTS--CONSTRUCTION MANAGEMENT SERVICES.--

A. A construction management services contract may be entered into for any construction or state or local public works project when a state agency or local public body makes a determination that it is in the public's interest to utilize construction management services.

Construction management services shall not duplicate and are in addition to the normal scope of separate architect or engineer contracts, the need for which may arise due to the complexity or unusual requirements of a project as requested by a state agency or local public body.

B. To insure fair, uniform, clear and effective procedures that will strive for the delivery of a quality project, on time and within budget, the secretary, in conjunction with the appropriate and affected professional associations and contractors, shall promulgate regulations, which shall be adopted by the governing bodies of all using agencies and shall be followed by all using agencies when procuring construction management services as authorized in Subsection A of this section.

C. A state agency shall make the decision on a construction management services contract for a state public works project, and a local public body shall make that decision for a local public works project. A state agency shall not make the decision on a construction management services contract for a local public works project."

Section 4

Section 4. Section 13-1-111 NMSA 1978 (being Laws 1984, Chapter 65, Section 84, as amended) is amended to read:

"13-1-111. COMPETITIVE SEALED PROPOSALS--CONDITIONS FOR USE.--When a state agency or a local public body is procuring professional services or a design and build project delivery system, or when the state purchasing agent, a central purchasing office or a designee of either officer makes a written determination that the use of competitive sealed bidding for items of tangible personal property or services is either not practicable or not advantageous to the state agency or a local public body, a procurement shall be effected by competitive sealed proposals. Competitive qualifications-based proposals shall be used for procurement of professional services of architects, engineers, landscape architects, construction managers and surveyors who submit proposals pursuant to Sections 13-1-120 through 13-1-124 NMSA 1978."

Section 5

Section 5. A new Section 13-1-119.1 NMSA 1978 is enacted to read:

"13-1-119.1. PUBLIC WORKS PROJECT DELIVERY SYSTEM--DESIGN AND BUILD PROJECTS AUTHORIZED.--

A. Except for road and highway construction or reconstruction projects of the state highway and transportation department or any local public body, a design and build project delivery system may be authorized when the state purchasing agent or a central purchasing office makes a determination in writing that it is appropriate and in the best interest of the state or local public body to use the system on a specific project with a maximum allowable construction cost of more than ten million dollars ($10,000,000). The determination shall be issued only after the state purchasing or central purchasing office has taken into consideration the following criteria, which shall be used as the minimum basis in determining when to use the design and build process:

(1) the extent to which the project requirements have been, or can be, adequately defined;

(2) time constraints for delivery of the project;

(3) the capability and experience of potential teams with the design and build process;

(4) the suitability of the project for use of the design and build process as concerns time, schedule, costs and quality; and

(5) the capability of the using agency to manage the project, including experienced personnel or outside consultants, and to oversee the project with persons who are familiar with the design and build process.

B. When a determination has been made by the state purchasing agent or a central purchasing office that it is appropriate to use a design and build project delivery system, the design and build team shall include, as needed, a New Mexico registered engineer or architect, and a contractor properly licensed in New Mexico for the type of work required.

C. For each proposed state or local public works design and build project, a two-phase procedure for awarding design and build contracts shall be adopted and shall include at a minimum the following:

(1) during phase one, and prior to solicitation, documents shall be prepared for a request for qualifications by a registered engineer or architect, either in house or selected in accordance with Sections 13-1-120 through 13-1-124 NMSA 1978, and shall include minimum qualifications, a scope of work statement and schedule, documents defining the project requirements, the composition

of the selection committee and a description of the phase two requirements and subsequent management needed to bring the project to completion. Design and build qualifications of responding firms shall be evaluated and a maximum of five firms shall be short listed in accordance with technical and qualifications-based criteria; and

(2) during phase two, the short-listed firms shall be invited to submit detailed specific technical concepts or solutions, costs and scheduling. Unsuccessful firms may be paid a stipend to cover proposal expenses. After evaluation of these submissions, selection shall be made and the contract awarded to the highest ranked firm.

D. To ensure fair, uniform, clear and effective procedures that will strive for the delivery of a quality project on time and within budget, the secretary, in conjunction with the appropriate and affected professional associations and contractors, shall promulgate regulations applicable to all using agencies, which shall be followed by all using agencies when procuring a design and build project delivery system.

E. A state agency shall make the decision on a design and build project delivery system for a state public works project, and a local public body shall make that decision for a local public works project. A state agency shall not make the decision on a design and build project delivery system for a local public works project.

Section 6

Section 6. Section 13-1-120 NMSA 1978 (being Laws 1984, Chapter 65, Section 93, as amended) is amended to read:

"13-1-120. COMPETITIVE SEALED QUALIFICATIONS-BASED PROPOSALS--ARCHITECTS--ENGINEERS--LANDSCAPE ARCHITECTS--SURVEYORS--SELECTION PROCESS.--

A. For each proposed state public works project, local public works project or construction management contract, the architect, engineer, landscape architect, construction management and surveyor selection committee, state highway and transportation department selection committee or local selection committee, as appropriate, shall evaluate statements of qualifications and performance data submitted by at least three businesses in regard to the particular project and may conduct interviews with and may require public presentation by all businesses applying for selection regarding their qualifications, their approach to the project and their ability to furnish the required services.

B. The appropriate selection committee shall select, ranked in the order of their qualifications, no less than three businesses deemed to be the most highly qualified to perform the required services, after considering the following criteria together with any criteria, except price, established by the using agency authorizing the project:

(1) specialized design and technical competence of the business, including a joint venture or association, regarding the type of services required;

(2) capacity and capability of the business, including any consultants, their representatives, qualifications and locations, to perform the work, including any specialized services, within the time limitations;

(3) past record of performance on contracts with government agencies or private industry with respect to such factors as control of costs, quality of work and ability to meet schedules;

(4) proximity to or familiarity with the area in which the project is located;

(5) the amount of design work that will be produced by a New Mexico business within this state;

(6) the volume of work previously done for the entity requesting proposals which is not seventy-five percent complete with respect to basic professional design services, with the objective of effecting an equitable distribution of contracts among qualified businesses and of assuring that the interest of the public in having available a substantial number of qualified businesses is protected; provided, however, that the principle of selection of the most highly qualified businesses is not violated; and

(7) notwithstanding any other provisions of this subsection, price may be considered in connection with construction management contracts, unless the services are those of an architect, engineer, landscape architect or surveyor.

C. Notwithstanding the requirements of Subsections A and B of this section, if fewer than three businesses have submitted a statement of qualifications for a particular project, the appropriate committee may:

(1) rank in order of qualifications and submit to the secretary or local governing authority of the public body for award those businesses which have submitted a statement of qualifications; or

(2) recommend termination of the selection process pursuant to Section 13-1-131 NMSA 1978 and sending out of new notices of the resolicitation of the proposed procurement pursuant to Section 13-1-104 NMSA 1978. Any proposal received in response to the terminated solicitation is not public information and shall not be made available to competing offerors.

D. The names of all businesses submitting proposals and the names of all businesses, if any, selected for interview shall be public information. After an award has been made, the appropriate selection committee's final ranking and evaluation scores for all proposals shall become public information. Businesses which have not been selected for contract award shall be so notified in writing within fifteen days after an award is made."

HOUSE BILL 1317, AS AMENDED
Approved April 9, 1997

CHAPTER 172

RELATING TO ECONOMIC DEVELOPMENT; CHANGING THE MEMBERSHIP OF THE ECONOMIC DEVELOPMENT COMMISSION.

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

Section 1

Section 1. Section 9-15-11 NMSA 1978 (being Laws 1988, Chapter 81, Section 5, as amended) is amended to read:

"9-15-11. ECONOMIC DEVELOPMENT COMMISSION CREATED--MEMBERSHIP--ADMINISTRATIVELY ATTACHED TO THE DEPARTMENT.--

A. The "economic development commission" is created. The commission shall be a planning commission administratively attached to the department. The commission shall provide advice to the department on policy matters. The commission shall be responsible for the annual approval and update of the state's five-year economic development plan. The commission shall consist of nine members who shall be qualified electors of the state, no more than five of whom at the

time of their appointment shall be members of the same political party and at least one of whom shall be a Native American. Members shall be appointed by the governor and confirmed by the senate. Seven members shall be appointed from their respective planning districts, the eighth member shall be a Native American and represent the interests of the Indian tribes and pueblos and the ninth member shall represent the public at large.

B. Appointments shall be made for five-year terms expiring on January 1 of the appropriate year. Commission members shall serve staggered terms as determined by the governor at the time of their initial appointment. Annually, the governor shall designate a chairman of the commission from among the members.

C. The commission shall meet at the call of the chairman, not less than once each quarter, and shall invite representatives of appropriate legislative committees, other state agencies and interested persons to its meetings for the purpose of information exchange and coordination.

D. Commission members shall not vote by proxy. A majority of the members constitutes a quorum for the conduct of business.

E. Members of the commission shall not be removed except for incompetence, neglect of duty or malfeasance in office; provided, however, no removal shall be made without notice of hearing and an opportunity to be heard having first been given the member being removed. The senate shall be given exclusive original jurisdiction over proceedings to remove members of the commission under such rules as it may promulgate. The senate's decision in connection with such matters shall be final. A vacancy in the membership of the commission occurring other than by expiration of term shall be filled in the same manner as the original appointment, but for the unexpired term only.

F. Commission members shall not be paid, but shall receive per diem and mileage as provided in the Per Diem and Mileage Act."

HOUSE BILL 1209, AS AMENDED

Approved April 9, 1997

CHAPTER 173

RELATING TO THE CONSTRUCTION OF STATUTES AND ADMINISTRATIVE RULES; ENACTING THE UNIFORM STATUTE

AND RULE CONSTRUCTION ACT; PROVIDING GENERAL DEFINITIONS AND PRINCIPLES OF CONSTRUCTION; REPEALING 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--APPLICABILITY.--

A. This act may be cited as the "Uniform Statute and Rule Construction Act".

B. The Uniform Statute and Rule Construction Act applies to a statute enacted or rule adopted on or after the effective date of that act unless the statute or rule expressly provides otherwise, the context of its language requires otherwise or the application of that act to the statute or rule would be infeasible.

C. Subsection B of this section does not authorize an administrative agency to exempt its rules from a provision of the Uniform Statute and Rule Construction Act.

Section 2

Section 2. COMMON AND TECHNICAL USAGE.--

Unless a word or phrase is defined in the statute or rule being construed, its meaning is determined by its context, the rules of grammar and common usage. A word or phrase that has acquired a technical or particular meaning in a particular context has that meaning if it is used in that context.

Section 3

Section 3. GENERAL DEFINITIONS.--In the statutes and rules of New Mexico:

A. "annually" means per year;

B. "age of majority" begins on the first instant of an individual's eighteenth birthday;

C. "child" includes a child by adoption;

D. "oath" includes an affirmation;

E. "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or any legal or commercial entity;

F. "personal property" means property other than real property;

G. "personal representative" of a decedent's estate includes an administrator and executor;

H. "population" means the number of individuals enumerated in the most recent federal decennial census;

I. "property" means real and personal property;

J. "real property" means an estate or interest in, over or under land and other things or interests, including minerals, water, structures and fixtures that by custom, usage or law pass with a transfer of land even if the estate or interest is not described or mentioned in the contract of sale or instrument of conveyance and, if appropriate to the context, the land in which the estate or interest is claimed;

K. "rule" means a rule, regulation, order, standard or statement of policy, including amendments thereto or repeals thereof, promulgated by an administrative agency, that purports to affect one or more administrative agencies other than the promulgating agency or that purports to affect persons who are not members or employees of the promulgating agency;

L. "sign" or "subscribe" includes the execution or adoption of any symbol by a person with the present intention to authenticate a writing;

M. "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;

N. "swear" includes affirm;

O. "will" includes a codicil; and

P. "written" and "in writing" includes printing, engraving or any other mode of representing words and letters.

Section 4

Section 4. CONSTRUCTION OF "SHALL", "MUST" AND "MAY".--

A. "Shall" and "must" express a duty, obligation, requirement or condition precedent.

B. "May" confers a power, authority, privilege or right.

C. "May not", "must not" and "shall not" prohibit the exercise of a power, authority, privilege or right.

Section 5

Section 5. NUMBER, GENDER AND TENSE.--

A. Use of the singular number includes the plural, and use of the plural number includes the singular.

B. Use of a word of one gender includes corresponding words of the other genders.

C. Use of a verb in the present tense includes the future tense.

Section 6

Section 6. REFERENCE TO SERIES.--A reference to a series of numbers or letters includes the first and last number or letter.

Section 7

Section 7. COMPUTATION OF TIME.--In computing a period of time prescribed or allowed by a statute or rule, the following rules apply:

A. if the period is expressed in days, the first day of the period is excluded and the last day is included;

B. if the period is expressed in weeks, the period ends on the day that is the same day of the concluding week as the day of the week on which an event determinative of the computation occurred;

C. if the period is expressed in months, the period ends on the day of the concluding month that is numbered the same as the day of the month on which an event determinative of the computation occurred, unless the concluding month has no such day, in which case the period ends on the last day of the concluding month;

D. if the period is expressed in years, the period ends on the day of the concluding month of the concluding year that is numbered the same as the day of the month of the year on which an event determinative of the computation occurred, unless the concluding month has no such day, in which case the period ends on the last day of the concluding month of the concluding year;

E. if the period is less than eleven days, a Saturday, Sunday or legal holiday is excluded from the computation;

F. if the last day of the period is a Saturday, Sunday or legal holiday, the period ends on the next day that is not a Saturday, Sunday or legal holiday;

G. a day begins immediately after midnight and ends at the next midnight;

H. if the period is determinable by the occurrence of a future event, the first day of the period is ascertained by applying the rules of Subsections A through G of this section backward from the last day of the period as if the event had occurred; and

I. in computing the time that a legislative session shall end, the word "day" means a twenty-four-hour period from 12:00 noon on one calendar day to 12:00 noon on the next calendar day.

Section 8

Section 8. PROSPECTIVE OPERATION.--

A statute or rule operates prospectively only unless the statute or rule expressly provides otherwise or its context requires that it operate retrospectively.

Section 9

Section 9. SEVERABILITY.--

If a provision of a statute or rule or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the statute or rule that can be given effect without the invalid provision or application, and to this end the provisions of the statute or rule are severable.

Section 10

Section 10. IRRECONCILABLE STATUTES OR RULES.--

A. If statutes appear to conflict, they must be construed, if possible, to give effect to each. If the conflict is irreconcilable, the later-enacted statute governs. However, an earlier-enacted specific, special or local statute prevails over a later-enacted general statute unless the context of the later-enacted statute indicates otherwise.

B. If an administrative agency's rules appear to conflict, they must be construed, if possible, to give effect to each. If the conflict is irreconcilable, the later-adopted rule governs. However, an earlier-adopted specific, special or local rule prevails over a later-adopted general rule unless the context of the later-adopted rule indicates otherwise.

C. If a statute is a comprehensive revision of the law on a subject, it prevails over previous statutes on the subject, whether or not the revision and the previous statutes conflict irreconcilably.

D. If a rule is a comprehensive revision of the rules on the subject, it prevails over previous rules on the subject, whether or not the revision and the previous rules conflict irreconcilably.

Section 11

Section 11. ENROLLED AND ENGROSSED BILL CONTROLS OVER SUBSEQUENT PUBLICATION.--

If the text of an enrolled and engrossed bill differs from a later publication of the text, the enrolled and engrossed bill prevails.

Section 12

Section 12. INCORPORATION BY REFERENCE.--

A. A statute or rule that incorporates by reference another procedural statute of New Mexico incorporates a later enactment or amendment of the other statute.

B. A statute that incorporates by reference a rule of New Mexico does not incorporate a later adoption or amendment of the rule.

C. A rule that incorporates by reference another rule of New Mexico incorporates a later adoption or amendment of the other rule.

Section 13

Section 13. HEADINGS AND TITLES.--

Headings and titles may not be used in construing a statute or rule unless they are contained in the enrolled and engrossed bill or rule as adopted.

Section 14

Section 14. CONTINUATION OF PREVIOUS STATUTE OR RULE.--

A statute or rule that is revised, whether by amendment or by repeal and reenactment, is a continuation of the previous statute or rule and not a new enactment to the extent that it contains substantially the same language as the previous statute or rule.

Section 15

Section 15. REPEAL OF REPEALING STATUTE OR RULE.--

The repeal of a repealing statute or rule does not revive the statute or rule originally repealed or impair the effect of a savings clause in the original repealing statute or rule.

Section 16

Section 16. EFFECT OF AMENDMENT OR REPEAL.--

A. An amendment or repeal of a civil statute or rule does not affect a pending action or proceeding or a right accrued before the amendment or repeal takes effect.

B. A pending civil action or proceeding may be completed and a right accrued may be enforced as if the statute or rule had not been amended or repealed.

C. If a criminal penalty for a violation of a statute or rule is reduced by an amendment, the penalty, if not already imposed, must be imposed under the statute or rule as amended.

Section 17

Section 17. CITATION FORMS.--

Citations in the following forms are adequate for all purposes:

A. session laws: "Laws 1995, Chapter 1, Section 1" or "L. 1995, Ch. 1, § 1"; and

B. annotated statutes: "§ 1-1-1 NMSA 1978" or "Section 1-1-

1 NMSA 1978".

Section 18

Section 18. PRINCIPLES OF CONSTRUCTION--

PRESUMPTION.--

A. A statute or rule is construed, if possible, to:

(1) give effect to its objective and purpose;

(2) give effect to its entire text; and

(3) avoid an unconstitutional, absurd or unachievable result.

B. A statute that is intended to be uniform with those of other states is construed to effectuate that purpose with respect to the subject of the statute.

C. The presumption that a civil statute in derogation of the common law is construed strictly does not apply to a statute of this state.

Section 19

Section 19. PRIMACY OF TEXT.--

The text of a statute or rule is the primary, essential source of its meaning.

Section 20

Section 20. OTHER AIDS TO CONSTRUCTION.--

A. In considering the text of a statute or rule in light of Sections 2 through 7 and Sections 18 and 19 of the Uniform Statute and Rules Construction Act, and the context in which the statute or rule is

applied, the following aids to construction may be considered in ascertaining the meaning of the text:

(1) the meaning of a word or phrase may be limited by the series of words or phrases of which it is a part; and

(2) the meaning of a general word or phrase following two or more specific words or phrases may be limited to the category established by the specific words or phrases.

B. In addition to considering the text of a statute or rule in light of Sections 2 through 7 and Sections 18 and 19 of the Uniform Statute and Rules Construction Act, the context in which the statute or rule is applied and the aids to construction in Subsection A of this section, the following aids to construction may be considered in ascertaining the meaning of the text:

(1) a settled judicial construction in another jurisdiction as of the time a statute or rule is borrowed from the other jurisdiction;

(2) a judicial construction of the same or similar statute or rule of this or another state;

(3) an official commentary published and available before the enactment or adoption of the statute or rule;

(4) an administrative construction of the same or similar statute or rule of this state;

(5) a previous statute or rule, or the common law, on the same subject;

(6) a statute or rule on the same or a related subject, even if it was enacted or adopted at a different time; and

(7) a reenactment of a statute or readoption of a rule that does not change the pertinent language after a court or agency construed the statute or rule.

C. If, after considering the text of a statute or rule in light of Sections 2 through 7 and Sections 18 and 19 of the Uniform Statute and Rules Construction Act, the context in which the statute or rule is applied and the aids to construction in Subsections A and B of this section, the meaning of the text or its application is uncertain, the

following aids to construction may be considered in ascertaining the meaning of the text:

(1) the circumstances that prompted the enactment or adoption of the statute or rule;

(2) the purpose of a statute or rule as determined from the legislative or administrative history of the statute or rule; and

(3) the history of other legislation on the same subject.

Section 21

Section 21. REPEAL.--

Sections 12-2-1, 12-2-2 and 12-2-6 NMSA 1978 (being Laws 1865-1866, Page 192, Section 4, Laws 1880, Chapter 6, Section 32 and Laws 1912, Chapter 21, Section 1, as amended) are repealed.

Section 22

Section 22. EFFECTIVE DATE.--

The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 1267

Approved April 9, 1997

CHAPTER 174

RELATING TO PROFESSIONAL ATHLETIC CONTESTS; EXEMPTING LIVE PROFESSIONAL BOXING CONTESTS HELD IN NEW MEXICO FROM THE PRIVILEGE TAX FOR EXHIBITING LIVE PROFESSIONAL CONTESTS ON A CLOSED-CIRCUIT TELECAST OR MOTION PICTURE; AMENDING A SECTION OF THE PROFESSIONAL ATHLETIC COMPETITION ACT; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 60-2A-26 NMSA 1978 (being Laws 1980, Chapter 90, Section 26, as amended) is amended to read:

"60-2A-26. PRIVILEGE TAX ON CLOSED-CIRCUIT TELECASTS OR MOTION PICTURES--REPORT TO COMMISSION.--

A. Any person who charges and receives an admission fee for exhibiting any live professional contest on a closed-circuit telecast or motion picture shall, within seventy-two hours after the event, furnish to the commission a verified written report on a form prescribed by the commission showing the number of tickets sold and issued or sold or issued and the gross receipts for the exhibition without any deductions.

B. There is imposed a tax upon the privilege of exhibiting for an admission fee any live professional contest, except a live professional boxing contest held in New Mexico between the effective date of this 1997 act and July 1, 1999, on a closed-circuit telecast or motion picture. The rate of the tax imposed is five percent of the gross receipts derived from the exhibition.

C. The privilege tax imposed in this section shall be administered, collected, enforced and the proceeds deposited as provided in Section 60-2A-24 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 1289, AS AMENDED

WITH EMERGENCY CLAUSEY

SIGNED APRIL 9, 1997

Approved April 9, 1997

CHAPTER 175

RELATING TO PUBLIC EMPLOYEE SALARIES; INCREASING CERTAIN PUBLIC EMPLOYEE SALARY LEVELS; MAKING APPROPRIATIONS.

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

Section 1

Section 1. APPROPRIATIONS--GENERAL FUND.--Four million four hundred seventy-seven thousand three hundred dollars ($4,477,300) is appropriated from the general fund to the department of finance and administration for expenditure in fiscal year 1998 for the purpose of providing a salary increase to eligible classified employees in agencies governed by the Personnel Act. In accordance with a variable pay for performance salary matrix as approved by the personnel board and negotiated with the New Mexico state labor coalition, a salary increase of an average two and one-half percent of range midpoint on the eligible classified employee's anniversary date is authorized. This average increase includes providing annualized lump-sum payments to eligible classified employees whose salaries equal or exceed their salary range maximums. Salary increases shall be effective the first full pay period following the employee's anniversary date. The department of finance and administration shall distribute a sufficient amount to each agency to provide the appropriate increase for those employees whose salaries are received as a result of general fund appropriations in the General Appropriation Act of 1997. Any unexpended or unencumbered balance remaining at the end of fiscal year 1998 shall revert to the general fund.

"Section 2. APPROPRIATIONS--GENERAL FUND--SALARY INCREASES AVERAGING TWO AND ONE-HALF PERCENT.--

A. One million three hundred twenty-seven thousand seven hundred fifty-seven dollars ($1,327,757) is appropriated from the general fund to the department of finance and administration for expenditure in fiscal year 1998 for the purpose of providing salary increases to certain public employees as follows:

(1) two hundred forty-six thousand nine hundred fifteen dollars ($246,915) to provide commissioned officers of the New Mexico state police division of the department of public safety with a salary increase equivalent to two and one-half percent of the midpoint value of the officer's salary range, subject to satisfactory job performance, in accordance with the state police pay plan, and effective on the first full pay period following the officer's anniversary date; and to provide those officers whose salaries are equal to or above the maximum of their salary range a lump-sum payment equivalent to two and one-half percent of the midpoint value of their salary range, subject to satisfactory job performance, in accordance with the state police pay plan, and effective on the first full pay period following the officer's anniversary date;

(2) four hundred twenty-five thousand two hundred ninety-five dollars ($425,295) to provide district attorney permanent employees with a salary increase equivalent to two and one-half percent of the midpoint value of the employee's salary range, subject to

satisfactory job performance and effective on the first full pay period following the employee's anniversary date; and to provide those district attorney permanent employees whose salaries are equal to or above the maximum of their salary range a lump-sum payment of two and one-half percent of the midpoint value of their salary range, subject to satisfactory job performance, in accordance with the district attorneys employee pay plan, and effective on the first full pay period following the employee's anniversary date;

(3) five hundred nineteen thousand two hundred forty-seven dollars ($519,247) to provide judicial permanent employees, other than employees whose salaries are set by statute, with a salary increase equivalent to two and one-half percent of the midpoint value of the employee's salary range, subject to satisfactory job performance, in accordance with the judicial personnel and compensation plan, and effective on the first full pay period following the employee's anniversary date; and to provide those judicial permanent employees, other than employees whose salaries are set by statute, and whose salaries are equal to or above the maximum of their salary range, a lump-sum payment equivalent to two and one-half percent of the midpoint value of their salary range, subject to satisfactory job performance, in accordance with the judicial personnel and compensation plan, and effective on the first full pay period following the employee's anniversary date; and

(4) one hundred thirty-six thousand three hundred dollars ($136,300) to provide permanent legislative employees, including permanent employees of the legislative council service, legislative finance committee, legislative education study committee, legislative maintenance and the house and senate, but excluding the directors and deputy directors of the legislative council service, legislative finance committee, legislative education study committee and the chief clerks of the house and senate, with a two and one-half percent salary increase, subject to satisfactory job performance and effective on the first full pay period after the employee's anniversary date.

B. Any unexpended or unencumbered balances remaining at the end of fiscal year 1998 shall revert to the general fund.".

Section 3

Section 3. APPROPRIATIONS--OTHER STATE FUNDS.--For those state employees whose salaries are referenced in or received as a result of non-general fund appropriations in the General Appropriation Act of 1997, the department of finance and administration shall transfer from the appropriate fund to the appropriate agency the

amount required for the salary increases equivalent to those provided for in this act, and such amounts are appropriated for expenditure in fiscal year 1998. Any unexpended or unencumbered balance remaining at the end of fiscal year 1998 shall revert to the appropriate fund.

HOUSE BILL 1392, AS AMENDED

Approved April 9, 1997

CHAPTER 176

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; PROVIDING FOR COST RECOVERY FOR AGRICULTURAL EMERGENCY PEST CONTROL ACTIONS; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 76-6-6 NMSA 1978 (being Laws 1969, Chapter 41, Section 6) is amended to read:

"76-6-6. ABATEMENT AND EMERGENCY MEASURES AUTHORIZED.-- A. Whenever the board finds any article that is infested or reasonably believed to be infested or a host or pest exists on any premises or is in transit in this state, it may, upon giving notice to the owner or his agent in possession thereof, seize, quarantine, treat or otherwise dispose of the pest, host or article in such manner as the board deems necessary to suppress, control, eradicate or prevent or retard the spread of a pest, or the board may order the owner or agent to so treat or otherwise dispose of the pest, host or article.

B. When the board finds that a continuing threat of the spread of a pest exists, and after appropriate notice, an owner or his agent does not take immediate measures to prevent or retard the spread of the pest, the board may take reasonable emergency action as necessary in accordance with the provisions of the Pest Control Act and regulations of the board. The board may assess an emergency action fee to recover the cost of the emergency action, not to exceed one thousand dollars ($1,000), against the owner of the property that was subject to the board's emergency action."

HOUSE AGRICULTURE AND WATER RESOURCES COMMITTEE SUBSTITUTE FOR HOUSE AGRICULTURE AND WATER RESOURCES COMMITTEE SUBSTITUTE FOR HOUSE BILL 1342

WITH CERTIFICATE OF CORRECTION

CHAPTER 177 WITH PARTIAL VETO

RELATING TO THE NATIONAL STATUARY HALL; CREATING A STATUARY HALL COMMISSION; HONORING POPI; [~~MAKING AN APPROPRIATION;~~] DECLARING AN EMERGENCY.

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

Section 1

Section 1. COMMISSION CREATED.--The "statuary hall commission" is created. The commission shall be composed of no more than nine persons, the chairman of which shall be the governor and the membership of which shall include the state treasurer, the state cultural affairs officer, the executive director of the New Mexico office of Indian affairs and no fewer than four members appointed by the governor from a list of names that have been submitted to him by the Indian nations, tribes or pueblos in New Mexico, containing names of members of those Indian nations, tribes or pueblos who would be appropriate to serve on the commission. Terms of the members shall extend until a second statue from New Mexico is emplaced in the national statuary hall in Washington, D.C. The governor shall fill any vacancy on the statuary hall commission within three months from the date that the vacancy occurs in the same manner as original members were appointed.

Section 2

Section 2. DUTIES.--The statuary hall commission shall:

A. meet at the call of the governor but shall meet no fewer than four times per year;

B. determine the process necessary for New Mexico to have a second statue placed in the national statuary hall;

C. develop procedures for the funding of the second statue and raise funds to commission the design, creation and transport of a

statue to be placed in the national statuary hall through the creation of a foundation for the acceptance of gifts, donations, bequests and proceeds from appropriate fundraising events in accordance with the provisions of the act of July 2, 1864 (40 U.S.C. 187); and

D. commission the design and creation of a statue of the illustrious San Juan pueblo Indian strategist and warrior Popi, who was renowned, respected and revered by the Native Americans of New Mexico as the leader of the pueblo revolt of 1680 and who would be the second Native American to be honored with placement of a statue in the national statuary hall.

Section 3

[~~Section 3. APPROPRIATION.--Sixty thousand dollars ($60,000) is appropriated from the general fund to the office of cultural affairs for expenditure in fiscal years 1997 and 1998 for the purpose of paying mileage and per diem expenses pursuant to the Per Diem and Mileage Act to members of the statuary hall commission that are not official representatives of state agencies and to pay for operational expenses of the commission. Any unexpended or unencumbered balance remaining at the end of fiscal year 1998 shall revert to the general fund.~~]

Section 4

Section 4. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect

immediately.

SENATE BILL 404, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 9, 1997

CHAPTER 178 WITH PARTIAL VETO

RELATING TO PUBLIC BUILDINGS; TRANSFERRING INCOME AND DISTRIBUTIONS CREDITABLE TO THE CAPITOL BUILDINGS REPAIR FUND; AUTHORIZING THE ISSUANCE OF REVENUE BONDS; AMENDING AND ENACTING CERTAIN SECTIONS OF THE

NMSA 1978; CREATING A LONG-RANGE PLANNING COMMISSION FOR STATE BUILDINGS IN SANTA FE; MAKING APPROPRIATIONS.

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

Section 1

Section 1. NEW MEXICO FINANCE AUTHORITY REVENUE BONDS--PURPOSE--CERTIFICATION--APPROPRIATION.--

A. The New Mexico finance authority may issue and sell in installments or at one time revenue bonds in compliance with the New Mexico Finance Authority Act in an amount not to exceed ten million one hundred fifty-five thousand dollars ($10,155,000) for the purpose of repairing, remodeling, constructing and equipping a state building located adjacent to the state capitol in Santa Fe known as the New Mexico state library and for relocation-associated renovations in the state capitol.

B. Monthly, all income and distributions creditable to the capitol buildings repair fund shall be distributed by the state treasurer to the New Mexico finance authority and are appropriated to the authority to be pledged irrevocably for the payment of the principal, interest, any premium and expenses related to the bonds authorized pursuant to this section.

C. All income and distributions to the capitol buildings repair fund distributed to the New Mexico finance authority shall be deposited in a special bond fund or segregated account of the authority. At the end of each month, any money remaining in the special bond fund or segregated account from distribution made to the authority during each month, after all debt service, accumulations, expenses or obligations required by the resolution authorizing issuance of the bonds to be satisfied or paid during each month and any deficiencies from prior months are fully satisfied or paid, shall be transferred by the authority to the state treasurer for deposit into the capitol buildings repair fund. Upon payment of all principal and interest and any other expenses or obligations related to the bonds authorized by this section, the New Mexico finance authority shall certify to the state treasurer that all obligations for the bonds issued pursuant to this section have been fully discharged and direct the state treasurer to cease the distribution to the authority.

D. The legislature shall not repeal, amend or otherwise modify any law that affects or impairs the revenue bonds of the New

Mexico finance authority secured by a pledge of the income and distributions creditable to the capitol buildings repair fund.

E. The New Mexico finance authority may issue and sell revenue bonds authorized by this section when the legislative council service certifies the need for issuance of the bonds. The net proceeds from the sale of the bonds are appropriated to the legislative council service for the purposes described in Subsection A of this section.

F. Upon certification by the New Mexico finance authority that the state building project is sufficiently developed to warrant the issuance of bonds by the authority, the state treasurer shall commence monthly payments of income and distributions creditable to the capitol buildings repair fund to the New Mexico finance authority.

Section 2

Section 2. 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, 7-27-5.13 through 7-27-5.17, 7-27-5.22 and 7-27-5.24 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 3

Section 3. A new section of the Severance Tax Bonding Act, Section 7-27-5.24 NMSA 1978, is enacted to read:

"7-27-5.24. SEVERANCE TAX PERMANENT FUND--

INVESTMENT IN OBLIGATIONS ISSUED FOR STATE CAPITOL BUILDINGS AND RENOVATIONS.--Subject to the approval of the state investment council, the severance tax permanent fund may be invested

in revenue bonds issued by the New Mexico finance authority for state capitol buildings and relocation-associated renovations in the state capitol. The amount invested shall not exceed ten million one hundred fifty-five thousand dollars ($10,155,000)."

Section 4

Section 4. Section 15-3-24 NMSA 1978 (being Laws 1972, Chapter 74, Section 4, as amended) is amended to read:

"15-3-24. CAPITOL BUILDINGS REPAIR FUND--CREATION--EXPENDITURES.--

A. The "capitol buildings repair fund" is created. To this fund shall be transferred, after payments required by Section 1 of this 1997 act to the New Mexico finance authority, all income, including distributions from the land grant permanent fund, derived from lands granted to the state by the United States congress for legislative, executive and judicial public buildings. Two percent of this fund shall be transferred annually to a "state capitol maintenance fund", hereby created, as a special perpetual fund for the upkeep and maintenance of the capitol renovation and capitol grounds.

B. The capitol buildings repair fund may be used to repair, remodel and equip capitol buildings and adjacent lands, to repair or replace building machinery and building equipment located in capitol buildings and to contract for options to purchase real estate, such real estate, if purchased, to be put to state use; provided that no more than ten thousand dollars ($10,000) shall be expended for any single option. Any money used for consideration in acquiring an option to purchase real estate shall be applied against the purchase price of the real estate if the option is exercised. No money shall be expended from the capitol buildings repair fund without authorization of the state board of finance.

C. In the event any capital outlay project exceeds authorized project cost by no more than five percent, the state board of finance may authorize the property control division of the general services department to supplement the authorized cost by an allocation not to exceed five percent of the authorized cost from the capitol buildings repair fund to the extent of the unencumbered and unexpended balance of the fund."

Section 5

Section 5. CAPITOL BUILDINGS PLANNING COMMISSION CREATED.--

A. The "capitol buildings planning commission" is created to study and plan for the long-range facilities needs of state government in Santa Fe. The commission shall review prior long-range facilities needs assessments and develop an initial master plan for the state facilities in Santa Fe.

B. The commission shall be composed of four members of the legislature, two from each house, appointed by the New Mexico legislative council, the secretary of general services, the New Mexico staff architect, the secretary of finance and administration or his designee, the commissioner of public lands or his designee and the chairman of the supreme court building commissioner or his designee.

C. The legislative council service shall provide staff for the commission in coordination with the staff of the general services department.

D. The commission shall meet and shall report annually to the legislature on an annual update of the master plan for the long-range facilities needs for state government in Santa Fe.

Section 6

Section 6. APPROPRIATION.--

A. Three million five hundred thousand dollars ($3,500,000) is appropriated from the cash balances of the legislative council service that remain from the appropriations for session and session preparation expenses and other legislative expenses authorized in Paragraph (4) of Subsection A of Section 4 of Chapter 355 of Laws 1987; Subsections B and C of Section 7 and Section 10 of Chapter 1 of Laws 1989; Subsections A through C of Section 1 of Chapter 1 of Laws 1990 (2nd S.S.); Subsections B, D, F and H of Section 2, Subsections B and C of Section 7 and Sections 10 and 11 of Chapter 1 of Laws 1990; Subsection N of Section 3 of Chapter 131 of Laws 1990; Subsections A through C of Section 1 of Chapter 1 of Laws 1991 (1st S.S.); Subsections A through H and J of Section 2 and Subsections B and C of Section 7 of Chapter 1 of Laws 1991; Section 5 of Chapter 10 of Laws 1991; Subsections A through C of Section 1 of Chapter 1 of Laws 1992 (2nd S.S.); Subsections A through H of Section 2, Subsections B and C of Section 7 and Section 10 of Chapter 1 of Laws 1992; Paragraphs (2) through (4) and (6) of Subsection A of Section 4 of Chapter 94 of Laws 1992; Subsections A through H and J of Section 2, Subsections B through D of Section 7 and Section 10 of Chapter 1 of Laws 1993; Section 4 of Chapter 365 of Laws 1993; Subsection A of Section 3 of Chapter 366 of Laws 1993; Subsection C of Section 22 of

Chapter 65 of Laws 1993; Subsections A through H and J of Section 2, Subsections B and C of Section 7 and Section 10 of Chapter 1 of Laws 1994; Paragraphs (2) through (4) of Subsection A of Section 4 of Chapter 6 of Laws 1994; and Subsections A, C, E and G of Section 2 of Chapter 1 of Laws 1995 for expenditure in fiscal years 1998 through 2000 to renovate the existing state library building. Any unexpended or unencumbered balance remaining at the end of fiscal year 2000 shall not revert to the general fund.

[~~B. Two million dollars ($2,000,000) is appropriated from the general fund to the legislative council service for expenditure in fiscal years 1999 and 2000 to renovate the existing state library building. Any unexpended or unencumbered balance remaining at the end of fiscal year 2000 shall revert to the general fund.~~]

C. Sixty-five thousand dollars ($65,000) is appropriated from the cash balances of the legislative council service from Subsection J of Section 2 of Chapter 1 of Laws 1995 to the legislative council service for expenditure in fiscal years 1998 and 1999 to coordinate with the general services department to provide staff support and planning expertise to the capital buildings planning commission. Any unexpended or unencumbered balance remaining at the end of fiscal year 1999 shall revert to the general fund.

HOUSE BILL 1268, AS AMENDED

CHAPTER 179

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; MAKING APPROPRIATIONS FOR THE SPECIAL CONGRESSIONAL ELECTION IN THE THIRD CONGRESSIONAL DISTRICT; DECLARING AN EMERGENCY.

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

Section 1

Section 1. APPROPRIATION.--

~~A. One hundred fifty thousand dollars ($150,000) is appropriated from the general fund to the secretary of state for expenditure in fiscal year 1997 to pay expenses incurred by the secretary of state in conducting a special congressional election in the~~

~~third congressional district. Any unexpended or unencumbered balance remaining at the end of fiscal year 1997 shall revert to the general fund.~~

B. Five hundred forty-seven thousand dollars ($547,000) is appropriated from the general fund to the secretary of state for expenditure in fiscal year 1997 to distribute the appropriate amounts to the county clerks of the counties in the third congressional district to pay expenses incurred by the counties in conducting a special congressional election in the third congressional district. Any unexpended or unencumbered balance remaining at the end of fiscal year 1997 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 VOTERS AND ELECTIONS COMMITTEE

SUBSTITUTE FOR HOUSE BILL 1365

WITH EMERGENCY CLAUSE

SIGNED APRIL 10, 1997

CHAPTER 180 WITH PARTIAL VETO

RELATING TO COURTS; CREATING JUDGESHIPS IN THE FIRST AND SECOND JUDICIAL DISTRICTS AND METROPOLITAN COURT; ESTABLISHING A DRUG COURT IN THE SECOND JUDICIAL DISTRICT; PROVIDING FOR ADDITIONAL ASSISTANT DISTRICT ATTORNEYS AND PUBLIC DEFENDERS; AMENDING SECTIONS OF THE NMSA 1978; MAKING APPROPRIATIONS.

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

Section 1

Section 1. Section 34-6-4 NMSA 1978 (being Laws 1968, Chapter 69, Section 7, as amended) is amended to read:

"34-6-4. JUDGES--FIRST JUDICIAL DISTRICT.--There shall be seven district judges in the first judicial district."

Section 2. 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-three district judges in the second judicial district."

Section 3

Section 3. Section 34-8A-4.1 NMSA 1978 (being Laws 1981, Chapter 318, Section 2, as amended) is amended to read:

"34-8A-4.1. METROPOLITAN COURT JUDGES--TERMS OF OFFICE--ELECTION.--

A. The elected term of office for each judge of the metropolitan court is four years.

B. Judges of the metropolitan court who have been previously elected in a partisan election or who were serving as metropolitan judges on January 1, 1989 in divisions one through twelve shall be subject to retention or rejection on a nonpartisan ballot at the 1990 general election for a four-year term ending December 31, 1994.

C. Any person appointed to fill a vacancy on the metropolitan court after January 1, 1989 shall serve until the next general election. That person's successor shall be chosen at that general election and shall hold the office until the general election four years later.

D. Judges of the Bernalillo county metropolitan court for divisions thirteen, fourteen and fifteen shall be appointed and shall serve until the 1992 general election. Their successors shall be chosen at that general election and shall hold office until the general election four years later. Additional judges shall be appointed and elected pursuant to Article 6 of the constitution of New Mexico."

Section 4

Section 4. Section 34-8A-8 NMSA 1978 (being Laws 1979, Chapter 346, Section 8, as amended) is amended to read:

"34-8A-8. METROPOLITAN COURT--BERNALILLO DISTRICT.--

A. The name of the metropolitan court in the Bernalillo metropolitan district shall be the "Bernalillo county metropolitan court".

B. The metropolitan court is an agency of the judicial department of state government. Personnel of the metropolitan court are subject to all laws and regulations applicable to state officers and agencies and state officers and employees, except where otherwise specifically provided by law.

[~~C. There shall be eighteen judges of the Bernalillo county metropolitan court."~~]

Section 5

Section 5. TEMPORARY PROVISION--DRUG COURT.--One of the additional judges provided for the second judicial district in this act shall preside over the operation of a drug court.

Section 6

Section 6. TEMPORARY PROVISION--APPOINTMENT.--The additional district judgeships provided for in this act shall be filled by appointment by the governor pursuant to Article 6 of the constitution of New Mexico for terms beginning July 1, 1997.

Section 7

Section 7. APPROPRIATIONS.--

A. The following amounts are appropriated from the general fund to the following entities for expenditure in fiscal year 1998 for the specified purposes:

(1) two hundred ninety-seven thousand five hundred seventy-seven dollars ($297,577) to pay the cost of adding an additional judgeship in the first judicial district, including salary and benefits, training and office equipment, furnishings and supplies;

(2) four hundred ninety thousand nine hundred dollars ($490,900) to the second judicial district to pay two district court judges' salaries and benefits, provide support staff and purchase furniture and equipment for the judgeships;

[~~(3) six hundred twenty-one thousand dollars ($621,000) to the Bernalillo county metropolitan court for the purpose of paying salaries and benefits and providing furniture, equipment and supplies for three judges and support staff;~~]

(4) three hundred eighty-eight thousand three hundred dollars ($388,300) to the district attorney's office for the second judicial district to pay for salaries and benefits for assistant district attorneys and support staff; and

(5) five hundred sixty-six thousand dollars ($566,000) to the public defender department to pay for salaries and benefits for public defenders and support staff.

B. Any unexpended or unencumbered balance remaining at the end of fiscal year 1998 shall revert to the general fund.

Section 8

[~~Section 8. APPROPRIATIONS.--~~

~~A. The following amounts are appropriated from the general fund to the third judicial district for expenditure in fiscal year 1998 for the specified purposes:~~

~~(1) one hundred twenty thousand dollars ($120,000) to pay court costs incurred as the result of the stream and ground water adjudication of the lower Rio Grande basin; and~~

~~(2) one hundred forty thousand dollars ($140,000) to pay salaries and benefits for two additional full-time employees and to provide for contractual services.~~

~~B. Any unexpended or unencumbered balance remaining at the end of fiscal year 1998 shall revert to the general fund.~~]

Section 9

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE APPROPRIATIONS AND FINANCE

COMMITTEE SUBSTITUTE FOR HOUSE BILLS

277, 175, 587 AND 784 AS AMENDED

CHAPTER 181 WITH PARTIAL VETO

RELATING TO REGULATION OF THE CONSTRUCTION INDUSTRY; PLACING BUREAU CHIEFS OF THE CONSTRUCTION INDUSTRIES DIVISION OF THE REGULATION AND LICENSING DEPARTMENT

UNDER THE PERSONNEL ACT; CHANGING LICENSE ISSUANCE AND QUALIFICATION PROVISIONS; CHANGING CERTAIN FEES; EXTENDING THE PERMITTED PERIOD FOR A CERTIFICATE OF COMPETENCE; ABOLISHING THE JOURNEYMEN TESTING REVOLVING FUND.

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

Section 1

Section 1. Section 9-16-8 NMSA 1978 (being Laws 1983, Chapter 297, Section 24) is amended to read:

"9-16-8. BUREAUS--CHIEFS.--The superintendent shall establish within each division such "bureaus" as he deems necessary to carry out the provisions of the Regulation and Licensing Department Act. He shall appoint a "chief" to be the administrative head of any such bureau. The positions so appointed may be exempted from the Personnel Act by action of the superintendent, except for the construction industries division trade bureaus created pursuant to Section 60-13-31 NMSA 1978. The chiefs of those bureaus shall be covered positions under the Personnel Act."

Section 2. Section 60-13-3 NMSA 1978 (being Laws 1978, Chapter 66, Section 1, as amended) is amended to read:

"60-13-3. DEFINITION--CONTRACTOR.--As used in the Construction Industries Licensing Act, "contractor":

A. means any person who undertakes, offers to undertake by bid or other means or purports to have the capacity to undertake, by himself or through others, contracting. Contracting includes but is not limited to constructing, altering, repairing, installing or demolishing any:

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

(2) building, stadium or other structure;

(3) airport, subway or similar facility;

(4) park, trail, bridle path, athletic field, golf course or similar facility;

(5) dam, reservoir, canal, ditch or similar facility;

(6) sewerage or water treatment facility, power generating plant, pump station, natural gas compressing station or similar facility;

(7) sewerage, water, gas or other pipeline;

(8) transmission line;

(9) radio, television or other tower;

(10) water, oil or other storage tank;

(11) shaft, tunnel or mining appurtenance;

(12) leveling or clearing land;

(13) excavating earth;

(14) air conditioning, conduit, heating or other similar mechanical works;

(15) electrical wiring, plumbing or plumbing fixture, consumers' gas piping, gas appliances or water conditioners; or

(16) similar work, structures or installations which are covered by applicable codes adopted under the provisions of the Construction Industries Licensing Act;

B. includes subcontractor and specialty contractor;

C. includes a construction manager who coordinates and manages the building process; who is a member of the construction team with the owner, architect, engineer and other consultants required for the building project; and who utilizes his skill and knowledge of general contracting to develop schedules, prepare project construction estimates, study labor conditions and advise concerning construction; and

D. does not include:

(1) any person who merely furnishes materials or supplies at the site without fabricating them into, or consuming them in the performance of, the work of a contractor;

(2) any person who drills, completes, tests, abandons or operates any petroleum, gas or water well; or services

equipment and structures used in the production and handling of any product incident to the production of any petroleum, gas or water wells, excluding any person performing duties normally performed by electrical, mechanical or general contractors; or who performs geophysical or similar exploration for oil, gas or water;

(3) a public utility or rural electric cooperative which constructs, reconstructs, operates or maintains its plant or renders authorized service by the installation, alteration or repair of facilities, up to and including the meters, which facilities are an integral part of the operational system of the public utility or rural electric cooperative; provided that the construction of a building by a public utility or rural electric cooperative or the installation or repair of any consumer gas or electrical appliance not an integral part of the operational system makes a public utility or rural electric cooperative a contractor for that purpose;

(4) a utility department of any municipality or local public body rendering authorized service by the installation, alteration or repair of facilities, up to and including the meters, which facilities are an integral part of the operational system of the utility department of the municipality;

(5) any railroad company;

(6) a telephone or telegraph company or rural electric cooperative which installs, alters or repairs electrical equipment and devices for the operation of signals or the transmission of intelligence where that work is an integral part of the operation of a communication system owned and operated by a telephone or telegraph company or rural electric cooperative in rendering authorized service;

(7) a pipeline company which installs, alters or repairs electrical equipment and devices for the operation of signals or the transmission of intelligence where that service is an integral part of the operation of the communication system of that pipeline company and is not for hire or for the use of the general public, or any pipeline company which installs, alters or repairs plumbing fixtures or gas piping where the work is an integral part of installing and operating the system owned or operated by the pipeline company in rendering its authorized service;

(8) any mining company, gas company or oil company which installs, alters or repairs its facilities, including but not limited to plumbing fixtures or gas piping, where the work is an integral part of the installing or operating of a system owned or operated by the

mining company, gas company or oil company; provided the construction of a building by a mining company, a gas company or an oil company is required to be done in conformity with all other provisions of the Construction Industries Licensing Act and with orders, rules, regulations, standards and codes adopted pursuant to that act;

(9) a radio or television broadcaster who installs, alters or repairs electrical equipment used for radio or television broadcasting;

(10) an individual who, by himself or with the aid of others who are paid wages and who receive no other form of compensation, builds or makes installations, alterations or repairs in or to a single-family dwelling owned and occupied or to be occupied by him; provided that the installation, building, alteration or repair is required to be done in conformity with all other provisions of the Construction Industries Licensing Act and with the orders, rules, regulations, standards and codes adopted pursuant to that act;

(11) a person who acts on his own account to build or improve a single-family residence for his personal use, including the building or improvement of a free standing storage building located on that residential property, provided that the construction or improvement is required to be done in conformity with all other provisions of the Construction Industries Licensing Act and with the orders, rules, regulations, standards and codes adopted pursuant to that act, and provided further that he does not engage in commercial construction;

(12) a person who, by himself or with the aid of others who are paid wages and receive no other form of compensation, builds or makes installations, repairs or alterations in or to a building or other improvement on a farm or ranch owned, occupied or operated by him, or makes installations of electrical wiring which are not to be connected to electrical energy supplied from a power source outside the premises of the farm or ranch owned, occupied or operated by him; provided that the state codes and any local codes adopted pursuant to Subsection F of Section 60-13-44 NMSA 1978 shall not require any permits or inspections for such construction on a farm or ranch except for electrical wiring to be connected to a power source outside the premises;

(13) an individual who works only for wages;

(14) an individual who works on one undertaking or project at a time which, in the aggregate or singly, does not exceed seven thousand two hundred dollars ($7,200) compensation a year, the

work being casual, minor or inconsequential such as, but not limited to, handyman repairs; provided that this exemption shall not apply to any undertaking or project pertaining to the installation, connection or repair of electrical wiring, plumbing or gas fitting as defined in Section 60-13-32 NMSA 1978 and provided:

(a) the work is not part of a larger or major operation undertaken by the same individual or different contractor;

(b) the individual does not advertise or maintain a sign, card or other device which would indicate to the public that he is qualified to engage in the business of contracting; and

(c) the individual files annually with the division, on a form prescribed by the division, a declaration substantially to the effect that he is not a contractor within the meaning of the Construction Industries Licensing Act, that the work he performs is casual, minor or inconsequential and will not include more than one undertaking or project at one time and that the total amount of such contracts, in the aggregate or singly, will not exceed seven thousand two hundred dollars ($7,200) compensation a year;

(15) any person, firm or corporation which installs fuel containers, appliances, furnaces and other appurtenant apparatus as an incident to its primary business of distributing liquefied petroleum fuel;

(16) a cable television or community antenna television company which constructs, installs, alters or repairs facilities, equipment, cables or lines for the provision of television service or the carriage and transmission of television or radio broadcast signals; or

(17) a person who performs work consisting of short-term depreciable improvements to commercial property to provide needed repairs and maintenance such as painting, carpeting, flooring and similar items if the total amount paid the person for the work on a single undertaking, including materials, services and wages of those who work for him, does not exceed the sum of five thousand dollars ($5,000)."

Section 3

Section 3. Section 60-13-14 NMSA 1978 (being Laws 1967, Chapter 199, Section 17, as amended) is amended to read:

"60-13-14. DIVISION--LICENSE ISSUANCE--REPORTS.--

A. No license shall be issued by the division to any applicant unless the director is satisfied that the applicant is or has in his employ a qualifying party who is qualified for the classification for which application is made and the applicant has satisfied the requirements of Subsection B of this section.

B. An applicant for a license shall:

(1) demonstrate proof of responsibility as provided in the Construction Industries Licensing Act;

(2) comply with the provisions of Subsection D of this section if he has engaged illegally in the contracting business in New Mexico within one year prior to making application;

(3) demonstrate familiarity with the rules and regulations promulgated by the commission and division concerning the classification for which application is made;

(4) if a corporation, incorporated association, registered limited liability partnership or limited liability company, have complied with the laws of this state requiring qualification to do business in New Mexico and provide the name of its current registered agent and the current address of its registered office in New Mexico;

(5) if a person other than the persons described in Paragraph (4) of this subsection, provide a current physical location address and mailing address of the applicant's place of business;

(6) submit proof of registration with the taxation and revenue department and submit a current identification tax number;

(7) comply with any additional procedures, rules and regulations which are established by the commission relating to issuance of licenses; and

(8) have had four years, within the ten years immediately prior to application, of practical or related trade experience dealing specifically with the type of construction or its equivalent for which the applicant is applying for a license, except that the commission may by regulation provide for:

(a) reducing this requirement for a particular industry or craft where it is deemed excessive but the requirement shall not be less than two years; and

(b) a waiver of the work experience requirement of this paragraph when the qualifying party has been certified in New Mexico with the same license classification within the ten years immediately prior to application.

C. The division, with the consent of the commission, may enter into a reciprocal licensing agreement with any state having equivalent licensing requirements.

D. The director may issue a license to an applicant who at any time within one year prior to making application has acted as a contractor in New Mexico without a license as required by the Construction Industries Licensing Act if:

(1) the applicant in addition to all other requirements for licensure pays an additional fee as follows:

(a) in an amount up to ten percent of the contract price or the value of the nonlicensed contracted work in the discretion of the commission; or

(b) if the applicant has bid or offered a price on a construction project and was not the successful bidder or offeror, the fee shall be at least one percent but not more than five percent of the total bid amount; and

(2) the director is satisfied that no incident of such contracting without a license:

(a) caused monetary damage to any person; or

(b) resulted in an unresolved consumer complaint being filed against the applicant with the division.

E. An unlicensed contractor who has performed unlicensed work may settle the claims against him without becoming licensed if the claims arise from his first offense and he pays an administrative fee calculated pursuant to Paragraph (1) of Subsection D of this section. In addition to the administrative fee, an additional ten percent of the amount of the administrative fee shall be assessed as a service fee.

F. If the total fee to be paid by the contractor pursuant to the provisions of Subsection D or E of this section is twenty-five dollars ($25.00) or less, the fee may be waived.

G. The director shall report every incident of nonlicensed contracting work to the taxation and revenue department to assure that the contractor complies with tax requirements and pays all taxes due."

Section 4

Section 4. Section 60-13-16 NMSA 1978 (being Laws 1967, Chapter 199, Section 18, as amended) is amended to read:

"60-13-16. DIVISION--QUALIFYING PARTY--EXAMINATION--CERTIFICATE.--

A. Except as otherwise provided in this section, no certificate of qualification shall be issued to an individual desiring to be a qualifying party until he has passed with a satisfactory score an examination approved and adopted by the division.

B. The examination shall consist of a test based on general business knowledge, rules and regulations of the division and the provisions of the Construction Industries Licensing Act. In addition, applicants for a GB, MM or EE classification or for any other classification that the commission determines to be appropriate shall take a test based on technical knowledge and familiarity with the prescribed codes and minimum standards of the particular classification for which certification is requested. The division shall provide examinations in both English and Spanish.

C. In lieu of the examination to determine knowledge of business and construction industries law provided in Subsection B of this section, an applicant may satisfy the business and law knowledge requirement by receiving a certificate of completion of a business and law course of study offered by an accredited education institute approved by the commission. The course and any preparation and instruction materials shall be available in both English and Spanish and shall be made available to the division, the commission or the designated agent of the division, upon request, for review.

D. If a contractor's license is subject to suspension by the commission and if the suspension is based on the requirement that the licensee employ a qualifying party and the employment of the qualifying party is terminated without fault of the licensee, a member of that trade who is experienced in the classification for which the certificate of qualification was issued and has been employed for five or more years by the licensed contractor shall be issued without examination a temporary certificate of qualification in the classification for which the contractor is licensed. The temporary qualifying party is required to pass

the regular examination as set forth in Subsection B of this section within ninety days of issuance of a temporary certificate of qualification.

E. The certificate of qualification is not transferable.

F. A qualifying party whose certificate is revoked by the commission shall not reapply for a certificate for one year."

Section 5

Section 5. Section 60-13-20 NMSA 1978 (being Laws 1967, Chapter 199, Section 22, as amended) is amended to read:

"60-13-20. FEES ESTABLISHED BY THE DIVISION--PAYMENT OF EXAMINATION AND LICENSING SERVICE FEES.--

A. The division shall by regulation establish and charge reasonable candidate and applicant fees for each license and certificate classification for initial applications, initial and additional examinations, license issuance and renewals, certificate of qualification issuance and renewal, and licensing verification services.

B. The division by regulation may provide that fees charged pursuant to Subsection A of this section shall be paid to the agency providing or administering the service if the service is provided pursuant to authority of the division."

Section 6

Section 6. Section 60-13-39 NMSA 1978 (being Laws 1967, Chapter 199, Section 42, as amended) is amended to read:

"60-13-39. CERTIFICATES AND EXAMINATION.--

A. Certificates of competence issued by the division are not transferable and shall expire on the date established by the division, not more than three years from the month of issuance.

B. Application shall be made before the expiration date for renewal of a current certificate of competence and shall be accompanied by the fee prescribed for the initial issuance of the certificate.

C. Applications for a renewal of a certificate of competence shall be filed with the division prior to the last working day before the certificate expires. An expired certificate shall be renewable within a six-

month period without examination and only upon paying a fee in twice the amount of the renewal fee. If the certificate has not been renewed within the six-month period, it shall be canceled."

Section 7

Section 7. Section 60-13-58 NMSA 1978 (being Laws 1978, Chapter 194, Section 1, as amended) is amended to read:

"60-13-58. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The construction industries commission and division and its trade bureaus are terminated on July 1, 2005 pursuant to the Sunset Act. The construction industries commission and division and its trade bureaus shall continue to operate according to the provisions of Chapter 60, Article 13 NMSA 1978 and Chapter 70, Article 5 NMSA 1978 until July 1, 2006. Effective July 1, 2006, Chapter 60, Article 13 NMSA 1978 and Chapter 70, Article 5 NMSA 1978 are repealed."

Section 8

[~~Section 8. A new section of the Construction Industries Licensing Act is enacted to read:~~

~~"CONSTRUCTION INDUSTRIES DIVISION REGULATORY COMPLIANCE REVOLVING FUND CREATED--APPROPRIATION.--The "construction industries division regulatory compliance revolving fund" is created. All money collected by the division for plan review, building permits and inspection services pursuant to the Construction Industries Licensing Act shall be deposited with the state treasurer to be credited to the fund. Money in the fund is appropriated to the division. Fees for plan review, building permits and inspection services shall be established by regulations adopted by the division and approved by the commission. Disbursements from the fund shall be made by warrants signed by the secretary of finance and administration, based upon vouchers signed by the director and only in accordance with a budget approved by the department of finance and administration. Expenditures from the fund shall be used to achieve compliance with the provisions of the Construction Industries Licensing Act. Money in the fund shall not revert at the end of the fiscal year."~~]

Section 9

Section 9. A new section of the Construction Industries Licensing Act is enacted to read:

"CONSTRUCTION INDUSTRIES DIVISION PUBLICATIONS REVOLVING FUND CREATED--APPROPRIATION.--The "construction industries division publications revolving fund" is created. All money collected by the division from the sale of publications and information related to the licensing and regulatory provisions of and issues arising under the Construction Industries Licensing Act and regulations adopted pursuant to that act shall be deposited with the state treasurer to be credited to the fund. Money in the fund is appropriated to the division. Money in the fund shall be used only for printing and maintenance of publications and information related to the licensing and regulatory provisions of and issues arising under the Construction Industries Licensing Act and regulations adopted pursuant to that act. Disbursements from the fund shall be made by warrants signed by the secretary of finance and administration, based upon vouchers signed by the director and only in accordance with a budget approved by the department of finance and administration. Money in the fund shall not revert at the end of the fiscal year."

Section 10

Section 10. TEMPORARY PROVISION--APPROPRIATION OF BALANCE IN JOURNEYMEN TESTING REVOLVING FUND.--

The balance remaining in the journeymen testing revolving fund on June 30, 1997, is appropriated to the construction industries division of the regulation and licensing department for expenditure in fiscal years 1998, 1999, and 2000 in accordance with approved budgets for the division. Any unexpended or unencumbered balance remaining at the end of fiscal year 2000 shall revert to the general fund.

Section 11

Section 11. REPEAL.--

Section 60-13-40.1 NMSA 1978 (being Laws 1983, Chapter 82, Section 2, as amended) is repealed.

Section 12

Section 12. EFFECTIVE DATE.--

The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 273, AS AMENDED

CHAPTER 182 WITH PARTIAL VETO

RELATING TO THE LOCAL DWI GRANT PROGRAM; MAKING A DISTRIBUTION OF LIQUOR EXCISE TAX REVENUES TO THE LOCAL DWI GRANT FUND; PROVIDING A FORMULA FOR DISTRIBUTION OF LOCAL DWI GRANT FUNDS; AMENDING THE PURPOSES OF THE LOCAL DWI GRANT 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. A new section of the Tax Administration Act is enacted to read:

"DISTRIBUTION--LOCAL DWI GRANT FUND.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the local DWI grant fund in an amount equal to twenty-seven and two-tenths percent of the net receipts attributable to the liquor excise tax."

Section 2

Section 2. A new section of the Local DWI Grant Program Act is enacted to read:

"DISTRIBUTION OF CERTAIN DWI GRANT PROGRAM FUNDS--APPROVAL OF PROGRAMS.--

A. An amount equal to the liquor excise tax revenues distributed to the local DWI grant fund for the fiscal year less two million dollars ($2,000,000) shall be available for distribution in accordance with the formula in Subsection B of this section to each county for council-approved DWI programs, services or activities, provided that each county shall receive a minimum distribution of at least one-half of one percent of the money available for distribution.

B. Each county shall be eligible for a DWI program distribution in an amount derived by multiplying the total amount of money available for distribution by a percentage that is the average of the following two percentages:

(1) a percentage equal to a fraction, the numerator of which is the retail trade gross receipts in the county and the

denominator of which is the total retail trade gross receipts in the state; and

(2) a percentage equal to a fraction, the numerator of which is the number of alcohol-related injury crashes in the county and the denominator of which is the total alcohol-related injury crashes in the state.

C. A county shall be eligible to receive the distribution determined pursuant to Subsection B of this section if the board of county commissioners has submitted to the council a request to use the distribution for the operation of one or more DWI programs, services or activities in the county and the request has been approved by the council.

D. No later than August 1 each year, each board of county commissioners seeking approval for the DWI program distribution pursuant to this section shall make application to the division for review and approval by the council for one or more local DWI programs, services or activities in the county. Application shall be made on a form and in a manner determined by the division. The council shall approve the programs eligible for funds no later than September 1 of each year. The division shall make the annual distribution to each county in quarterly installments on or before each October 10, January 10, April 10 and July 10, beginning in October 1997. The amount available for distribution quarterly to each county shall be the amount determined by applying the formula in Subsection B of this section to the amount of liquor excise tax revenues in the fund at the end of the month prior to the quarterly installment due date and after five hundred thousand dollars ($500,000) has been set aside for the DWI grant program.

E. If a county has no council-approved DWI program, service or activity or does not need the full amount of the available distribution, the unused money shall revert to the local DWI grant fund and may be used by the council for the local DWI grant program.

F. As used in this section:

(1) "alcohol-related injury crashes" means the average annual number of alcohol-related injury crashes during the period from January 1, 1993 through December 31, 1995, as determined by the traffic safety bureau of the state highway and transportation department; and

(2) "retail trade gross receipts" means the total reported gross receipts attributable to taxpayers reporting under the

retail trade industry sector of the state for the most recent fiscal year as determined by the taxation and revenue department."

Section 3

Section 3. Section 11-6A-3 NMSA 1978 (being Laws 1993, Chapter 65, Section 3) is amended to read:

"11-6A-3. LOCAL DWI GRANT PROGRAM--FUND.--

A. The division shall establish a local DWI grant program to make grants to municipalities or counties for new, innovative or model programs, services or activities to prevent or reduce the incidence of DWI, alcoholism and alcohol abuse. Grants shall be awarded by the council pursuant to the advice and recommendations of the division.

B. The "local DWI grant fund" is created in the state treasury and shall be administered by the division. Two million dollars ($2,000,000) of liquor excise tax revenues distributed to the fund and all other money in the fund, other than money appropriated for DWI program distributions, are appropriated to the division to make grants to municipalities and counties upon council approval in accordance with the program established under the Local DWI Grant Program Act. An amount equal to the liquor excise tax revenues distributed annually to the fund less two million dollars ($2,000,000) is appropriated to the division to make DWI program distributions to counties upon council approval of programs in accordance with the provisions of the Local DWI Grant Program Act. No more than five percent of the two million dollars ($2,000,000) of liquor excise tax revenues distributed to the fund in any fiscal year shall be expended for administration of the grant program. Balances in the fund at the end of any fiscal year shall not revert to the general fund.

C. In awarding DWI grants to local communities, the council:

(1) may fund new, innovative or model programs, services or activities of any kind designed to prevent or reduce the incidence of DWI, alcoholism or alcohol abuse;

(2) may fund existing community-based programs, services or facilities for prevention, screening and treatment of alcoholism and alcohol abuse;

[~~(3) may fund programs for the treatment and care of family members and others who suffer from problems related to~~

~~alcoholism and alcohol abuse, including persons with developmental disabilities caused by fetal alcohol syndrome or alcohol-related birth defects and victims of domestic violence;~~]

(4) shall give consideration to a broad range of approaches to prevention, education, screening, treatment or alternative sentencing, including programs that combine incarceration, treatment and aftercare, to address the problem of DWI, alcoholism or alcohol abuse; and

(5) shall make grants only to counties or municipalities in counties that have established a DWI planning council and adopted a county DWI plan or are parties to a multicounty DWI plan that has been approved pursuant to the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act and only for programs, services or activities consistent with that plan.

D. The council shall use the criteria in Subsection C of this section to approve DWI programs, services or activities for funding through the county DWI program distribution."

Section 4

Section 4. Section 11-6A-5 NMSA 1978 (being Laws 1993, Chapter 65, Section 5) is amended to read:

"11-6A-5. ADMINISTRATION OF DWI GRANT PROGRAM AND COUNTY DWI PROGRAM DISTRIBUTION--REGULATIONS.--

A. The division shall administer the DWI grant program and the county DWI program distribution and shall serve as staff to the council.

B. The division, with the advice and approval of the council, shall adopt regulations necessary for operation of the grant program and the county DWI program distribution, including:

(1) forms and procedures for the application process for the grant program and the county DWI program distribution;

(2) documentation to be provided by the applicant to assure compliance with the grant and the county DWI program distribution guidelines and other provisions of the Local DWI Grant Program Act;

(3) procedures and guidelines for review, evaluation and approval of grant awards and for review and approval of programs to be funded by the county DWI program distribution;

(4) procedures and guidelines for oversight, evaluation and audit of DWI grantees to assure that grants are being administered in the manner and for the purposes that the grant was awarded; and

(5) design of an evaluation mechanism for DWI grant programs and services and submission by each grantee of an annual report on each grant program or service and its effectiveness and outcomes."

Section 5

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1998.

HB 108, AS AMENDED

CHAPTER 183

RELATING TO THE LAND GRANT PERMANENT FUNDS; CHANGING INVESTMENT RESTRICTIONS; AUTHORIZING AND LIMITING NON-UNITED STATES INVESTMENTS AND VENTURE CAPITAL INVESTMENTS; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 6-8-1 NMSA 1978 (being Laws 1957, Chapter 179, Section 1, as amended by Laws 1983, Chapter 301, Section 11 and also by Laws 1983, Chapter 306, Section 1) is amended to read:

"6-8-1. DEFINITIONS.--As used in Chapter 6, Article 8 NMSA 1978:

A. "secretary" means the secretary of finance and administration;

B. "department" means the department of finance and administration;

C. "land grant permanent funds" means those funds derived from lands under the direction, control, care and disposition of the commissioner of

public lands conferred by Article 13, Sections 1 and 2 of the constitution of New Mexico; and

D. "council" means the state investment council."

Section 2

Section 2. Section 6-8-9 NMSA 1978 (being Laws 1957, Chapter 179, Section 9, as amended) is amended to read:

"6-8-9. SECURITIES AND INVESTMENT.--

A. Money made available from the land grant permanent funds for investment for a period in excess of one year may be invested in the following classes of securities and investments:

(1) bonds, notes or other obligations of the United States government, its agencies, government-sponsored enterprises, corporations or instrumentalities and that portion of bonds, notes or other obligations guaranteed as to principal and interest and issued by the United States government, its agencies, government-sponsored enterprises, corporations or instrumentalities or issued pursuant to acts or programs authorized by the United States government;

(2) bonds, notes, debentures and other obligations issued by the state of New Mexico or a municipality or other political subdivision of the state that are secured by an investment grade bond rating from a national rating service, pledged revenue or other collateral or insurance necessary to satisfy the standard of prudence set forth in Section 6-8-10 NMSA 1978;

(3) bonds, notes, debentures, equipment trust certificates, conditional sales agreements or other evidences of indebtedness of any corporation organized and operating within the United States rated not less than Baa or BBB or the equivalent by a national rating service;

(4) 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 that 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 in an amount sufficient to pay all principal and interest on the mortgage;

(5) common and preferred stocks and convertible issues of any corporation; provided that it has a minimum net worth of twenty-five million dollars ($25,000,000) and securities listed on one or more national stock exchanges or included in a nationally recognized list of stocks; and provided

further that the fund shall not own more than five percent of the voting stock of any company;

(6) securities of non-United States governmental, quasi-governmental or corporate entities, and these may be denominated in foreign currencies; provided:

(a) aggregate non-United States investments shall not exceed fifteen percent of the book value of the land grant permanent funds;

(b) for non-United States stocks and non-United States bonds and notes, issues permitted for purchase shall be limited to those issues traded on a national stock exchange or included in a nationally recognized list of stocks or bonds;

(c) currency contracts may be used for investing in non-United States securities only for the purpose of hedging foreign currency risk and not for speculation;

(d) the investment management services of a trust company or national bank exercising trust powers or of an investment counseling firm may be employed; and

(e) reasonable compensation for investment management services and other administrative and investment expenses related to these investments shall be paid directly from the assets of the funds, subject to budgeting and appropriation by the legislature; and

(7) stocks or shares of a diversified investment company registered under the federal Investment Company Act of 1940, as amended, and listed securities of long-term unit investment trusts or individual, common or collective trust funds of banks or trust companies that invest primarily in equity securities authorized in Paragraphs (5) and (6) of this subsection; provided that the investment company has total assets under management of at least one hundred million dollars ($100,000,000); and provided further that the council may allow reasonable administrative and investment expenses to be paid directly from the assets derived from these investments, subject to budgeting and appropriation by the legislature.

B. Not more than sixty-five percent of the book value of the land grant permanent funds shall be invested at any given time in securities described in Paragraphs (5), (6) and (7) of Subsection A of this section, and no more than ten percent of the book value of the land grant permanent funds shall be invested at any given time in securities described in Paragraph (3) of Subsection A of this section that are rated Baa or BBB. Assets of the land grant

permanent funds may be combined for investment in common pooled funds to effectuate efficient management.

C. Commissions paid for the purchase and sale of any security shall not exceed brokerage rates prescribed and approved by national stock exchanges or by industry practice."

Section 3

Section 3. Section 6-8-19 NMSA 1978 (being Laws 1987, Chapter 126, Section 1, as amended) is amended to read:

"6-8-19. SHORT-TERM INVESTMENTS--REPURCHASE AGREEMENTS AND SECURITIES LENDING.--

A. Money in or derived from the land grant permanent funds made available for investment for a period of less than one year may be invested in:

(1) 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 state. No such contract shall be invested in unless the contract is fully secured by:

(a) obligations of the United States or other securities backed by the United States if the obligations or securities have a market value of at least one hundred two percent of the amount of the contract; or

(b) A1 or P1 commercial paper, corporate obligations rated AA or better and maturing in five years or less or asset-backed securities rated AAA if the commercial paper, corporate obligations or asset-backed securities have a market value of at least one hundred two percent of the market value of the contract;

(2) security-lending contracts for the temporary exchange of state-owned securities for the use of broker-dealers, banks or other recognized institutional investors in securities, for periods not to exceed one year, for a specified fee rate. No such contract shall be invested in unless the contract is fully secured by exchange of an irrevocable letter of credit running to the state, cash or equivalent collateral of at least one hundred two percent of the market value of the securities plus accrued interest temporarily exchanged. Such contracts may authorize the state investment officer 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. The state investment officer may enter into a contract that apportions income derived from the investment of cash to pay its agent in securities-lending transactions;

(3) commercial paper issued by corporations organized and operating within the United States and rated "prime" quality by a national rating service; and

(4) prime bankers' acceptances issued by money center banks.

B. The collateral required for either of the forms of investment specified in Paragraph (1) or (2) of Subsection A of this section shall be delivered to the state fiscal agent or its 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.

C. Neither of the contracts specified in Paragraph (1) or (2) of Subsection A of this section shall be invested in unless the contracting bank, brokerage firm or recognized institutional investor has a net worth in excess of five hundred million dollars ($500,000,000) or is a primary broker or primary dealer."

Section 4

Section 4. Section 6-8-20 NMSA 1978 (being Laws 1987, Chapter 219, Section 3, as amended) is amended to read:

"6-8-20. VENTURE CAPITAL INVESTMENT ADVISORY COMMITTEE CREATED--MEMBERSHIP--DUTIES--TERMS--LIABILITIES--CONFLICT OF INTEREST.--

A. There is created the "venture capital investment advisory committee" to the council. The committee consists of the state investment officer, a member of the council appointed by the governor and three members who are qualified by competence and experience in finance and investment and knowledgeable about the venture capital process and who are appointed by the governor.

B. Members appointed by the governor, except the council member, shall be appointed for three-year terms, provided that the terms of the initial committee members shall be staggered so that the term of one member expires each year. After the initial appointments, all governor-appointed members shall be appointed for three-year terms. Members shall serve until their successors are appointed. A vacancy occurring other than by expiration of

term shall be filled in the same manner as the original appointment, but only for the unexpired term.

C. The committee shall review and make recommendations to the council on investments authorized pursuant to Sections 6-8-21, 7-27-5.6 and 7-27-5.15 NMSA 1978 and shall advise the council in matters and policies related to such investments. The committee shall establish policies for venture capital fund and New Mexico venture capital fund investments not less often than annually and shall make copies available to interested parties.

D. Members of the committee shall receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

E. The committee shall elect annually a chairman from among its members and may elect other officers as necessary. The committee shall meet upon the call of the chairman or the state investment officer.

F. Members of the committee are public employees within the meaning of the Tort Claims Act and are entitled to all immunity and indemnification provided under that act.

G. No person may be a member of the committee if any recommendation, action or decision of the committee will or is likely to result in direct, measurable economic gain to that person or his employer.

H. The state investment officer may enter into a contract with an investment adviser for venture capital fund investments authorized pursuant to Sections 6-8-21, 7-27-5.6 and 7-27-5.15 NMSA 1978 and may pay budgeted expenses for the venture capital fund adviser from the assets of any fund administered under the supervision of the council, as applicable."

Section 5

Section 5. A new Section 6-8-21 NMSA 1978 is enacted to read:

"6-8-21. VENTURE CAPITAL INVESTMENTS.--

A. The state investment officer may make commitments to venture capital funds to invest up to three percent of the market value of the land grant permanent funds in accordance with the provisions of this section. If invested capital should at any time exceed three percent of the market value of the land grant permanent funds, no further commitments shall be made until the invested capital is less than three percent of the market value of the land grant permanent funds.

B. Not more than ten percent of the amount authorized for investment pursuant to Subsection A of this section shall be invested in any one venture capital fund. The amount invested in any one venture capital fund shall not exceed twenty percent of the committed capital of that fund.

C. In making investments pursuant to this section, the state investment officer and the council shall give consideration to investments in venture capital funds whose investments enhance the economic development objectives of the state, provided such investments offer a rate of return and safety comparable to other venture capital investments currently available.

D. The state investment officer shall make investments pursuant to this section only upon the approval of the council and upon review of the recommendation of the venture capital investment advisory committee.

E. As used in this section:

(1) "committed capital" means the sum of the fixed amounts of money that accredited investors have obligated for investment in a venture capital fund and which fixed amounts may be invested in that fund in one or more payments over time; and

(2) "venture capital fund" means a limited partnership, limited liability company or corporation that:

(a) has as its primary business activity the investment of funds in return for equity in businesses for the purpose of providing capital for start-up, expansion, new product development or similar business purposes;

(b) holds out prospects for capital appreciation from such investments comparable to similar investments made by other professionally managed venture capital funds;

(c) has a minimum committed capital of ten million dollars ($10,000,000);

(d) accepts investments only from accredited investors, as that term is defined in Section 2 of the Federal Securities Act of 1933, as amended, 15 U.S.C. Section 77(b), and rules and regulations promulgated pursuant to that section; and

(e) has full-time management with at least five years of experience in managing venture capital funds."

Section 6

Section 6. EFFECTIVE DATE.--

The provisions of this act shall be effective on the date the United States congress consents to the provisions of Constitutional Amendment 1, "A JOINT RESOLUTION PROPOSING AMENDMENTS TO ARTICLE 8, SECTION 10 AND ARTICLE 12, SECTIONS 2, 4 AND 7 OF THE CONSTITUTION OF NEW MEXICO TO PROTECT THE STATE'S PERMANENT FUNDS AGAINST INFLATION BY LIMITING DISTRIBUTIONS TO A PERCENTAGE OF EACH FUND'S MARKET VALUE AND BY MODIFYING CERTAIN INVESTMENT RESTRICTIONS TO ALLOW OPTIMAL DIVERSIFICATION OF INVESTMENTS", approved by the voters of New Mexico at the 1996 general election.

Section 7

Section 7. EMERGENCY.--

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

HOUSE BILL 143

WITH EMERGENCY CLAUSE

SIGNED APRIL 10, 1997

CHAPTER 184

RELATING TO WORKERS' COMPENSATION; AMENDING THE GROUP SELF-INSURANCE ACT TO PERMIT PAYMENT OF INCOME TAXES FROM CLAIMS FUND ACCOUNT; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 52-6-8 NMSA 1978 (being Laws 1986, Chapter 22, Section 82, as amended) is amended to read:

"52-6-8. BOARD OF TRUSTEES--MEMBERSHIP, POWERS, DUTIES AND PROHIBITIONS.--Each group shall be operated by a board of trustees that shall consist of not less than five persons whom the members of a group elect for stated terms of office. At least two-

thirds of the trustees shall be employees, officers or directors of members of the group. The group's administrator or service company, or any owner, officer or employee of, or any other person affiliated with, the administrator or service company shall not serve on the board of trustees of the group. All trustees shall be residents of this state or officers of corporations authorized to do business in this state. The board of trustees of each group shall ensure that all claims are paid promptly and take all necessary precautions to safeguard the assets of the group, including all of the following:

A. the board of trustees shall:

(1) maintain responsibility for all money collected or disbursed from the group and segregate all money into a claims fund account and an administrative fund account. At least seventy percent of the net premium shall be placed into a designated depository, to be called the "claims fund account", for the sole purpose of paying claims, allocated claims expenses, reinsurance or excess insurance and special fund contributions, including second-injury and other loss-related funds; provided that income taxes may be paid from the actuarially determined surplus portion of the claims fund account at the discretion of the board of trustees. The remaining net premium shall be placed into a designated depository, to be called the "administrative fund account", for the payment of taxes, general regulatory fees and assessments and administrative costs. The director may approve an administrative fund account of more than thirty percent and a claims fund account of less than seventy percent only if the group shows to the director's satisfaction that:

(a) more than thirty percent is needed for an effective safety and loss-control program; or

(b) the group's aggregate excess insurance at

taches at less than seventy percent;

(2) maintain minutes of its meetings and make the minutes available to the director;

(3) designate an administrator to carry out the policies established by the board of trustees and to provide day-to-day management of the group and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator; and

(4) retain an independent certified public accountant to prepare the statement of financial condition required by Subsection A of Section 52-6-l2 NMSA l978; and

B. the board of trustees shall not:

(1) extend credit to individual members for payment of a premium except pursuant to payment plans approved by the director; or

(2) borrow any money from the group or in the name of the group except in the ordinary course of business, without first advising the director of the nature and purpose of the loan and obtaining prior approval from the director."

Section 2

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

HOUSE BILL 396, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 10, 1997

CHAPTER 185

RELATING TO EDUCATIONAL INSTITUTIONS; AMENDING THE UNIVERSITY RESEARCH PARK ACT TO INCLUDE COMMUNITY COLLEGES AND TECHNICAL AND VOCATIONAL INSTITUTES.

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

Section 1

Section 1. Section 21-28-3 NMSA 1978 (being Laws 1989, Chapter 264, Section 3) is amended to read:

"21-28-3. DEFINITIONS.--As used in the University Research Park Act:

A. "bond" or "bonds" means any bond, note or other evidence of indebtedness;

B. "regents" means:

(1) in the case of an educational institution named in Article 12, Section 11 of the constitution of New Mexico, the board of regents of the institution;

(2) in the case of a community college, the community college board;

(3) in the case of a technical and vocational institute, the governing board of the technical and vocational institute district; and

(4) in the case of an area vocational school, the governing board of the area vocational school district;

C. "research park" means research and development facilities, research institutes, testing laboratories, offices, light manufacturing, related businesses and government installations and similar facilities, together with land, including all necessary appurtenances, rights and franchises acquired, constructed and developed by a university or under its authority which are suitable or necessary to promote the social welfare of the state of New Mexico through the advancement of education, science, research, economic development and related purposes;

D. "research park corporation" means any corporation formed pursuant to the provisions of the University Research Park Act;

E. "technological innovations" means research, development, prototype assembly, manufacture, patenting, licensing, marketing and sale of inventions, ideas, practices, applications, processes, machines, technology and related property rights of all kinds; and

F. "university" means:

(1) a New Mexico educational institution named in Article 12, Section 11 of the constitution of New Mexico;

(2) a community college organized pursuant to the Community College Act;

(3) a technical and vocational institute organized pursuant to the Technical and Vocational Institute Act; and

(4) an area vocational school organized pursuant to the Area Vocational School Act.

HOUSE BILL 544, AS AMENDED
Approved April 10, 1997

CHAPTER 186

RELATING TO PROPERTY; AMENDING AND ENACTING SECTIONS OF THE MOBILE HOME PARK ACT TO IMPROVE OWNER-RESIDENT RELATIONS.

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

Section 1

Section 1. Section 47-10-3 NMSA 1978 (being Laws 1983, Chapter 122, Section 3) is amended to read:

"47-10-3. TENANCY--REQUIREMENTS--NOTICE TO QUIT.--

A. No tenancy or other lease or rental occupancy of space in a mobile home park shall commence without a written lease or rental agreement, and no tenancy in a mobile home park shall be terminated until a notice to quit has been served upon the mobile home resident. The notice to quit shall be in writing directed to the resident and in the form specified in this section. The form of notice shall be deemed legally sufficient if it states:

(1) the name of the landlord or of the mobile home park;

(2) the mailing address of the property;

(3) the location or space number upon which the mobile home is situated;

(4) the county in which the mobile home is situate; and

(5) the reason for the termination of the tenancy and the date, place and circumstances of any acts allegedly justifying the termination.

B. The notice to quit shall be served by delivering the notice to the mobile home tenant personally or by posting the notice at the main entrance of the mobile home. If service is made by posting the notice, a copy of the notice shall also be sent by certified mail to the mobile home tenant, return receipt requested. The date of a posting shall be included on the posted notice and on the copy mailed to the mobile home tenant and shall constitute the effective date of the notice.

C. The tenant shall be given a period of not less than thirty days from the end of the rental period during which the termination notice was served to remove any mobile home from the premises, but which is automatically extended to sixty days where the tenant must remove a multisection mobile home. In those situations where a multisection mobile home is being leased to or occupied by a person other than its owner and in a manner contrary to the rules and regulations of the landlord, then, in that event, the tenancy may be terminated by the landlord upon giving a thirty-day notice instead of a sixty-day notice.

D. No lease shall contain any provision by which the tenant waives his rights under the Mobile Home Park Act, and any such waiver shall be deemed to be contrary to public policy and shall be unenforceable and void. Any lease, however, may provide for the termination of the tenancy in accordance with the provisions of Subsection C of this section.

E. No tenancy shall be terminated by a mobile home park owner solely because of the size or age of the mobile home."

Section 2

Section 2. Section 47-10-11 NMSA 1978 (being Laws 1983, Chapter 122, Section 11) is amended to read:

"47-10-11. CLOSED PARKS PROHIBITED.--

A. The owner of a mobile home park or his agent shall not require, as a condition of tenancy in a mobile home park, that the prospective tenant purchase a mobile home from any particular seller or from any one of a particular group of sellers and shall not require that the management act as agent in the future sale of the mobile home.

B. The owner or agent shall not give any special preference in renting to a prospective tenant who has purchased a mobile home from a particular seller.

C. A seller of mobile homes shall not require as a condition of sale that a purchaser locate in a particular mobile home park or in any one of a particular group of mobile home parks.

D. The owner of a mobile home park shall not prohibit the listing or sale of a mobile home within the park by the owner of the mobile home or the owner's agent. The park owner or manager shall not require as a condition of sale that the management serve as the selling agent.

E. The owner or operator of a mobile home park shall treat all persons equally in evaluating credit or renting or leasing available space, except that all or any portion of a park may be designated for adult-only occupancy after a six months' notice to the residents."

Section 3

Section 3. Section 47-10-14 NMSA 1978 (being Laws 1983, Chapter 122, Section 14, as amended) is amended to read:

"47-10-14. RENTAL AGREEMENT--DISCLOSURE OF TERMS IN WRITING.--

A. The terms and conditions of a tenancy shall be adequately disclosed in writing in a rental agreement by the management to any prospective resident prior to the rental or occupancy of a mobile home space or lot. The disclosures shall include:

(1) the term of the tenancy, the amount of the rent and the dollar amount of any rent increases for each of the preceding two years;

(2) the day the rental payment is due;

(3) the day when unpaid rent shall be considered in default;

(4) the rules and regulations of the park then in effect;

(5) the zoning applicable to the property upon which the park is located;

(6) the name and mailing address where a manager's decision may be appealed;

(7) the name and mailing address of the owner of the park;

(8) all charges to the tenant other than rent; and

(9) A statement explaining the resident's right to request alternative dispute resolution of any disputes with the mobile home park owner or management, except for disputes over nonpayment of rent or utility charges or in the case of public safety emergencies.

B. The rental agreement shall be signed by both the management and the resident, and each party shall receive a copy of it.

C. The management and the resident may include in a rental agreement terms and conditions not prohibited under the provisions of the Mobile Home Park Act.

D. If an owner deliberately uses a rental agreement containing provisions known by him to be prohibited by law or by the provisions of Section 47-10-11, 47-10-12 or 47-10-13 NMSA 1978, the resident may recover damages sustained by him resulting from application of the illegal provision and reasonable attorney fees."

Section 4

Section 4. Section 47-10-15 NMSA 1978 (being Laws 1983, Chapter 122, Section 15) is amended to read:

"47-10-15. RULES AND REGULATIONS.--The management shall adopt rules and regulations concerning all residents' use and occupancy of the premises. The rules and regulations are enforceable against a resident only if:

A. they are submitted to tenants for their comment sixty days prior to the rules being implemented;

B. their purpose is to promote the convenience, safety or welfare of the residents, protect and preserve the premises from abusive use or make a fair distribution of services and facilities held out for the residents generally;

C. they are reasonably related to the purpose for which they are adopted;

D. they are not retaliatory or discriminatory in nature, except that all or any portion of the park may be designated for adult-only occupancy after a six-months' notice to the residents; and

E. they are sufficiently explicit in prohibition, direction or limitation of the resident's conduct to fairly inform him of what he shall or shall not do to comply."

Section 5

Section 5. A new section of the Mobile Home Park Act is enacted to read:

"NEW OR AMENDED RULES--NOTIFICATION--OPEN MEETING--PETS--PHYSICAL IMPROVEMENTS.--

A. The management shall notify mobile home park residents of proposed new rules or amendments to existing rules at least sixty days prior to the effective date of the new or amended rules. The management shall allow residents a thirty-day comment period on proposed rule changes. Comments from residents to management on proposed rule changes shall be in writing and signed by the author. Once all comments have been received, the management shall post all comments and the responses to the comments in a conspicuous place. The new rules or amended rules shall not take effect before sixty days after the notification date.

B. Existing pets that are in compliance with the mobile home park rules or regulations shall be exempt from any provision of new rules or regulations that would prohibit those pets provided those are not a nuisance violating the public peace, health or safety.

C. The mobile home park management shall not require existing residents to comply with changes in rules or regulations that require physical improvements to the existing resident's mobile home or lot unless the mobile home is in violation of a local municipal or county ordinance or the physical condition of the resident's mobile home or lot constitutes a public nuisance or threat to the public peace, health or safety."

Section 6

Section 6. Section 47-10-17 NMSA 1978 (being Laws 1983, Chapter 122, Section 17) is amended to read:

"47-10-17. ALTERNATIVE DISPUTE RESOLUTION--WHEN PERMITTED--COURT ACTIONS.--

A. In any civil dispute between the management and a resident of a mobile home park arising out of the provisions of the Mobile Home Park Act, except for nonpayment of rent or utility charges or in cases in which the health or safety of other residents is in imminent danger, the controversy may be submitted to alternative dispute resolution by request of either party prior to the filing of a court action or a forcible entry and detainer action. The cost of the alternative dispute resolution services shall be divided equally among the disputing parties.

B. The agreement, if one is reached, shall be presented to the court as a stipulation. Either party to the dispute resolution process may terminate the process at any time without prejudice.

C. If either party subsequently violates the stipulation, the other party may apply immediately to the court for relief.

D. Any alternative dispute resolution pursuant to this section shall be performed by a professionally certified mediator approved by all disputing parties."

Section 7

Section 7. Section 47-10-20 NMSA 1978 (being Laws 1993, Chapter 147, Section 6) is amended to read:

"47-10-20. COST OF UTILITY SERVICES--ACCESS TO RECORDS.--

A. Mobile home park owners shall be responsible for maintaining all park-owned exterior utility lines from the mobile home hookups to the main lines in the park, except lines that are damaged by a resident.

B. When a landlord purchases utility services for residents, the charge for utility services billed to residents shall not exceed the cost per unit amount paid by the landlord to the suppliers of the utility services.

C. A landlord shall provide a resident with reasonable access to records of meter readings, if any, taken at the resident's mobile home space."

HOUSE BILL 608, AS AMENDED

WITH CERTIFICATE OF CORRECTION

Approved April 10, 1997

CHAPTER 187

RELATING TO HEALTH PROVIDERS; AMENDING THE PHYSICIAN ASSISTANT ACT AND THE OSTEOPATHIC PHYSICIANS' ASSISTANTS ACT TO PROVIDE FOR LICENSURE.

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

Section 1

Section 1. Section 61-6-6 NMSA 1978 (being Laws 1973, Chapter 361, Section 1, as amended) is amended to read:

"61-6-6. DEFINITIONS.--As used in Chapter 61, Article 6 NMSA 1978:

A. "acting in good faith" means acting without malice as the primary motive or without knowledge or belief that one is in error in taking a particular action;

B. "board" means the New Mexico board of medical examiners;

C. "licensed physician" means a medical doctor licensed under the Medical Practice Act to practice medicine in New Mexico;

D. "medical college or school in good standing" means a board-approved medical college or school that has as high a standard as that required by the association of American medical colleges and the council on medical education of the American medical association;

E. "medical student" means a student enrolled in a board-approved medical college or school in good standing;

F. "person" means an individual or any legal entity of any kind whatever;

G. "physician assistant" means a skilled person licensed by the board as being qualified by academic and practical training to provide patient services under the supervision and direction of the licensed physician who is responsible for the performance of that assistant;

H. "postgraduate year one" or "intern" means a first year postgraduate student upon whom a degree of doctor of medicine and surgery or equivalent degree has been conferred by a medical college or school in good standing;

I. "postgraduate year two through eight" or "resident" means a graduate of a medical college or school in good standing who is in training in a board-approved and accredited residency training program in a hospital or facility affiliated with an approved hospital and who has been appointed to the position of "resident" or "assistant resident" for the purpose of postgraduate medical training;

J. "the practice of medicine" consists of:

(1) advertising, holding out to the public or representing in any manner that one is authorized to practice medicine in this state;

(2) offering or undertaking to administer, dispense or prescribe any drug or medicine for the use of any other person, except as authorized pursuant to a professional or occupational licensing statute set forth in Chapter 61 NMSA 1978;

(3) offering or undertaking to give or administer, dispense or prescribe any drug or medicine for the use of any other person, except as directed by a licensed physician;

(4) offering or undertaking to perform any operation or procedure upon any person;

(5) offering or undertaking to diagnose, correct or treat in any manner or by any means, methods, devices or instrumentalities any disease, illness, pain, wound, fracture, infirmity, deformity, defect or abnormal physical or mental condition of any person;

(6) offering medical peer review, utilization review or diagnostic service of any kind that directly influences patient care, except as authorized pursuant to a professional or occupational licensing statute set forth in Chapter 61 NMSA 1978; or

(7) acting as the representative or agent of any person in doing any of the things listed in Paragraphs (1) through (6) of this subsection;

K. "sexual contact" means touching the primary genital area, groin, anus, buttocks or breast of a patient or allowing a patient to touch another's primary genital area, groin, anus, buttocks or breast in a manner that is commonly recognized as outside the scope of acceptable medical practice;

L. "sexual penetration" means sexual intercourse, cunnilingus, fellatio or anal intercourse, whether or not there is any emission, or introducing any object into the genital or anal openings of another in a manner that is commonly recognized as outside the scope of acceptable medical practice; and

M. "United States" means the fifty states, its territories and possessions and the District of Columbia."

Section 2

Section 2. Section 61-6-7 NMSA 1978 (being Laws 1973, Chapter 361, Section 3, as amended by Laws 1994, Chapter 57, Section 13 and also by Laws 1994, Chapter 80, Section 2) is amended to read:

"61-6-7. SHORT TITLE--LICENSURE AS A PHYSICIAN ASSISTANT--SCOPE OF PRACTICE--BIENNIAL REGISTRATION OF SUPERVISION--CHANGE--FEES.--

A. Sections 61-6-7 through 61-6-10 NMSA 1978 may be cited as the "Physician Assistant Act".

B. The board may license qualified persons as physician assistants. No person shall perform, attempt to perform or hold himself out as a physician assistant without first applying for and obtaining a license from the board and without biennially registering his supervising licensed physician in accordance with board regulations. Physician assistants who are registered under the Physician Assistant Act as of June 31, 1997 shall be considered to be licensed until the expiration of that registration.

C. Physician assistants may 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, provided that the prescribing, administering and distributing are done under the direction of a supervising licensed physician and within the parameters of a board-approved formulary and guidelines established under Paragraph (3) of Subsection A of Section 61-6-9 NMSA 1978. The distribution process shall comply with state laws concerning

prescription packaging, labeling and record keeping requirements. Physician assistants shall not otherwise dispense dangerous drugs or controlled substances.

D. A physician assistant shall perform only those acts and duties assigned him by a supervising licensed physician that are within the scope of practice of the supervising licensed physician.

E. An applicant for licensure as a physician assistant shall complete application forms supplied by the board and shall pay a licensing fee as provided in Section 61-6-19 NMSA 1978. Upon being licensed by the board, the applicant shall have his name and address and other pertinent information enrolled by the board on a roster of physician assistants.

F. Each physician assistant shall biennially submit proof of completion of continuing education as required by the board and shall biennially renew his license and registration of supervision with the board. Upon any change in supervising physician between biennial registrations, each physician assistant shall reregister his supervising physician and shall pay any additional registration of supervision fees as provided in Section 61-6-19 NMSA 1978. All applications for licensure or registration of supervision shall include the applicant's name, current address, the name and office address of the supervising licensed physician and other additional information as the board deems necessary. Upon any change of supervising licensed physician, prior registration of supervision shall automatically become void or inactive.

G. Each biennial renewal of registration of supervision shall be accompanied by a fee as provided in Section 61-6-19 NMSA 1978."

Section 3

Section 3. A new section of the Physician Assistant Act, Section 61-6-7.2 NMSA 1978, is enacted to read:

"61-6-7.2. INACTIVE LICENSE.--

A. A physician assistant who notifies the board in writing on forms prescribed by the board may elect to place his license on an inactive status. A physician assistant with an inactive license shall be excused from payment of renewal fees and shall not practice as a physician assistant.

B. A physician assistant who engages in practice while his license is lapsed or on inactive status is practicing without a license, and this is grounds for discipline pursuant to the Physician Assistant Act.

C. A physician assistant requesting restoration from inactive status shall pay the current renewal fee and fulfill the requirement for renewal pursuant to the Physician Assistant Act."

Section 4

Section 4. A new section of the Physician Assistant Act, Section 61-6-7.3 NMSA 1978, is enacted to read:

"61-6-7.3. EXEMPTION FROM LICENSURE.--

A. A physician assistant student enrolled in a physician assistant or surgeon assistant educational program accredited by the committee on allied health education and accreditation or by its successor shall be exempt from licensure while functioning as a physician assistant student.

B. A physician assistant employed by the federal government while performing duties incident to that employment is not required to be licensed as a physician assistant."

Section 5

Section 5. Section 61-6-8 NMSA 1978 (being Laws 1973, Chapter 361, Section 4, as amended) is amended to read:

"61-6-8. DENIAL, SUSPENSION OR REVOCATION.--In accordance with the procedures contained in the Uniform Licensing Act, the board may deny, revoke or suspend any license to practice as a physician assistant or may place on probation, enter stipulation, censure, reprimand or fine any person licensed as a physician assistant for:

A. procuring, aiding or abetting a criminal abortion;

B. soliciting patients for any practitioner of the healing arts;

C. soliciting or receiving any form of compensation from any person other than the physician assistant's registered employer for performing as a physician assistant;

D. willfully or negligently divulging a professional confidence or discussing a patient's condition or a physician's diagnosis without the express permission of the physician and patient;

E. conviction for any offense punishable by incarceration in a state penitentiary or federal prison. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence;

F. the habitual or excessive use of intoxicants or drugs;

G. fraud or misrepresentation in applying for or procuring a license to perform as a physician assistant in this state or in applying for or procuring a registration of supervision;

H. impersonating another person licensed as a physician assistant or allowing any person to use the physician assistant's license or registration of supervision;

I. aiding or abetting the practice of medicine by a person not licensed by the board;

J. gross negligence in the performance of duties, tasks or functions assigned by a licensed physician;

K. manifest incapacity or incompetence to perform as a physician assistant;

L. conduct resulting in the suspension or revocation by another state of a registration, license or certification to perform as a physician assistant, based upon acts by the physician assistant similar to acts constituting grounds for suspension or revocation in New Mexico. A certified copy of the record of the suspension or revocation of the state imposing the penalty is conclusive evidence thereof;

M. conduct unbecoming in a person licensed as a physician assistant or detrimental to the best interests of the public;

N. conduct outside the scope of duties assigned by the supervising physician;

O. repeated similar negligent acts; or

P. injudicious prescribing, administering or distributing of drugs."

Section 6

Section 6. A new section of the Physician Assistant Act, Section 61-6-8.1 NMSA 1978, is enacted to read:

"61-6-8.1. PHYSICIAN ASSISTANT ADVISORY COMMITTEE.--

A. The "physician assistant advisory committee" is created. The advisory committee shall review and make recommendations to the board on all matters relating to physician assistants.

B. The physician assistant advisory committee shall be composed of four members appointed by the board to two-year staggered terms. The board shall initially appoint two members whose terms shall end on July 1, 1998 and two members whose terms shall end on July 1, 1999. One member shall be a licensed physician with experience supervising a physician assistant, and the other three, one of whom shall serve as chairman, shall be physician assistants chosen by the board from a list provided by the board of directors of the New Mexico academy of physician assistants. All physician assistants shall be eligible for inclusion on the list The chairman of the physician assistant advisory committee shall be a nonvoting advisor to the board."

Section 7

Section 7. Section 61-6-9 NMSA 1978 (being Laws 1973, Chapter 361, Section 5, as amended) 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 licensure of a person as a physician assistant and providing forms and procedures for biennial licensure and registration of supervision by a licensed physician;

(2) for examining and evaluating applicants for licensure 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."

Section 8

Section 8. Section 61-6-10 NMSA 1978 (being Laws 1973, Chapter 361, Section 6, as amended) is amended to read:

"61-6-10. SUPERVISING PHYSICIAN--RESPONSIBILITY.--

A. As a condition of biennial licensure and renewal of registration of supervision, all physician assistants practicing in New Mexico shall inform the board of the physician under whose supervision they will practice. All supervising physicians shall be licensed under the Medical Practice Act and shall be approved by the board.

B. Every physician supervising a licensed physician assistant shall be individually responsible and liable for the performance of the acts and omissions delegated to the physician assistant. Nothing in this section shall be construed to relieve the physician assistant of any responsibility and liability for any of his own acts and omissions.

C. No physician may have under his supervision more than two physician assistants; except, where a physician is working in a health facility providing health service to the public primarily on a free or reduced fee basis, that is funded in whole or in part out of public funds

or the funds of private charitable institutions, the board may authorize a greater number upon a finding that the program provides adequate supervision of the physician assistants.

Section 9

Section 9. Section 61-6-19 NMSA 1978 (being Laws 1989, Chapter 269, Section 15, as amended) is amended to read:

"61-6-19. FEES.--

A. The board shall impose the following fees:

(1) an application fee not to exceed four hundred dollars ($400) for licensure by endorsement as provided in Section 61-6-13 NMSA 1978;

(2) an application fee not to exceed four hundred dollars ($400) for licensure by examination as provided in Section 61-6-11 NMSA 1978;

(3) an examination fee equal to the cost of purchasing the examination plus an administration fee not to exceed fifty percent of that cost;

(4) a triennial renewal fee not to exceed four hundred fifty dollars ($450);

(5) a late fee not to exceed one hundred fifty dollars ($150) for applicants who fail to renew their licenses within forty-five days of the required renewal date;

(6) a late fee not to exceed two hundred dollars ($200) for applicants who fail to renew their licenses within ninety days of the required renewal date;

(7) a reinstatement fee not to exceed the current application fee for reinstatement of a revoked, suspended or inactive license;

(8) a reasonable administrative fee for verification and duplication of license or registration and copying of records;

(9) a reasonable publication fee for the purchase of a publication containing the names of all practitioners licensed under the Medical Practice Act;

(10) an impaired physician fee not to exceed one hundred fifty dollars ($150) for a three-year period;

(11) an interim license fee not to exceed one hundred dollars ($100);

(12) a temporary license fee not to exceed one hundred dollars ($100);

(13) a postgraduate training license fee not to exceed fifty dollars ($50.00) annually;

(14) an application fee not to exceed one hundred fifty dollars ($150) for physician assistants applying for initial licensure; and

(15) a license fee not to exceed one hundred fifty dollars ($150) for physician assistants biennial licensing and registration of supervising physician.

B. All fees are nonrefundable and shall be used by the board to carry out its duties efficiently."

Section 10

Section 10. Section 61-10A-4 NMSA 1978 (being Laws 1979, Chapter 26, Section 4, as amended by Laws 1994, Chapter 57, Section 15 and also by Laws 1994, Chapter 80, Section 13) is amended to read:

"61-10A-4. LICENSURE AS OSTEOPATHIC PHYSICIAN ASSISTANT --SCOPE OF AUTHORITY--ANNUAL REGISTRATION OF EMPLOYMENT--EMPLOYMENT CHANGE.--

A. No person shall perform or attempt to perform as an osteopathic physician assistant without first applying for and obtaining a license from the board as an osteopathic physician assistant and having his supervision registered in accordance with board regulations. Osteopathic physician assistants who are certified under the Osteopathic Physicians' Assistants Act as of June 30, 1997 shall be considered to be licensed until the expiration of that certification.

B. Osteopathic physician assistants may 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, provided that the prescribing, administering and distributing

are done under the direction of a supervising osteopathic physician and within the parameters of a board-approved formulary and guidelines established under Paragraph (3) of Subsection A of Section 61-10A-6 NMSA 1978. The distribution process shall comply with state laws concerning prescription packaging, labeling and record keeping requirements. Osteopathic physician assistants shall not otherwise dispense dangerous drugs or controlled substances.

C. An osteopathic physician assistant shall perform only those acts and duties assigned him by a supervising osteopathic physician that are within the scope of practice of the supervising osteopathic physician.

D. An applicant for a license as an osteopathic physician assistant shall complete such application forms as supplied by the board and pay a fee as provided in Section 61-10A-4.1 NMSA 1978. Upon licensing by the board, the applicant shall have his name and address and other pertinent information enrolled by the board on a roster of osteopathic physician assistants.

E. Each osteopathic physician assistant shall biennially submit proof of completion of continuing education as required by the board and register his name and current address, the name and office address of the supervising osteopathic physician and such additional information as the board deems necessary. Upon any change of supervision as an osteopathic physician assistant, the registration of supervision shall automatically be void. Each biennial registration or registration of new supervision shall be accompanied by a fee as provided in Section 61-10A-4.1 NMSA 1978."

Section 11

Section 11. Section 61-10A-4.1 NMSA 1978 (being Laws 1989, Chapter 9, Section 8) is amended to read:

"61-10A-4.1. FEES.--Applicants shall pay the following fees:

A. an initial license fee of not to exceed one hundred fifty dollars ($150);

B. a biennial license fee of not to exceed one hundred dollars ($100);

C. a late fee not to exceed twenty-five dollars ($25.00) for applicants who fail to register their licenses on or before July 1 of each year; and

D. a registration of new supervision fee equal to one-half the biennial renewal fee."

Section 12

Section 12. A new Section 61-10A-4.2 NMSA 1978 is enacted to read:

"61-10A-4.2. INACTIVE LICENSE.--

A. An osteopathic physician assistant who notifies the board in writing on forms prescribed by the board may elect to place his license on an inactive status. An osteopathic physician assistant with an inactive license shall be excused from payment of renewal fees and shall not practice as an osteopathic physician assistant.

B. An osteopathic physician assistant who engages in practice while his license is lapsed or on inactive status is practicing without a license and is subject to discipline pursuant to the Osteopathic Physicians' Assistants Act.

C. An osteopathic physician assistant requesting restoration from inactive status shall pay the current renewal fee and fulfill the requirement for renewal pursuant to the Osteopathic Physicians' Assistants Act."

Section 13

Section 13. A new Section 61-10A-4.3 NMSA 1978 is enacted to read:

"61-10A-4.3. EXEMPTION FROM LICENSURE.--

A. An osteopathic physician assistant student enrolled in a physician assistant, osteopathic physician assistant or surgeon assistant educational program accredited by the committee on allied health education and accreditation or by its successor shall be exempt from licensure while functioning as an osteopathic physician assistant student.

B. An osteopathic physician assistant employed by the federal government while performing duties incident to that employment is not required to be licensed as an osteopathic physician assistant pursuant to the Osteopathic Physicians' Assistants Act."

Section 14

Section 14. Section 61-10A-6 NMSA 1978 (being Laws 1979, Chapter 26, Section 6, as amended by Laws 1994, Chapter 57, Section 16 and also by Laws 1994, Chapter 80, Section 14) is amended to read:

"61-10A-6. RULES AND REGULATIONS.--

A. The board may adopt and enforce reasonable rules and regulations:

(1) for setting qualifications of education, skill and experience for licensure of a person as an osteopathic physician assistant and providing forms and procedures for licensure and for biennial registration of supervision;

(2) for examining and evaluating applicants for licensure as an osteopathic physician assistant as to their skill, knowledge and experience in the field of medical care;

(3) for establishing when and for how long an osteopathic physician assistant is 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 osteopathic physician to temporarily delegate his supervisory responsibilities for an osteopathic physician assistant to another osteopathic physician;

(5) for allowing an osteopathic physician assistant to temporarily serve under the supervision of an osteopathic physician other than the supervising osteopathic physician of record; and

(6) for the purpose of carrying out all other provisions of the Osteopathic Physicians' Assistants Act.

B. The board shall not adopt any rule or regulation allowing an osteopathic physician assistant to dispense dangerous drugs; 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 section shall not preclude vision screening.

Section 15

Section 15. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 788, AS AMENDED
Approved April 10, 1997

CHAPTER 188

MAKING AN APPROPRIATION TO THE LEGISLATIVE COUNCIL SERVICE FOR ADDITIONAL AUTOMATION NEEDS FOR THE LEGISLATIVE INFORMATION SYSTEM.

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

Section 1

Section 1. APPROPRIATION.--Five hundred seventy thousand dollars ($570,000) is appropriated from the unexpended and unencumbered balances of the legislative council service remaining from the appropriation for session expenses authorized in Subsections B, D, F and H of Section 2 of Chapter 1 of Laws 1995 and Subsections B, D, G and H of Section 2 of Chapter 1 of Laws 1996 to the legislative council service for expenditure in fiscal years 1998 and 1999 for the legislative information system for network infrastructure, for legislative notebooks and other attendant hardware and software upgrades to enhance communications equipment for support of the legislative web site, other communications applications and limited upgrades and replacements to internal systems for the legislative council service, the legislative education study committee, the legislative finance committee, the house of representatives and the senate. Any unexpended or unencumbered balance remaining at the end of fiscal year 1999 shall revert to the general fund.

HOUSE BILL 840, AS AMENDED

Approved April 10, 1997

CHAPTER 189

RELATING TO PUBLIC RETIREMENT; AMENDING AND ENACTING SECTIONS OF THE PUBLIC EMPLOYEES RETIREMENT ACT, THE JUDICIAL RETIREMENT ACT AND THE MAGISTRATE RETIREMENT ACT.

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

Section 1

Section 1. A new section of the Public Employees Retirement Act is enacted to read:

"10-11-2.1. DEFINITIONS.--As used in Chapter 10, Article 11 NMSA 1978, with reference to the public employees retirement association, "executive secretary" means "executive

director"."

Section 2

Section 2. Section 10-11-4 NMSA 1978 (being Laws 1987, Chapter 253, Section 4, as amended) is amended to read:

"10-11-4. SERVICE CREDIT--REQUIREMENTS FOR--FORFEITURE-- REINSTATEMENT.--

A. Personal service rendered an affiliated public employer by a member shall be credited to the member's service credit account in accordance with retirement board rules and regulations. Service shall be credited to the nearest month. In no case shall any member be credited with a year of service for less than twelve months of service in any calendar year or more than a month of service for all service in any calendar month or more than a year of service for all service in any calendar year. In no case shall any member be allowed to purchase service credit unless the purchase is authorized in the Public Employees Retirement Act.

B. Personal service rendered an affiliated public employer prior to August 1, 1947 shall be credited to a member if the member acquires one year of service credit for personal service rendered an affiliated public employer.

C. Personal service rendered an affiliated public employer after July 31, 1947 but prior to the date the public employer became an affiliated public employer is prior service and shall be credited to a member if:

(1) the member acquires five years of service credit for personal service rendered an affiliated public employer; and

(2) the member pays the association the amount determined in accordance with Subsection D of this section.

D. The purchase cost for each month of service credit purchased under the provisions of this section is equal to the member's

final average salary multiplied by the sum of the member contribution rate and employer contribution rate determined in accordance with the coverage plan applicable to the member at the time of the written election to purchase. Full payment shall be made in a single lump-sum amount in accordance with the procedures established by the retirement board. The portion of the purchase cost derived from the employer contribution rate shall be credited to the employer accumulation fund and shall not be refunded to the member in the event of cessation of membership. In no case shall any member be credited with a month of service for less than the purchase cost as defined in this section.

E. Service credit shall be forfeited if a member terminates employment with an affiliated public employer and withdraws the member's accumulated member contributions.

F. A member or former member who is a member of another state system or the educational retirement system and who has forfeited service credit by withdrawal of member contributions may reinstate the forfeited service credit by repaying the amount withdrawn plus compound interest from the date of withdrawal to the date of repayment at the rate set by the retirement board. Withdrawn member contributions may be repaid in increments of one year in accordance with the procedures established by the retirement board. Full payment of each one-year increment shall be made in a single lump-sum amount in accordance with procedures established by the retirement board."

Section 3

Section 3. Section 10-11-4.2 NMSA 1978 (being Laws 1993, Chapter 239, Section 1) is amended to read:

"10-11-4.2. CORRECTION OF ERRORS AND OMISSIONS--ESTOPPEL.--

A. If an error or omission 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 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 retirement board plus all costs of collection, including attorney fees if

necessary. Recovery of such overpayments shall extend back to the date the first payment was made based on the fraudulent information.

C. Statements of fact or law made by retirement board members or employees of the retirement board or the association shall not estop the retirement board or the association from acting in accordance with the applicable statutes."

Section 4

Section 4. Section 10-11-6 NMSA 1978 (being Laws 1987, Chapter 253, Section 6) is amended to read:

"10-11-6. CREDITED SERVICE--CREDIT FOR INTERVENING MILITARY AND UNITED STATES GOVERNMENT SERVICE.--

A. A member who leaves the employ of an affiliated public employer to enter a uniformed service of the United States shall be given service credit for periods of service in the uniformed services subject to the following conditions:

(1) the member is reemployed by an affiliated public employer within ninety days following termination of the period of intervening serving in the uniformed service or the affiliated employer certifies in writing to the association that the member is entitled to reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994;

(2) the member retains membership in the association during the period of service in the uniformed services;

(3) free service credit shall not be given for periods of intervening service in the uniformed services following voluntary reenlistment. Service credit for such periods shall be given only after the member pays the association the sum of the contributions that the person would have been required to contribute had the person remained continuously employed throughout the period of intervening service following voluntary reenlistment, which payment shall be made during the period beginning with the date of reemployment and whose duration is three times the period of the person's intervening service in the uniformed services following voluntary reenlistment, not to exceed five years;

(4) service credit shall not be given for periods of intervening service in the uniformed services that are used to obtain or

increase a benefit from another state system or the retirement program provided under the Educational Retirement Act; and

(5) the member must not have received a discharge or separation from uniformed service under other than honorable conditions.

Notwithstanding any provision of this plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code of 1986, as amended.

B. For a member who is subsequently employed by the government of the United States within thirty days of leaving the employ of an affiliated public employer:

(1) that member may continue membership in the association subject to the following conditions:

(a) the member has fifteen or more years of credited service;

(b) employment by the government of the United States commences within ninety days of termination of employment with the last affiliated public employer;

(c) the member files with the association a written application for continued membership within ninety days of ter

mination of employment with the last affiliated public employer; and

(d) the member remits to the association, at the times and in the manner prescribed by the association, the member contributions and the employer contributions that would have been made had the member continued in the employ of the last affiliated public employer;

(2) the contributions required by Paragraph (1) of this subsection shall be based on a salary equal to the member's monthly salary at time of termination of employment with the last affiliated public employer;

(3) credited service will be determined as if the employment by the government of the United States was rendered the last affiliated public employer; and

(4) the employer contributions remitted by the member shall be credited to the employer accumulation fund and shall not be paid out of the association in the event of subsequent cessation of membership."

Section 5

Section 5. Section 10-11-7 NMSA 1978 (being Laws 1987, Chapter 253, Section 7, as amended) is amended to read:

"10-11-7. CREDITED SERVICE--PURCHASE OF SERVICE.--

A. A member who entered a uniformed service of the United States may purchase service credit for periods of active duty in the uniformed services, subject to the following conditions:

(1) the member pays the association the purchase cost determined according to Subsection D of this section;

(2) the member has five or more years of service credit acquired as a result of personal service rendered in the employ of an affiliated public employer;

(3) the aggregate amount of service credit purchased under this subsection does not exceed five years reduced by any period of service credit acquired for military service under any other provision of the Public Employees Retirement Act;

(4) service credit may not be purchased for periods of service in the uniformed services that are used to obtain or increase a benefit from another retirement program; and

(5) the member must not have received a discharge or separation from uniformed service under other than honorable conditions.

B. A member who was employed by a utility company, library, museum, transit company or by a nonprofit organization administering federally funded public service programs, which utility company, library, museum, transit company or nonprofit organization administering federally funded public service programs or federally funded public service programs administered by a nonprofit organization are subsequently taken over by an affiliated public employer, or a member who was employed by an entity created pursuant to a joint powers agreement between two or more affiliated public employers for the purpose of administering or providing drug or alcohol addiction

treatment services irrespective of whether the entity is subsequently taken over by an affiliated public employer, may purchase credited service for the period of employment subject to the following conditions:

(1) the member pays the association the purchase cost determined according to Subsection D of this section;

(2) the member has five or more years of credited service acquired as a result of personal service rendered in the employ of an affiliated public employer; and

(3) the aggregate amount of credited service purchased under this subsection does not exceed five years.

C. A member who was appointed to participate in a cooperative work study training program established jointly by the state highway and transportation department and the university of New Mexico or New Mexico state university may purchase credited service for the period of participation subject to the following conditions:

(1) the member pays the association the purchase cost determined according to Subsection D of this section;

(2) the member has five or more years of credited service acquired as a result of personal service rendered in the employ of an affiliated public employer; and

(3) the aggregate amount of credited service purchased under this subsection does not exceed five years.

D. Except for service to be used under a state legislator coverage plan, the purchase cost for each month of credited service purchased under the provisions of this section is equal to the member's final average salary multiplied by the sum of the member contribution rate and employer contribution rate, determined in accordance with the coverage plan applicable to the member at the time of the written election to purchase. The purchase cost for each year of credited service to be used under a state legislator coverage plan is equal to the sum of the member contribution and an employer contribution of ten times the annual amount of pension per year of credited service under the state legislator coverage plan applicable to the member. Full payment shall be made in a single lump sum within sixty days of the date the member is informed of the amount of the payment. The portion of the purchase cost derived from the employer contribution rate shall be credited to the employer accumulation fund and shall not be paid out of the association in the event of cessation of membership. In no case

shall any member be credited with a month of service for less than the purchase cost as defined in this section.

E. A member shall be refunded, upon written request filed with the association, the portion of the purchase cost of credited service purchased under this section that the association determines to have been unnecessary to provide the member with the maximum pension applicable to the member. The association shall not pay interest on the portion of the purchase cost refunded to the member.

F. A member of the magistrate retirement system who during his service as a magistrate was eligible to become a member of the public employees retirement system and elected not to become a member of that system may purchase service credit under the public employees retirement system for the period for which the magistrate elected not to become a public employees retirement system member, by paying the amount of the increase in the actuarial present value of the magistrate pension as a consequence of the purchase as determined by the association. Full payment shall be made in a single lump-sum amount in accordance with procedures established by the board. Except as provided in Subsection E of this section, seventy-five percent of the purchase cost shall be considered to be employer contributions and shall not be refunded to the member in the event of cessation of membership."

Section 6

Section 6. Section 10-11-14.5 NMSA 1978 (being Laws 1993, Chapter 160, Section 4) is amended to read:

"10-11-14.5. DEATH BEFORE RETIREMENT--SURVIVOR PENSIONS.--

A. A survivor pension may be paid to certain persons related to or designated by a member who dies before normal or disability retirement if a written application for the pension, in the form prescribed by the association, is filed with the association by the potential survivor beneficiary or beneficiaries within one year of the death of the member. Applications may be filed on behalf of the potential survivor beneficiary or beneficiaries or by a person legally authorized to represent them.

B. If there is no designated survivor beneficiary and the retirement board finds the death to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty with an affiliated public employer, a

survivor pension shall be payable to the eligible surviving spouse. The amount of the survivor pension shall be the greater of:

(1) the amount as calculated under the coverage plan applicable to the deceased member at the time of death as though the deceased member had retired the day preceding death under form of payment B using the actual amount of service credit attributable to the deceased member at the time of death; or

(2) fifty percent of the deceased member's final average salary.

C. A survivor pension shall also be payable to eligible surviving children if there is no designated survivor beneficiary and the retirement board finds the death to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty with an affiliated public employer. The total amount of survivor pension payable for all eligible surviving children shall be either:

(1) fifty percent of the deceased member's final average salary if an eligible surviving spouse is not paid a pension; or

(2) twenty-five percent of the deceased member's final average salary if an eligible surviving spouse is paid a pension.

The total amount of survivor pension shall be divided equally among all eligible surviving children. If there is only one eligible child, the amount of pension shall be twenty-five percent of the deceased member's final average salary.

D. If the member had five or more years of service credit, but the retirement board did not find the death to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty with an affiliated public employer and there is no designated survivor beneficiary, a survivor pension shall be payable to the eligible surviving spouse. The amount of the survivor pension shall be the greater of:

(1) the amount as calculated under the coverage plan applicable to the deceased member at the time of death as though the deceased member had retired the day preceding death under form of payment B using the total amount of actual service credit attributable to the deceased member at the time of death; or

(2) thirty percent of the deceased member's final average salary.

E. If the member had five or more years of service credit, but the retirement board did not find the death to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty with an affiliated public employer and there is no designated survivor beneficiary, and if there is no eligible surviving spouse at the time of death, a survivor pension shall be payable to and divided equally among all eligible surviving children, if any. The total amount of survivor pension payable for all eligible surviving children shall be the greater of:

(1) the amount as calculated under the coverage plan applicable to the deceased member at the time of death as though the deceased member had retired the day preceding death under form of payment B with the oldest eligible surviving child as the survivor beneficiary using the total amount of actual service credit attributable to the deceased member at the time of death; or

(2) thirty percent of the deceased member's final average salary.

F. An eligible surviving spouse is the spouse to whom the deceased member was married at the time of death. An eligible surviving child is a child under the age of eighteen years and who is an unmarried, natural or adopted child of the deceased member.

G. An eligible surviving spouse's pension shall terminate upon death. An eligible surviving child's pension shall terminate upon death or marriage or reaching age eighteen years, whichever comes first.

H. If there is no designated survivor beneficiary and there is no eligible surviving child, the eligible surviving spouse may elect to be refunded the deceased member's accumulated member contributions instead of receiving a survivor pension.

I. A member may designate a survivor beneficiary to receive a pre-retirement survivor pension, subject to the following conditions:

(1) a written designation, in the form prescribed by the association, is filed by the member with the association;

(2) if the member is married at the time of designation, the designation shall only be made with the consent of the member's spouse, in the form prescribed by the association;

(3) if the member is married subsequent to the time of designation, any prior designations shall automatically be revoked upon the date of the marriage;

(4) if the member is divorced subsequent to the time of designation, any prior designation of the former spouse as survivor beneficiary shall automatically be revoked upon the date of divorce; and

(5) a designation of survivor beneficiary may be changed, with the member's spouse's consent if the member is married, by the member at any time prior to the member's death.

J. If there is a designated survivor beneficiary and the retirement board finds the death to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty with an affiliated public employer, a survivor pension shall be payable to the designated survivor beneficiary. The amount of the survivor pension shall be the greater of:

(1) the amount as calculated under the coverage plan applicable to the deceased member at the time of death as though the deceased member had retired the day preceding death under form of payment B using the actual amount of service credit attributable to the member at the time of death; or

(2) fifty percent of the deceased member's final average salary.

K. If there is a designated survivor beneficiary, if the member had five or more years of service credit and if the retirement board did not find the death to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty with an affiliated public employer, a survivor pension shall be payable to the designated survivor beneficiary. The amount of the survivor pension shall be the greater of:

(1) the amount as calculated under the coverage plan applicable to the deceased member at the time of death as though the deceased member had retired the day preceding death under form of payment B using the actual amount of service credit attributable to the member at the time of death; or

(2) thirty percent of the deceased member's final average salary.

L. If all pension payments permanently terminate before there is paid an aggregate amount equal to the deceased member's accumulated member contributions at time of death, the difference between the amount of accumulated member contributions and the aggregate amount of pension paid shall be paid to the deceased member's refund beneficiary. If no refund beneficiary survives the survivor beneficiary, the difference shall be paid to the estate of the deceased member."

Section 7

Section 7. Section 10-11-117 NMSA 1978 (being Laws 1987, Chapter 253, Section 117, as amended) is amended to read:

"10-11-117. FORMS OF PAYMENT OF A PENSION.--

A. Straight life pension is form of payment A. The retired member is paid the pension for life under form of payment A. All payments stop upon the death of the retired member, except as provided by Subsection E of this section. The amount of pension is determined in accordance with the coverage plan applicable to the retired member.

B. Life payments with full continuation to one survivor beneficiary is form of payment B. The retired member is paid a reduced pension for life under form of payment B. When the retired member dies, the designated survivor beneficiary is paid the full amount of the reduced pension until death. Upon the association's receipt of proof of death of the designated survivor beneficiary, the amount of pension shall be changed to the amount that would have been payable had the retired member elected form of payment A.

C. Life payment with one-half continuation to one survivor beneficiary is form of payment C. The retired member is paid a reduced pension for life under form of payment C. When the retired member dies, the designated survivor beneficiary is paid one-half the amount of the reduced pension until death. If the designated survivor beneficiary predeceases the retired member, the amount of pension shall be changed to the amount that would have been payable had the retired member elected form of payment A.

D. Life payments with temporary survivor benefits for children is form of payment D. The retired member is paid a reduced

pension for life under form of payment D. When the retired member dies, each declared eligible child is paid a share of the reduced pension until death or age twenty-five years, whichever occurs first. The share is the share specified in writing and filed with the association by the retired member. If shares are not specified in writing and filed with the association, each declared eligible child is paid an equal share of the reduced pension. A redetermination of shares shall be made when the pension of any child terminates. An eligible child is a natural or adopted child of the retired member who is under age twenty-five years. A declared eligible child is an eligible child whose name has been declared in writing and filed with the association by the retired member at the time of election of form of payment D. The amount of pension shall be changed to the amount of pension that would have been payable had the retired member elected form of payment A upon there ceasing to be a declared eligible child during the lifetime of the retired member.

E. If all pension payments permanently terminate before there is paid an aggregate amount equal to the retired member's accumulated member contributions at the time of retirement, the difference between the amount of accumulated member contributions and the aggregate amount of pension paid shall be paid to the retired member's refund beneficiary. If no refund beneficiary survives the retired member, the difference shall be paid to the estate of the retired member."

Section 8

Section 8. Section 10-11-120 NMSA 1978 (being Laws 1987, Chapter 253, Section 120) is amended to read:

"10-11-120. DENIAL OF BENEFIT CLAIM--APPEALS.--

A. A benefit claimant shall be notified in writing of a denial of a claim for benefits within thirty days of the denial. The notification shall give the reason for the denial. A claimant may appeal the denial and request a hearing. The appeal shall be in writing filed with the association within ninety days of the denial. The appeal shall contain a statement of the claimant's reason for claiming the denial to be improper. The retirement board shall schedule a de novo hearing of the appeal before the retirement board or, at the discretion of the retirement board, a designated hearing officer or committee of the retirement board, within sixty days of receipt of the appeal. A final decision on the matter being appealed shall be made by the retirement board.

B. Appeals from a final decision of the retirement board shall be made to the first judicial district court and initiated by filing a notice of appeal with the district court within thirty days after the retirement board has issued its final decision. The review of the district court shall be restricted to the record made before the retirement board, and the district court shall not permit the introduction of new evidence on any of the issues presented before the retirement board. The decision of the retirement board shall be upheld by the district court unless the district court finds the decision of the retirement board to be unlawful, arbitrary or capricious or not supported by substantial evidence on the entire record as submitted by the retirement board."

Section 9

Section 9. 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 and notwithstanding any other provision of law, to employ or contract with and compensate competent legal counsel to handle the legal matters and litigation 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 results of elections of elected members of the retirement board shall be certified at the annual meeting of the association. Elections 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. The member appointed to fill the vacancy shall serve 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.

I. Neither the retirement board nor the association shall allow public inspection of, or disclosure of, information from any member or retiree file unless a prior release and consent, in the form prescribed by the association, has been executed by the member or retiree; except that applicable coverage plans, amounts of retirement plan contributions made by members and affiliated public employers, pension amounts paid, and the names and addresses of public employees retirement association members or retirees requested for election purposes by candidates for election to the retirement board may be produced or disclosed without release or consent."

Section 10

Section 10. Section 10-11-131 NMSA 1978 (being Laws 1987, Chapter 253, Section 131) is amended to read:

"10-11-131. RETIREMENT BOARD--OFFICERS--EMPLOYMENT OF SERVICES.--

A. The retirement board shall elect from its own number a chairman and a vice chairman.

B. The retirement board shall appoint an executive director who shall be the chief administrative officer for the retirement board and the association.

C. The retirement board shall employ professional, technical, clerical and other services as required for the operation of the association. The compensation for employed services shall be fixed by the retirement board.

D. The state treasurer shall be the treasurer of the association and the custodian of its funds. The treasurer's general bond to the state shall cover all liability for acts as treasurer of the association. The treasurer shall credit all receipts of money and assets of the association to the association. The treasurer shall make disbursements from association assets only upon warrants issued by the secretary of finance and administration based upon vouchers signed by the executive secretary or vouchers signed by the state treasurer for purposes of investment."

Section 11

Section 11. 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 attorney 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 has 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. obligations of non-United States governmental or quasi-governmental entities, and these may be denominated in foreign currencies; obligations, including but not limited to bonds, notes or commercial paper of any corporation organized outside of the United States, and these may be denominated in foreign currencies; or preferred stock or common stock of any corporation organized outside of the United States whose securities are listed on at least one national or foreign stock exchange or are traded in an over-the-counter market, and these may be denominated in foreign currencies. Currency transactions, including spot or cash basis currency transactions, forward contracts and buying or selling options or futures on foreign currencies,

shall be permitted but only for the purposes of hedging foreign currency risk and not for speculation;

G. stocks or shares of a diversified investment company registered under the federal Investment Company Act of 1940, 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, provided that the investment manager has assets under management of at least one hundred million dollars ($100,000,000); provided that the board may allow reasonable administrative and investment expenses to be paid directly from the income or assets of these investments;

H. 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

I. 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)."

Section 12

Section 12. Section 10-12B-5 NMSA 1978 (being Laws 1992, Chapter 111, Section 5) is amended to read:

"10-12B-5. SERVICE CREDIT--REINSTATEMENT OF FORFEITED SERVICE--PRIOR SERVICE--MILITARY SERVICE.--

A. Personal service rendered by a member shall be credited to the member's service credit account in accordance with board rules and regulations. Service shall be credited to the nearest month. In no case shall any member be credited with a year of service for less than twelve months of service in any calendar year or more than a month of service for all service in any calendar month or more than a year of service for all service in any calendar year.

B. Service credit shall be forfeited if a member leaves office and withdraws the member's accumulated member contributions. A member or former member who is a member of a state system or the educational retirement system who has forfeited service credit by withdrawal of member contributions may reinstate the forfeited service credit by repaying the amount withdrawn plus compound interest from the date of withdrawal to the date of repayment at a rate set by the board. Withdrawn member contributions may be repaid in increments of one year in accordance with procedures established by the board. Full payment of each one-year increment shall be made in a single lump-sum amount in accordance with procedures established by the board.

C. Service credit that a member would have earned if the member had not elected to be excluded from membership may be purchased if the member pays the purchase cost determined pursuant to the provisions of Subsection F of this section.

D. A member who during a term of office enters a uniformed service of the United States shall be given service credit for periods of service in the uniformed services subject to the following conditions:

(1) the member returns to office within ninety days following termination of the period of intervening service in the uniformed services or the affiliated employer certifies in writing to the association that the member is entitled to reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994;

(2) the member retains membership in the association during the period of service in the uniformed services;

(3) free service credit shall not be given for periods of intervening service in the uniformed services following voluntary reenlistment. Service credit for such periods shall only be given after the member pays the association the sum of the contributions that the person would have been required to contribute had the person remained continuously employed throughout the period of intervening service following voluntary reenlistment, which payment shall be made during the period beginning with the date of reemployment and whose duration is three times the period of the person's intervening service in the uniformed services following voluntary reenlistment, not to exceed five years;

(4) service credit shall not be given for periods of intervening service in the uniformed services that are used to obtain or increase a benefit from another state system or the retirement program provided under the Educational Retirement Act; and

(5) the member must not have received a discharge or separation from uniformed service under other than honorable conditions.

Notwithstanding any provision of this plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 4l4(u) of the Internal Revenue Code of 1986, as amended.

E. A member who entered uniformed service of the United States may purchase service credit for periods of active duty in the uniformed services, subject to the following conditions:

(1) the member pays the purchase cost determined pursuant to the provisions of Subsection F of this section;

(2) the member has five or more years of service credit accrued according to the provisions of the Judicial Retirement Act;

(3) the aggregate amount of service credit purchased pursuant to the provisions of this subsection does not exceed five years, reduced by any period of service credit acquired for military service under any other provision of the Judicial Retirement Act;

(4) service credit may not be purchased for periods of service in the uniformed services that are used to obtain or increase a benefit from another retirement program; and

(5) the member must not have received a discharge or separation from uniformed service under other than honorable conditions.

F. The purchase cost for each year of service credit purchased pursuant to the provisions of this section shall be the increase in the actuarial present value of the pension of the member under the Judicial Retirement Act as a consequence of the purchase, as determined by the association. Full payment shall be made in a single lump-sum amount in accordance with procedures established by the board. Except as provided in Subsection G of this section, seventy-five percent of the purchase cost shall be considered to be employer contributions and shall not be refunded to the member in the event of cessation of membership.

G. A member shall be refunded, after retirement and upon written request filed with the association, the portion of the purchase cost of service credit purchased pursuant to the provisions of this section that the association determines to have been unnecessary to provide the member with the maximum pension applicable to the member. The association shall not pay interest on the portion of the purchase cost refunded to the member."

Section 13

Section 13. Section 10-12B-18 NMSA 1978 (being Laws 1995, Chapter 115, Section 4) is amended to read:

"10-12B-18. 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 board, the executive director nor any officer or employee of the association or the 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 14

Section 14. Section 10-12B-19 NMSA 1978 (being Laws 1995, Chapter 115, Section 5) is amended to read:

"10-12B-19. CORRECTIONS OF ERRORS AND OMISSIONS--ESTOPPEL.--

A. If an error or omission results in 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 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 attorney 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 15

Section 15. Section 10-12C-5 NMSA 1978 (being Laws 1992, Chapter 118, Section 5) is amended to read:

"10-12C-5. SERVICE CREDIT--REINSTATEMENT OF FORFEITED SERVICE--PRIOR SERVICE--MILITARY SERVICE.--

A. Personal service rendered by a member shall be credited to the member's service credit account in accordance with board rules and regulations. Service shall be credited to the nearest month. In no case shall any member be credited with a year of service for less than twelve months of service in any calendar year or more than a month of service for all service in any calendar month or more than a year of service for all service in any calendar year.

B. Service credit shall be forfeited if a member leaves office and withdraws the member's accumulated member contributions. A member or former member who is a member of another state system or the educational retirement system who has forfeited service credit by withdrawal of member contributions may reinstate the forfeited service credit by repaying the amount withdrawn plus compound interest from the date of withdrawal to the date of repayment at a rate set by the board. Withdrawn member contributions may be repaid in increments of one year in accordance with procedures established by the board. Full

payment of each one-year increment shall be made in a single lump-sum amount in accordance with procedures established by the board.

C. Service credit that a member would have earned if the member had not elected to be excluded from membership may be purchased if the member pays the purchase cost determined pursuant to the provisions of Subsection F of this section.

D. A member who during a term of office enters a uniformed service of the United States shall be given service credit for periods of service in the uniformed services subject to the following conditions:

(1) the member returns to office within ninety days following termination of the period of intervening service in the uniformed services or the affiliated employer certifies in writing to the association that the member is entitled to reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994;

(2) the member retains membership in the association during the period of service in the uniformed services;

(3) free service credit shall not be given for periods of intervening service in the uniformed services following voluntary reenlistment. Service credit for such periods shall only be given after the member pays the association the sum of the contributions that the person would have been required to contribute had the person remained continuously employed throughout the period of intervening service following voluntary reenlistment, which payment shall be made during the period beginning with the date of reemployment and whose duration is three times the period of the persons intervening service in the uniformed services following voluntary reenlistment, not to exceed five years;

(4) service credit shall not be given for periods of intervening service in the uniformed services that are used to obtain or increase a benefit from another state system or the retirement program provided under the Educational Retirement Act; and

(5) the member must not have received a discharge or separation from uniformed service under other than honorable conditions.

Notwithstanding any provision of this plan to the contrary, contributions, benefits and service credit with respect to qualified military

service will be provided in accordance with Section 414(u) of the Internal Revenue Code of 1986, as amended.

E. A member who entered a uniformed service of the United States may purchase service credit for periods of active duty in the uniformed services, subject to the following conditions:

(1) the member pays the purchase cost determined pursuant to the provisions of Subsection F of this section;

(2) the member has five or more years of service credit accrued according to the provisions of the Magistrate Retirement Act;

(3) the aggregate amount of service credit purchased pursuant to the provisions of this subsection does not exceed five years, reduced by any period of service credit acquired for military service under any other provision of the Magistrate Retirement Act;

(4) service credit may not be purchased for periods of service in the uniformed services that are used to obtain or increase a benefit from another retirement program; and

(5) the member must not have received a discharge or separation from uniformed service under other honorable conditions.

F. The purchase cost for each year of service credit purchased pursuant to the provisions of this section shall be the increase in the actuarial present value of the pension of the member under the Magistrate Retirement Act as a consequence of the purchase, as determined by the association. Full payment shall be made in a single lump-sum amount in accordance with procedures established by the board. Except as provided in Subsection G of this section, seventy-five percent of the purchase cost shall be considered to be employer contributions and shall not be refunded to the member in the event of cessation of membership.

G. A member shall be refunded, after retirement and upon written request filed with the association, the portion of the purchase cost of service credit purchased pursuant to the provisions of this section that the association determines to have been unnecessary to provide the member with the maximum pension applicable to the member. The association shall not pay interest on the portion of the purchase cost refunded to the member."

Section 16

Section 16. Section 10-12C-17 NMSA 1978 (being Laws 1995, Chapter 115, Section 9) is amended to read:

"10-12C-17. 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 board, the executive director nor any officer or employee of the association or the 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 17

Section 17. Section 10-12C-18 NMSA 1978 (being Laws 1995, Chapter 115, Section 10) is amended to read:

"10-12C-18. CORRECTION OF ERRORS AND OMISSIONS--ESTOPPEL.--

A. If an error or omission 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 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 attorney 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 18

Section 18. Section 10-11-118.1 NMSA 1978 (being Laws 1992, Chapter 116, Section 9, as amended) is amended to read:

"10-11-118.1. ADJUSTMENT OF BENEFITS.--

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 which would otherwise be paid out which 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 Public Employees Retirement Act.

C. The provisions of this section are mandatory and may 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 board, the executive director nor any officer or employee of the association or the 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 Public Employees 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."

HOUSE BILL 875, AS AMENDED

WITH CERTIFICATE OF CORRECTION

Approved April 10, 1997

CHAPTER 190

RELATING TO GAMING; ENACTING THE INDIAN GAMING COMPACT; ENACTING A REVENUE-SHARING AGREEMENT TO PROVIDE FOR REVENUE-SHARING BETWEEN THE STATE AND AN INDIAN NATION, TRIBE OR PUEBLO CONDUCTING GAMING PURSUANT TO THE COMPACT; ENACTING THE GAMING CONTROL ACT TO PERMIT CERTAIN NONTRIBAL GAMING; PROVIDING PENALTIES; IMPOSING A GAMING TAX AND FEES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. INDIAN GAMING COMPACT ENTERED INTO.--The Indian Gaming Compact is enacted into law and entered into with all Indian nations, tribes and pueblos in the state legally joining in it by enactment of a resolution pursuant to the requirements of applicable tribal and federal law. The compact is enacted and entered into in the form substantially as follows:

"INDIAN GAMING COMPACT

INTRODUCTION

The State is a sovereign State of the United States of America, having been admitted to the Union pursuant to the Act of June 20, 1910, 36 Statutes at Large 557, Chapter 310, and is authorized by its

constitution to enter into contracts and agreements, including this Compact, with the Tribe;

The Tribe is a sovereign federally recognized Indian tribe and its governing body has authorized the officials of the Tribe to enter into contracts and agreements of every description, including this Compact, with the State;

The Congress of the United States has enacted the Indian Gaming Regulatory Act of 1988, 25 U.S.C. §§ 2701-2721 (hereinafter "IGRA"), which permits Indian tribes to conduct Class III Gaming on Indian Lands pursuant to a tribal-state compact entered into for that purpose;

The Tribe owns or controls Indian Lands and by Ordinance has adopted rules and regulations governing Class III games played and related activities at any Gaming Facility;

The State and the Tribe, in recognition of the sovereign rights of each party and in a spirit of cooperation to promote the best interests of the citizens of the State and the members of the Tribe, have engaged in good faith negotiations recognizing and respecting the interests of each party and have agreed to this Compact.

NOW, THEREFORE, the State and the Tribe agree as follows:

TERMS AND CONDITIONS

SECTION 1. Purpose and Objectives.

The purpose and objectives of the State and the Tribe in making this Compact are as follows:

A. To evidence the good will and cooperative spirit between the State and the Tribe;

B. To continue the development of an effective government-to-government relationship between the State and the Tribe;

C. To provide for the regulation of Class III Gaming on Indian Lands as required by the IGRA;

D. To fulfill the purpose and intent of the IGRA by providing for tribal gaming as a means of generating tribal revenues, thereby

promoting tribal economic development, tribal self-sufficiency, and strong tribal government;

E. To provide revenues to fund tribal government operations or programs, to provide for the general welfare of the tribal members and for other purposes allowed under the IGRA;

F. To provide for the effective regulation of Class III Gaming in which the Tribe shall have the sole proprietary interest and be the primary beneficiary; and

G. To address the State's interest in the establishment, by the Tribe, of rules and procedures for ensuring that Class III Gaming is conducted fairly and honestly by the owners, operators, employees and patrons of any Class III Gaming enterprise on Indian Lands.

SECTION 2. Definitions.

For purposes of this Compact, the following definitions pertain:

A. "Class III Gaming" means all forms of gaming as defined in 25 U.S.C. § 2703(8), and 25 C.F.R. § 502.4.

B. "Compact" means this compact between the State and the Tribe.

C. "Gaming Enterprise" means the tribal entity created and designated by the Tribe as having authority to conduct Class III Gaming pursuant to this Compact.

D. "Gaming Facility" means the buildings or structures in which Class III Gaming is conducted on Indian Lands.

E. "Gaming Machine" means a mechanical, electromechanical or electronic contrivance or machine that, upon insertion of a coin, token or similar object, or upon payment of any consideration, is available to play or operate a game, whether the payoff is made automatically from the Gaming Machine or in any other manner.

F. "Indian Lands" means:

1. all lands within the exterior boundaries of the Tribe's reservation and its confirmed grants from prior sovereigns; or

2. any other lands title to which is either held in trust by the United States for the exclusive benefit of the Tribe or a member thereof

or is held by the Tribe or a member thereof subject to restrictions against alienation imposed by

the United States, and over which the Tribe exercises jurisdiction and governmental authority, but not including any land within the boundaries of a municipality that is outside of the boundaries of the Tribe's reservation or confirmed Spanish grant, as those boundaries existed on October 17, 1988.

G. "Key Employee" means that term as defined in 25 CFR Section 502.14.

H. "Management Contract" means a contract within the meaning of 25 U.S.C. §§ 2710(d)(9) and 2711.

I. "Management Contractor" means any person or entity that has entered into a Management Contract with the Tribe.

J. "Ordinance" means the gaming ordinance and any amendments thereto adopted by the Tribal Council of the Tribe.

K. "Primary Management Official" means that term as defined in 25 CFR Section 502.19.

L. "State" means the State of New Mexico.

M. "State Gaming Representative" means that person designated by the gaming control board pursuant to the Gaming Control Act who will be responsible for actions of the State set out in the Compact. The representative will be the single contact with the Tribe and may be relied upon as such by the Tribe. If the State Legislature enacts legislation to establish an agency of the State, such agency may assume the duties of the State Gaming Representative.

N. "Tribal Gaming Agency" means the tribal governmental agency which will be identified to the State Gaming Representative as the agency responsible for actions of the Tribe set out in the Compact. It will be the single contact with the State and may be relied upon as such by the State.

O. "Tribe" means any Indian Tribe or Pueblo located within the State of New Mexico entering into this Compact as provided for herein.

SECTION 3. Authorized Class III Gaming.

The Tribe may conduct, only on Indian Lands, subject to all of the terms and conditions of this Compact, any or all forms of casino-style gaming, including but not limited to slot machines and other forms of electronic gaming devices; all forms of poker, blackjack and other casino-style card games, both banked and unbanked; roulette; craps; keno; wheel of fortune; pai gow; and other games played in casino settings; and any form of a lottery.

Subject to the foregoing, the Tribe shall establish, in its discretion, by tribal law, such limitations as it deems appropriate on the number and type of Class III Gaming conducted, the location of Class III Gaming on Indian Lands, the hours and days of operation, and betting and pot limits, applicable to such gaming.

SECTION 4. Regulation of Class III Gaming.

A. Tribal Gaming Agency. The Tribal Gaming Agency will assure that the Tribe will:

1. operate all Class III Gaming pursuant to this Compact, tribal law, the IGRA and other applicable Federal law;

2. provide for the physical safety of patrons in any Gaming Facility;

3. provide for the physical safety of personnel employed by the gaming enterprise;

4. provide for the physical safeguarding of assets transported to and from the Gaming Facility and cashier's cage department;

5. provide for the protection of the property of the patrons and the gaming enterprise from illegal activity;

6. participate in licensing of primary management officials and key employees of a Class III Gaming enterprise;

7. detain persons who may be involved in illegal acts for the purpose of notifying law enforcement authorities; and

8. record and investigate any and all unusual occurrences related to Class III Gaming within the Gaming Facility.

B. Regulations. Without affecting the generality of the foregoing, the Tribe shall adopt laws:

1. prohibiting participation in any Class III Gaming by any person under the age of twenty-one (21);

2. prohibiting the employment of any person in Class III Gaming activities who is under the age of twenty-one (21) or who has not been licensed in accordance with Section 5, herein;

3. requiring the Tribe to take all necessary action to impose on its gaming operation standards and requirements equivalent to or more stringent than those contained in the federal Fair Labor Standards Act of 1938, the federal Occupational Safety and Health Act of 1970, and any other federal laws relating to wages, hours of work and conditions of work, and the regulations issued thereunder;

4. requiring that on any construction project involving any Gaming Facility or related structure that is funded in whole or in part by federal funds, all workers will be paid wages meeting or exceeding the standards established for New Mexico under the federal Davis-Bacon Act;

5. prohibiting the Tribe, the Gaming Enterprise and a Management Contractor from discriminating in the employment of persons to work for the gaming Enterprise or in the Gaming Facility on the grounds of race, color, national origin, gender, sexual orientation, age or handicap;

6. providing to all employees of a gaming establishment employment benefits, including, at a minimum, sick leave, life insurance, paid annual leave and medical and dental insurance as well as providing unemployment insurance and workers' compensation insurance through participation in programs offering benefits at least as favorable as those provided by comparable state programs;

7. providing a grievance process for an employee in cases of disciplinary or punitive action taken against an employee that includes a process for appeals to persons of greater authority than the immediate supervisor of the employee;

8. permitting State Department of Environment inspectors to inspect Gaming Facilities' food service operations during normal Gaming Facility business hours to assure that standards and requirements equivalent to the State's Food Service Sanitation Act are maintained;

9. prohibiting a gaming enterprise from cashing any paycheck or any type of government assistance check, including Social Security, AFDC, pension and other similar checks, for any patron;

10. prohibiting a gaming enterprise from extending credit by accepting IOUs or markers from its patrons;

11. requiring that odds be posted on each electronic and electromechanical gaming device;

12. requiring that automatic teller machines on Gaming Facility premises be programmed so that the machines will not accept cards issued by the State to AFDC recipients for access to AFDC benefits;

13. providing that each electronic or electromechanical gaming device in use at the Gaming Facility must pay out a mathematically demonstrable percentage of all amounts wagered, which must not be less than eighty percent (80%);

14. providing that no later than ninety days after this Compact takes effect, all gaming machines on the premises of the Gaming Facility will be connected to a central computerized reporting and auditing system on the Gaming Facility premises, which shall collect on a continual basis the activity of each gaming machine in use at the Gaming Facility, and that such data shall be electronically accessible to the State Gaming Representative upon entry of appropriate security codes;

15. enacting provisions that:

(a) prohibit an employee of the Gaming Facility from selling, serving, giving or delivering an alcoholic beverage to an intoxicated person or from procuring or aiding in the procurement of any alcoholic beverage for an intoxicated person at the Gaming Facility;

(b) require Gaming Facility employees that dispense, sell, serve or deliver alcoholic beverages to attend Alcohol Server Education Classes similar to those classes provided for in the New Mexico Liquor Control Act; and

(c) purchase and maintain a liquor liability insurance policy that will provide, at a minimum, personal injury coverage of one million dollars ($1,000,000) per incident and two million dollars ($2,000,000) aggregate per policy year;

16. prohibiting alcoholic beverages from being sold, served, delivered or consumed in that part of a Gaming Facility where gaming is allowed;

17. requiring the gaming enterprise to spend an amount that is no less than one-quarter of one percent (.25%) of its net win as that term is defined herein annually to fund or support programs for the treatment and assistance of compulsive gamblers and for the prevention of compulsive gambling;

18. governing any Management Contract regarding its Class III Gaming activity such that it conforms to the requirements of tribal law and the IGRA and the regulations issued thereunder;

19. prohibiting the operation of any Class III Gaming for at least four (4) consecutive hours daily, Mondays through Thursdays (except federal holidays);

20. prohibiting a Tribal Gaming Enterprise and the Tribe from providing, allowing, contracting to provide or arranging to provide alcoholic beverages, food or lodging for no charge or at reduced prices at a Gaming Facility or lodging facility as an incentive or enticement for patrons to game; and

21. prohibiting the Tribe, the Tribal Gaming Agency or a Management Contractor from contributing directly, or through an agent, representative or employee, revenue from a Gaming Enterprise owned by the Tribe, or anything of value acquired with that revenue, to a candidate, political committee or person holding an office elected or to be elected at an election covered by the State's Campaign Reporting Act.

The Tribal Gaming Agency will provide true copies of all tribal laws and regulations affecting Class III Gaming conducted under the provisions of this Compact to the State Gaming Representative within thirty (30) days after the effective date of this Compact, and will provide true copies of any amendments thereto or additional laws or regulations affecting gaming within thirty (30) days after their enactment (or approval, if any).

C. Audit and Financial Statements. The Tribal Gaming Agency shall require all books and records relating to Class III Gaming to be maintained in accordance with generally accepted accounting principles. All such books and records shall be retained for a period of at least six (6) years from the date of creation. Not less than annually, the Tribal Gaming Agency shall require an audit and a certified financial

statement covering all financial activities of the gaming enterprise by an independent certified public accountant licensed by the State. The financial statement shall be prepared in accordance with generally accepted accounting principles and shall be submitted to the Tribal Gaming Agency within one hundred twenty (120) days of the close of the Tribe's fiscal year. Copies of the financial statement and the audit shall be furnished to the State Gaming Representative and the state treasurer by the Tribal Gaming Agency within one hundred twenty days of the agency's receipt of the documents. The Tribe will maintain the following records for not less than six (6) years:

1. revenues, expenses, assets, liabilities and equity for each Gaming Facility;

2. daily cash transactions for each Class III Gaming activity at each Gaming Facility, including but not limited to transactions relating to each gaming table bank, game dropbox and gaming room bank;

3. all markers, IOUs, returned checks, hold check or other similar credit instruments;

4. individual and statistical game records (except card games) to reflect statistical drop and statistical win; for electronic, computer, or other technologically assisted games, analytic reports which show the total amount of cash wagered and the total amount of prizes won;

5. contracts, correspondence and other transaction documents relating to all vendors and contractors;

6. records of all tribal gaming enforcement activities;

7. audits prepared by or on behalf of the Tribe; and

8. personnel information on all Class III Gaming employees or agents, including rotation sheets, hours worked, employee profiles and background checks.

D. Violations. The agents of the Tribal Gaming Agency shall have unrestricted access to the Gaming Facility during all hours of Class III Gaming activity, and shall have immediate and unrestricted access to any and all areas of the Gaming Facility for the purpose of ensuring compliance with the provisions of this Compact and the Ordinance. The agents shall report immediately to the Tribal Gaming Agency any suspected violation of this Compact, the Ordinance, or regulations of the Tribal Gaming Agency by the gaming enterprise, Management

Contractor, or any person, whether or not associated with Class III Gaming.

E. State Gaming Representative.

1. Upon written request by the State to the Tribe, the Tribe will provide information on primary management officials, key employees and suppliers, sufficient to allow the State to conduct its own background investigations, as it may deem necessary, so that it may make an independent determination as to the suitability of such individuals, consistent with the standards set forth in Section 5, hereinafter. The Tribe shall consider any information or recommendations provided to it by the State as to any such person or entity, but the Tribe shall have the final say with respect to the hiring or licensing of any such person or entity.

2. Notwithstanding that the Tribe has the primary responsibility to administer and enforce the regulatory requirements, the State Gaming Representative authorized in writing by the Governor of the State or by legislation duly enacted by the State Legislature shall have the right to inspect a Gaming Facility, Class III Gaming activity, and all records relating to Class III Gaming (including those set forth in Section 5, hereinafter) of the Tribe, subject to the following conditions:

(a) with respect to public areas of a Gaming Facility, at any time without prior notice during normal Gaming Facility business hours;

(b) with respect to private areas of a Gaming Facility not accessible to the public, at any time during normal Gaming Facility business hours, immediately after notifying the Tribal Gaming Agency and Gaming Facility of his or her presence on the premises and presenting proper identification, and requesting access to the non-public areas of the Gaming Facility. The Tribe, in its sole discretion, may require an employee of the Gaming Facility or the Tribal Gaming Agency to accompany the State Gaming Representative at all times that the State Gaming Representative is on the premises of a Gaming Facility, but if the Tribe imposes such a requirement, the Tribe shall require such an employee of the Gaming Facility or the Tribal Gaming Agency to be available at all times for such purposes;

(c) with respect to inspection and copying of all management records relating to Class III Gaming, at any time without prior notice between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding official holidays. The reasonable costs of copying will be borne by the State; and

(d) whenever the State Gaming Representative, or his designee, enters the premises of the Gaming Facility for any such inspection, such Representative, or designee, shall identify himself to security or supervisory personnel of the Gaming Facility.

3. Gaming Enterprise and gaming operations information that is provided to the State Gaming Representative shall be considered public information and subject to the Inspection of Public Records Act. Trade secrets, information relating to security and surveillance systems, cash handling and accounting procedures, building layout, gaming machine payouts, investigations into alleged violations of laws or regulations, personnel records and proprietary information regarding the gaming enterprise of the Tribe, Class III Gaming conducted by the Tribe, or the operation thereof, shall not be deemed public records as a matter of state law, and shall not be disclosed to any member of the public, without the prior written approval of a duly authorized representative of the Tribe. These prohibitions shall not be construed to prohibit:

(a) the furnishing of any information to a law enforcement or regulatory agency of the Federal Government;

(b) the State from making known the names of persons, firms, or corporations conducting Class III Gaming pursuant to the terms of this Compact, locations at which such activities are conducted, or the dates on which such activities are conducted;

(c) publishing the terms of this Compact;

(d) disclosing information as necessary to audit, investigate, prosecute or arbitrate violations of this Compact or other applicable laws or to defend suits against the State; and

(e) complying with subpoenas or court orders issued by courts of competent jurisdiction.

4. To the fullest extent allowed by State law, the Tribe shall have the right to inspect State records concerning all Class III Gaming conducted by the Tribe; the Tribe shall have the right to copy such State records, with the Tribe bearing the reasonable cost of copying.

5. For every year or part thereof in which the Tribe is actually engaged in Class III Gaming hereunder, the Tribe shall reimburse the State for the costs the State incurs in carrying out any functions authorized by the terms of this Compact. All calculations of amounts due shall be based upon the operations of the Gaming Enterprise on the

final day of operation of each quarter of the calendar year. Payments due the State shall be made no later than the twenty-fifth day of the month following the end of a quarter to the State Treasurer for deposit into the General Fund of the State ("State General Fund"). The amount of the regulatory fee each quarter shall be the sum of six thousand two hundred fifty dollars ($6,250) per Gaming Facility plus three hundred dollars ($300) per gaming machine plus seven hundred fifty dollars ($750) per gaming table or device other than a Gaming Machine. These amounts shall increase by five percent (5%) each year beginning on the first day of January occurring after the Compact has been in effect for at least twelve months.

6. In the event the State believes that the Tribe is not administering and enforcing the regulatory requirements set forth herein, it may invoke the procedures set forth in Section 7 of this Compact.

F. The Tribe shall comply with all applicable provisions of the Bank Secrecy Act, P.L. 91-508, October 26, 1970, 31 U.S.C. §§ 5311-5314, and all reporting requirements of the Internal Revenue Service.

SECTION 5. Licensing Requirements.

A. License Required. The Gaming Facility operator (but not including the Tribe), including its principals, primary management officials, and key employees, the Management Contractor and its principals, primary management officials, and key employees (if the Tribe hires a Management Contractor); any person, corporation, or other entity that has supplied or proposes to supply any gaming device to the Tribe or the Management Contractor; and any person, corporation or other entity providing gaming services within or without a Gaming Facility, shall apply for and receive a license from the Tribal Gaming Agency before participating in any way in the operation or conduct of any Class III Gaming on Indian Lands.

B. License Application. Each applicant for a license shall file with the Tribal Gaming Agency a written application in the form prescribed by the Tribal Gaming Agency, along with the applicant's fingerprint card, current photograph and the fee required by the Tribal Gaming Agency.

1. The following Notice ("Privacy Act Notice") shall be placed on the application form for a principal, key employee or a primary management official before that form is filled out by an applicant:

"In compliance with the Privacy Act of 1974, the following information is provided:

Solicitation of the information on this form is authorized by 25 U.S.C. §§ 2701-2721. The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming enterprise. The information will be used by members and staff of the Tribal Gaming Agency and the National Indian Gaming Commission who have need for the information in the performance of their official duties. The information may be disclosed to appropriate federal, tribal, state, local or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when, pursuant to a requirement by a Tribe, or the National Indian Gaming Commission, the information is relevant to the hiring or firing of an employee, the issuance or revocation of a gaming license or investigations of activities while associated with a Tribe or a gaming enterprise. Failure to consent to the disclosures indicated in this Notice will result in a Tribe being unable to hire you in a primary management official or key employee position with a tribal gaming enterprise.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply an SSN may result in errors in processing your application.".

2. Existing principals, key employees and primary management officials shall be notified, in writing, that they shall either:

(a) complete a new application form that contains a Privacy Act Notice; or

(b) sign a statement that contains the Privacy Act Notice and consent to the routine uses described in that Notice.

3. The following Notice ("False Statement Notice") shall be placed on the application form for a principal, key employee or a primary management official before that form is filled out by an applicant:

"A false statement on any part of your application may be grounds for not hiring you or for firing you after you begin work. Also, you may be punished by fine or imprisonment. See 18 U.S.C. § 1001.".

4. The Tribal Gaming Agency shall notify, in writing, existing principals, key employees and primary management officials that they shall either:

(a) complete a new application form that contains a False Statement Notice; or

(b) sign a statement that contains the False Statement Notice.

5. The Tribal Gaming Agency shall request from each applicant, and from each principal, primary management official and key employee of each applicant, all of the following information:

(a) full name, other names used (oral or written), Social Security Number(s), birth date, place of birth, citizenship, gender and all languages spoken or written;

(b) currently, and for the previous ten (10) years, business and employment positions held, ownership interests in those businesses, business and residence addresses and driver's license numbers; provided, that any applicant who is a principal, primary management official, key employee, Management Contractor, manufacturer or supplier of gaming devices, and/or a person providing gaming services, must provide such information currently, and from the age of eighteen (18);

(c) the names and current addresses of at least three (3) personal references, including one (1) personal reference who was acquainted with the applicant during each period of residence listed in Paragraph B.5.(b) of this section;

(d) current business and residence telephone numbers;

(e) a description of any existing and previous business relationships with a Tribe, including ownership interests in those businesses, and a description of any potential or actual conflict of interests between such businesses and a Tribe;

(f) a description of any existing and previous business relationships in the gaming industry, including, but not limited to, ownership interests in those businesses;

(g) the name and address of any licensing or regulatory agency with which the applicant has filed an application for a license or

permit related to gaming, whether or not such license or permit was granted;

(h) for each felony for which there is an ongoing prosecution or a conviction, the charge, the date of the charge, the name and address of the court involved and the disposition, if any;

(i) for each misdemeanor for which there is an ongoing prosecution or conviction (excluding minor traffic violations), the charge, the date of the charge, the name and address of the court involved and the disposition, if any;

(j) for each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is not otherwise listed pursuant to Paragraph B.5.(h) or B.5.(i) of this section, the criminal charge, the date of the charge, the name and address of the court involved and the disposition, if any;

(k) the name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, as an applicant, principal, primary management official or key employee, and whether or not such license or permit was granted;

(l) a current photograph;

(m) fingerprints, which shall be taken by officers of the tribal police department or by another law enforcement agency and forwarded directly to the tribal police department. Pursuant to a Memorandum of Understanding between the Tribe and the National Indian Gaming Commission ("Commission"), tribal police officers shall forward the fingerprint cards directly to the Commission;

(n) the fee required by the Tribal Gaming Agency; and

(o) any other information the Tribal Gaming Agency deems relevant.

C. Background Investigations.

1. Upon receipt of a completed application and required fee for licensing, the Tribal Gaming Agency shall conduct or cause to be conducted a background investigation to ensure that the applicant is qualified for licensing.

2. Background checks of applicants will be performed pursuant to the following procedures:

(a) The Tribal Gaming Agency will provide applications to potential applicants upon request and shall collect and maintain the applications.

(b) Pursuant to a Memorandum of Understanding between the Tribe and the Commission, tribal police officers will collect fingerprints from all applicants and forward the fingerprint cards directly to the Commission. The Commission will obtain a criminal history record from the Federal Bureau of Investigation on each applicant and forward such information to the Tribal Gaming Agency.

(c) The Tribal Gaming Agency shall investigate the information provided in the applications. This investigation shall include:

(1) contacting persons or entities identified in the application and verifying by written or oral communication that the information contained in the application is accurate;

(2) interviewing a sufficient number of knowledgeable people, such as former employers, partners, business associates, and others referred to in the application, to provide a basis for the Tribal Gaming Agency to make a determination concerning whether the applicant meets applicable eligibility requirements;

(3) reviewing relevant financial records of the applicant for the three (3) years preceding the application; and

(4) contacting any state, federal or other government agency that is referred to in the application.

(d) The Tribal Gaming Agency shall document any information it obtains that calls into question whether the applicant would meet the eligibility requirements under the Ordinance. The Tribal Gaming Agency shall then document in detail the disposition of these problem areas, indicating the follow-up investigations performed on the problem areas and the result of such investigations.

(e) The Tribal Gaming Agency will review the results of the investigation. This review will include a determination as to the scope of the investigation and whether sufficient information was obtained and verified. If such information is found not sufficient, the Tribal Gaming Agency will perform additional investigations.

(f) Once the investigation is complete, the Tribal Gaming Agency will decide whether the applicant meets the eligibility criteria under the Ordinance.

3. In conducting a background investigation, the Tribal Gaming Agency and its agents shall keep confidential the identity of each person interviewed in the course of the investigation.

4. Within twenty (20) days of the receipt of a completed application for licensing, and upon request of an applicant, the Tribal Gaming Agency may issue a temporary license to the applicant, unless the background investigation undertaken discloses that the applicant has a criminal history, or unless other grounds sufficient to disqualify the applicant are apparent on the face of the application. The temporary license shall become void and be of no effect upon either:

(a) the issuance of the license;

(b) the issuance of a notice of denial; or

(c) ninety (90) days after the temporary license is issued, whichever occurs first.

5. The Tribal Gaming Agency shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility or suitability of an applicant, or a principal, key employee or primary management official of an applicant, for employment or involvement in a gaming enterprise. After such consultation, the Tribal Gaming Agency shall either issue a license or deny the application. If the Tribal Gaming Agency determines that employment or involvement of the applicant poses a threat to the public interest or to the effective regulation of Class III Gaming or creates or enhances dangers of unsuitable, unfair or illegal practices, methods or activities in the conduct of Class III Gaming, the Tribal Gaming Agency shall deny the application.

6. The Tribal Gaming Agency shall retain the right to conduct additional background investigations of any person required to be licensed at any time while the license is valid.

D. Procedure for Forwarding Applications and Reports. Procedures for forwarding applications and investigative reports to the Commission and State Gaming Representative:

1. When a key employee or primary management official begins work at a gaming enterprise authorized by this Compact, the

Tribal Gaming Agency shall forward to the Commission and the State Gaming Representative a completed application for employment.

2. The Tribal Gaming Agency shall forward the report referred to in Paragraph D.4. of this section to the Commission and the State Gaming Representative within sixty (60) days after an employee begins work, or within sixty (60) days of the approval of this Compact by the Secretary of the Interior.

3. A key employee or primary management official who does not have a license shall not be employed after ninety (90) days.

4. The Tribal Gaming Agency shall prepare and forward to the Commission and the State Gaming Representative a report on each background investigation ("Investigative Report"). An Investigative Report shall include all of the following:

(a) steps taken in conducting the background investigation;

(b) results obtained;

(c) conclusions reached; and

(d) the basis for those conclusions.

5. The Tribal Gaming Agency shall submit with the Investigative Report a copy of the eligibility determination made under Paragraph C.5. of this section.

6. If a license is not issued to an applicant, the Tribal Gaming Agency shall notify the Commission and the State Gaming Representative.

7. With respect to principals, key employees and primary management officials, the Tribal Gaming Agency shall retain applications for employment and Investigative Reports (if any) for no less than three (3) years from the date of termination of employment.

E. Granting a Gaming License.

1. If within thirty (30) days after it receives an Investigative Report, neither the Commission nor the State Gaming Representative has notified the Tribal Gaming Agency that it has an objection to the issuance of a license pursuant to a license application filed by a

principal, key employee or primary management official, the Tribal Gaming Agency may issue a license to such applicant.

2. The Tribal Gaming Agency shall respond to any request for additional information from the Commission or the State Gaming Representative concerning a principal, key employee or primary management official who is the subject of an Investigative Report. Such a request shall suspend the thirty-day (30-day) period under Paragraph E.1. of this section until the Commission or the State Gaming Representative receives the additional information; however, in no event shall a request for additional information by the State Gaming Representative extend the thirty-day (30-day) period under Paragraph E.1. of this section for a total period of more than sixty (60) days from the date the State Gaming Representative received the Investigative Report.

3. If, within the thirty-day (30-day) period described above, the Commission or the State Gaming Representative provides the Tribal Gaming Agency with a statement itemizing objections to the issuance of a license to a principal, key employee or primary management official for whom the Tribal Gaming Agency has provided an application and Investigative Report, the Tribal Gaming Agency shall reconsider the application, taking into account the objections itemized by the Commission and/or the State Gaming Representative, and make a final decision whether to issue a license to such applicant.

F. Management Contract.

1. If the Tribe chooses to enter into a Management Contract, the Tribal Gaming Agency shall require that all principals, primary management officials and key employees of the Management Contractor be licensed.

2. The Tribe may enter into a Management Contract only if the Management Contract:

(a) provides that all Class III Gaming covered by the Management Contract will be conducted in accordance with the IGRA, the Ordinance and this Compact;

(b) enumerates the responsibilities of each of the parties for each identifiable function, including:

(1) maintaining and improving the Gaming Facility;

(2) providing operating capital;

(3) establishing operating days and hours;

(4) hiring, firing, training and promoting employees;

(5) maintaining the gaming enterprise's books and records;

(6) preparing the gaming enterprise's financial statements and reports;

(7) paying for the services of the independent auditor engaged pursuant to 25 C.F.R. § 571.12;

(8) hiring and supervising security personnel;

(9) providing fire protection services;

(10) setting an advertising budget and placing advertising;

(11) paying bills and expenses;

(12) establishing and administering employment practices;

(13) obtaining and maintaining insurance coverage, including coverage of public liability and property loss or damage;

(14) complying with all applicable provisions of the Internal Revenue Code of 1986, as amended;

(15) paying the cost of public safety services; and

(16) if applicable, supplying the Commission with all information necessary for the Commission to comply with the National Environmental Policy Act of 1969;

(c) provides for the establishment and maintenance of satisfactory accounting systems and procedures that shall, at a minimum:

(1) include an adequate system of internal controls;

(2) permit the preparation of financial statements in accordance with generally accepted accounting principles;

(3) be susceptible to audit;

(4) permit the calculation and payment of the Management Contractor's fee; and

(5) provide for the allocation of operating expenses or overhead expenses among the Tribe, the Management Contractor and any other user of a shared Gaming Facility and services;

(d) requires the Management Contractor to provide the Tribe, not less frequently than monthly, verifiable financial reports or all information necessary to prepare such reports;

(e) requires the Management Contractor to provide immediate access to the Gaming Facility, including its books and records, by appropriate officials of the Tribe, who shall have:

(1) the right to verify the daily gross revenues and income from the gaming enterprise; and

(2) access to any other gaming-related information the Tribe deems appropriate;

(f) provides for a minimum guaranteed monthly payment to the Tribe in a sum certain that has preference over the retirement of development and construction costs;

(g) provides an agreed upon maximum dollar amount for the recoupment of development and construction costs;

(h) provides for a term not to exceed the period allowed by the IGRA;

(i) details the method of compensating and reimbursing the Management Contractor. If a Management Contract provides for a percentage fee, such fee shall be either:

(1) not more than thirty percent (30%) of the net revenues of the gaming enterprise if the Chairman of the Commission determines that such percentage is reasonable considering the circumstances; or

(2) not more than forty percent (40%) of the net revenues if the Chairman of the Commission is satisfied that the capital investment required and income projections for the gaming enterprise require the additional fee;

(j) provides the grounds and mechanisms for modifying or terminating the Management Contract;

(k) contains a mechanism to resolve disputes between:

(1) the Management Contractor and customers, consistent with the procedures in the Ordinance;

(2) the Management Contractor and the Tribe; and

(3) the Management Contractor and the gaming enterprise employees;

(l) indicates whether and to what extent contract assignments and subcontracting are permissible;

(m) indicates whether and to what extent changes in the ownership interest in the Management Contract require advance approval by the Tribe; and

(n) states that the Management Contract shall not be effective unless and until it is approved by the Chairman of the Commission, date of signature of the parties notwithstanding.

3. The Tribe shall not enter into any Management Contract if the Tribal Gaming Agency determines that the Management Contractor or any principal, primary management official or key employee of the Management Contractor is not licensed or is ineligible to be licensed.

G. Confidentiality of Records. Any and all background Investigative Reports on employees or contractors, supporting documents acquired or generated in connection therewith, and any other Investigative Reports or documents acquired or generated in the course of investigations performed by the Tribe or the Tribal Gaming Agency, that are provided to the State Gaming Representative or any other agency or official of the State by the Tribal Gaming Agency or the Tribe pursuant to the provisions of this Compact, shall not be deemed public records of the State and shall not be disclosed to any member of the public without the prior express written authorization of an authorized representative of the Tribe; provided, that nothing herein

shall preclude any State agency or official from providing information to a federal agency or official having responsibility relative to Indian Gaming or from compliance with any valid order of a court having jurisdiction.

SECTION 6. Providers of Class III Gaming Equipment or Devices or Supplies.

A. Within thirty (30) days after the effective date of this Compact, if it has not already done so, the Tribal Gaming Agency will adopt standards for any and all Class III Gaming equipment, devices or supplies to be purchased, leased or otherwise acquired by the Tribe after the effective date of this Compact for use in any Gaming Facility, which standards shall be at least as strict as the comparable standards applicable to Class III Gaming equipment, devices or supplies within the State of Nevada. Any and all Class III Gaming equipment, devices or supplies acquired by the Tribe after the date of this Compact shall meet or exceed the standards thereby adopted, and any and all Class III Gaming equipment, devices or supplies used by the Tribe in its Gaming Facilities as of the effective date of this Compact shall be upgraded or replaced, if necessary, so as to comply with such standards, by no later than one (1) year after the effective date of this Compact.

B. Prior to entering into any future lease or purchase agreement for Class III Gaming equipment, devices or supplies, the Tribe shall obtain sufficient information and identification from the proposed seller or lessor and all persons holding any direct or indirect financial interest in the lessor or the lease/purchase agreement to permit the Tribe to license those persons in accordance with Section 5, hereof.

C. The seller, lessor, manufacturer or distributor shall provide, assemble and install all Class III Gaming equipment, devices or supplies in a manner approved and licensed by the Tribe.

SECTION 7. Dispute Resolution.

A. In the event either party believes that the other party has failed to comply with or has otherwise breached any provision of this Compact, such party may invoke the following procedure:

1. The party asserting noncompliance shall serve written notice on the other party. The notice shall identify the specific Compact provision believed to have been violated and shall specify the factual and legal basis for the alleged noncompliance. The notice shall specifically identify the date, time and nature of the alleged

noncompliance. Representatives of the State and Tribe shall thereafter meet within thirty (30) days in an effort to resolve the dispute.

2. In the event an allegation by the complaining party is not resolved to the satisfaction of such party within ninety (90) days after service of the notice set forth in Paragraph A.1. of this section, the complaining party may serve upon the other party a notice to cease conduct of the particular game(s) or activities alleged by the complaining party to be in noncompliance. Upon receipt of such notice, the responding party may elect to stop the game(s) or activities specified in the notice or invoke arbitration and continue the game(s) or activities pending the results of arbitration. The responding party shall act upon one of the foregoing options within thirty (30) days of receipt of notice from the complaining party.

3. Arbitration under this authority shall be conducted under the Commercial Arbitration Rules of the American Arbitration Association, except that the arbitrators shall be attorneys who are licensed members in good standing of the State Bar of New Mexico or of the bar of another state. The State will select one arbitrator, the Tribe a second arbitrator, and the two so chosen shall select a third arbitrator. If the third arbitrator is not chosen in this manner within ten (10) days after the second arbitrator is selected, the third arbitrator will be chosen in accordance with the rules of the American Arbitration Association.

4. All parties shall bear their own costs of arbitration and attorney fees.

5. The results of arbitration shall be enforceable by ion for injunctive or mandatory injunctive relief against the State and the Tribe in any court of competent jurisdiction. For purposes of any such action, the State and the Tribe acknowledge that any action or failure to act on the part of any agent or employee of the State or the Tribe, contrary to a decision of the arbitrators in an arbitration proceeding conducted under the provisions of this section, occurring after such decision, shall be wholly unauthorized and ultra vires acts, not protected by the sovereign immunity of the State or the Tribe.

B. Nothing in Subsection 7A. shall be construed to waive, limit or restrict any remedy that is otherwise available to either party to enforce or resolve disputes concerning the provisions of this Compact. Nothing in this Compact shall be deemed a waiver of the Tribe's sovereign immunity. Nothing in this Compact shall be deemed a waiver of the State's sovereign immunity.

SECTION 8. Protection of Visitors.

A. Liability to Visitors. The safety and protection of visitors to a Gaming Facility and uniformity and application of laws and jurisdiction of claims is directly related to and necessary for the regulation of Tribal gaming activities in this state. To that end, the general civil laws of New Mexico and concurrent civil jurisdiction in the State courts and the Tribal courts shall apply to a visitor's claim of liability for bodily injury or property damage proximately caused by the conduct of the Gaming Enterprise and:

1. occurring at a Gaming Facility, other premises, structures, on grounds or involving vehicles and mobile equipment used by a Gaming Enterprise;

2. arising out of a condition at the Gaming Facility or on premises or roads and passageways immediately adjoining it;

3. occurring outside of the Gaming Facility but arising from the activities of the Gaming Enterprise;

4. as a result of a written contract that directly relates to the ownership, maintenance or use of a Gaming Facility or when the liability of others is assumed by the Gaming Enterprise; or

5. on a road or other passageway on Indian lands while the visitor is traveling to or from the Gaming Facility.

B. Insurance Coverage for Claims Required. The Gaming Enterprise shall maintain in effect policies of liability insurance insuring the Tribe, its agents and employees against claims, demands or liability for bodily injury and property damages by a visitor arising from an occurrence described in Subsection A of this section. The policies shall provide bodily injury and property damage coverage in an amount of a least one million dollars ($1,000,000) per person and ten million dollars ($10,000,000) per occurrence. The Tribe shall provide the State Gaming Representative annually a certificate of insurance showing that the Tribe, its agents and employees are insured to the required extent and in the circumstances described in this section.

C. Limitation on Time to Bring Claim. Claims brought pursuant to the provisions of this section must be commenced by filing an action in court or a demand for arbitration within three years of the date the claim accrues.

D. Specific Waiver of Immunity. The Tribe, by entering into this Compact and agreeing to the provisions of this section, waives its defense of sovereign immunity in connection with any claims for

compensatory damages up to the amount of one million dollars ($1,000,000) per injured person and ten million dollars ($10,000,000) per occurrence asserted as provided in this section. This is a limited waiver and does not waive the tribe's immunity from suit for any other purpose. The Tribe shall ensure that a policy of insurance that it acquires to fulfill the requirements of this section shall include a provision under which the insurer agrees not to assert the defense of sovereign immunity on behalf of the insured.

E. Election by Visitor. A visitor having a claim described in this section may pursue that claim in the State court of general jurisdiction for such claims or the Tribal court or, at the option of the visitor, may proceed to enforce the claim in binding arbitration. The visitor shall make a written election that is final and binding upon the visitor.

F. Arbitration. Arbitration shall be conducted pursuant to an election by a visitor as provided in Subsection E of this section as follows:

1. the visitor shall submit a written demand for arbitration to the Gaming Enterprise, by certified mail, return receipt requested;

2. the visitor and the Gaming Enterprise shall each designate an arbitrator within thirty (30) days of the date of receipt of the demand, and the two arbitrators shall select a third arbitrator;

3. the arbitration panel shall permit the parties to engage in reasonable discovery, and shall establish other procedures to ensure a full, fair and expeditious hearing on the claim; and

4. the award of the arbitration panel shall be final and binding.

G. Public Health and Safety. The Tribe shall establish for its Gaming Facility health, safety and construction standards that are at least as stringent as the current editions of the National Electrical Code, the Uniform Building Code, the Uniform Mechanical Code, the Uniform Fire Code and the Uniform Plumbing Code, and any and all Gaming Facilities or additions thereto constructed by the Tribe hereafter shall be constructed and all facilities shall be maintained so as to comply with such standards. Inspections will be conducted with respect to these standards at least annually. If the State Gaming Representative requests sufficiently in advance of an annual inspection, the State Gaming Representative may be present during such inspection. The Tribe agrees to correct any deficiencies noted in such inspections within a time agreed upon between the State and Tribe. The Tribal Gaming

Agency will provide copies of such inspection reports to the State Gaming Representative, if requested to do so in writing.

SECTION 9. Effective Date. This Compact shall be effective immediately upon the occurrence of the last of the following:

A. execution by the Tribe's Governor after approval of the Tribal Council;

B. execution by the Governor of the State;

C. approval by the Secretary of the Interior; and

D. publication in the Federal Register.

The Governor is authorized to execute compacts with an individual Tribe that has also entered into revenue-sharing agreements and has passed resolutions described herein, in substantially the same form as set forth herein. Upon signature by the Governor and the Tribe, the Compact shall be transmitted to the Secretary of the Interior for approval.

SECTION 10. Criminal Jurisdiction.

A. The Tribe and the State acknowledge that under the provisions of § 23 of the IGRA, especially that portion codified at 18 U.S.C. § 1166(d), jurisdiction to prosecute violations of State gambling laws made applicable by that section to Indian country is vested exclusively within the United States, unless the Tribe and the State agree in a compact entered into pursuant to the IGRA to transfer such jurisdiction to the State.

B. The Tribe and the State hereby agree that, in the event of any violation of any State gambling law on Indian Lands or any other crime against the Gaming Enterprise or any employee thereof or that occurs on the premises of the Tribal Gaming Facility, that is committed by any person who is not a member of the Tribe, the State shall have and may exercise jurisdiction, concurrent with that of the United States, to prosecute such person, under its laws and in its courts.

C. Immediately upon becoming aware of any such suspected crime by a nonmember of the Tribe, the Gaming Enterprise or the Tribal Gaming Agency shall notify the state attorney general and the district attorney for the district in which the Gaming Facility is located, supplying all particulars available to the tribal entity at the time. The Tribe agrees that its law enforcement and gaming agencies shall perform such

additional investigation or take such other steps in furtherance of the investigation and prosecution of the violation as the district attorney may reasonably request, and otherwise cooperate fully with the district attorney and any state law enforcement agencies with respect to the matter, but once notice of a suspected violation has been given to the district attorney, the matter shall be deemed to be under the jurisdiction of the State (except that in the event of emergency circumstances involving a possible violation, the Tribe and its constituent agencies shall have the discretion to act as they see fit, and to call upon such other agencies or entities as they deem reasonable or necessary, in order to protect against any immediate threat to lives or property). The State may, in its discretion, refer the matter to federal authorities, but it shall notify the Tribal Gaming Agency upon doing so.

D. The State agrees that no less frequently than annually it will provide the Tribal Gaming Agency with a written report of the status and disposition of each matter referred to it under the provisions of this section that is still pending. In the event the district attorney to whom a matter is referred under the provisions of this section decides not to prosecute such matter, the district attorney shall promptly notify the Tribal Gaming Agency of such decision in writing. The Tribal Gaming Agency may in that event ask the attorney general of the state to pursue the matter.

E. The district attorney for the district in which the Gaming Facility is situated may decline to accept referrals of cases under the provisions of this section unless and until the Tribe has entered into a Memorandum of Understanding with the office of the district attorney to which Memorandum of Understanding the United States Attorney for the District of New Mexico may also be a party addressing such matters as the specific procedures by which cases are to be referred, participation of the Tribal Gaming Agency and tribal law enforcement personnel in the investigation and prosecution of any such case, payments by the Tribe to the office of the district attorney to defray the costs of handling cases referred under the provisions of this section, and related matters.

SECTION 11. Binding Effect and Duration.

A. This Compact shall be binding upon the State and Tribe for a term of nine (9) years from the date it becomes effective and may renew for an additional period.

B. Before the date that is one (1) year prior to the expiration of the ten-year (10-year) initial term, and/or before the date that is one (1) year prior to the expiration of the renewal period, either party may serve written notice on the other of its desire to renegotiate this Compact.

C. In the event that either party gives written notice to the other of its desire to renegotiate this Compact pursuant to Subsection B. of this section, the Tribe may, pursuant to the procedures of the IGRA, request the State to enter into negotiations for a new compact governing the conduct of Class III Gaming. If the parties are unable to conclude a successor compact, this Compact shall terminate.

D. Notwithstanding the foregoing, at any time while this Compact remains in effect, either party may, by written notice to the other party, request reopening of negotiations with respect to any provision of this Compact, or with respect to any issue not addressed in the Compact, specifying such provision or issue in such notice. No such request shall be unreasonably refused, but neither party shall be required to agree to any change in the Compact, and no agreement to supplement or amend this Compact in any respect shall have any validity until the same shall have been approved in writing by the Tribe, the State and the Secretary of the Interior and notice of such approval published in the Federal Register.

E. The Tribe may operate Class III Gaming only while this Compact or any renegotiated compact is in effect.

SECTION 12. Notice to Parties.

Unless otherwise indicated, all notices, payments, requests, reports, information or demand that any party hereto may desire or may be required to give to the other party hereto, shall be in writing and shall be personally delivered or sent by first-class mail sent to the other party at the address provided in writing by the other party. Every notice, payment, request, report, information or demand so given shall be deemed effective upon receipt or, if mailed, upon receipt or the expiration of the third day following the day of mailing, whichever occurs first, except that any notice of change of address shall be effective only upon receipt by the party to whom said notice is addressed.

SECTION 13. Entire Agreement.

This Compact is the entire agreement between the parties and supersedes all prior agreements, whether written or oral, with respect to the subject matter hereof. Neither this Compact nor any provision herein may be changed, waived, discharged or terminated orally, but only by an instrument, in writing, signed by the Tribe and the State and approved by the Secretary of the Interior. This Compact shall not be amended without the express approval of the Tribe, the Governor of the State and the State Legislature.

SECTION 14. Filing of Compact with State Records Center.

Upon the effective date of this Compact, a copy shall be filed by the Governor with the New Mexico Records Center. Any subsequent amendment or modification of this Compact shall be filed with the New Mexico Records Center.

SECTION 15. Counterparts.

This Compact may be executed by the parties in any number of separate counterparts with the same effect as if the signatures were upon the same instrument. All such counterparts shall together constitute one and the same document.".

Section 2

Section 2. REVENUE SHARING OF TRIBAL GAMING REVENUE.--The governor is authorized to execute a revenue-sharing agreement in the form substantially set forth in this section with any New Mexico Indian nation, tribe or pueblo that has also entered into an Indian gaming compact as provided by law. Execution of an Indian gaming compact is conditioned upon execution of a revenue-sharing agreement. The consideration for the Indian entity entering into the revenue-sharing agreement is the condition of the agreement providing limited exclusivity of gaming activities to the tribal entity. The revenue-sharing agreement shall be in substantially the following form and is effective when executed by the governor on behalf of the state and the appropriate official of the Indian entity:

"REVENUE-SHARING AGREEMENT

1. Summary and consideration. The Tribe shall agree to contribute a portion of its Class III Gaming revenues identified in and under procedures of this Revenue-Sharing Agreement, in return for which the State agrees that the Tribe:

A. has the exclusive right within the State to provide all types of Class III Gaming described in the Indian Gaming Compact, with the sole exception of the use of Gaming Machines, which the State may permit on a limited basis for racetracks and veterans' and fraternal organizations; and

B. will only share that part of its revenue arising from the use of Gaming Machines and all other gaming revenue is exclusively the Tribe's.

2. Revenue to State. The parties agree that, after the effective date hereof, the Tribe shall make the quarterly payments provided for in

Paragraph 3 of the Revenue Sharing Agreement to the state treasurer for deposit into the General Fund of the State ("State General Fund").

3. Calculation of Revenue to State.

A. As used in this Revenue-Sharing Agreement, "net win" means the annual total amount wagered at a Gaming Facility on Gaming Machines less the following amounts:

(1) the annual amount paid out in prizes from gaming on Gaming Machines;

(2) the actual amount of regulatory fees paid to the state; and

(3) the sum of two hundred fifty thousand dollars ($250,000) per year as an amount representing tribal regulatory fees, with these amounts increasing by five percent (5%) each year beginning on the first day of January occurring after the Compact has been in effect for at least twelve months.

B. The Tribe shall pay the state sixteen percent (16%) of the net win.

C. For purposes of these payments, all calculations of amounts due shall be based upon the quarterly activity of the gaming facility. Quarterly payments due to the State pursuant to these terms shall be paid no later than twenty-five (25) days after the last day of each calendar quarter. Any payments due and owing from the Tribe in the quarter the Compact is approved, or the final quarter the Compact is in force, shall reflect the net win, but only for the portion of the quarter the Compact is in effect.

4. Limitations. The Tribe's obligation to make the payments provided for in Paragraphs 2 and 3 of this section shall apply and continue only so long as there is a binding Indian Gaming Compact in effect between the Tribe and the State, which Compact provides for the play of Class III Gaming, but shall terminate in the event of any of the following conditions:

A. If the State passes, amends, or repeals any law, or takes any other action, which would directly or indirectly attempt to restrict, or has the effect of restricting, the scope of Indian gaming.

B. If the State permits any expansion of nontribal Class III Gaming in the State. Notwithstanding this general prohibition against

permitted expansion of gaming activities, the State may permit: (1) the enactment of a State lottery, (2) any fraternal, veterans or other nonprofit membership organization to operate such electronic gaming devices lawfully, but only for the benefit of such organization's members, (3) limited fundraising activities conducted by nonprofit tax exempt organizations pursuant to Section 30-19-6 NMSA 1978, and (4) any horse racetracks to operate electronic gaming devices on days on which live or simulcast horse racing occurs.

5. Effect of Variance. In the event the acts or omissions of the State cause the Tribe's obligation to make payments under Paragraph 3 of this section to terminate under the provisions of Paragraph 4 of this section, such cessation of obligation to pay will not adversely affect the validity of the Compact, but the amount that the Tribe agrees to reimburse the State for regulatory fees under the Compact shall automatically increase by twenty percent (20%).

6. Third-Party Beneficiaries. This Agreement is not intended to create any third-party beneficiaries and is entered into solely for the benefit of the Tribe and the State.".

Section 3

Section 3. SHORT TITLE.--Sections 3 through 63 of this act may be cited as the "Gaming Control Act".

Section 4

Section 4. POLICY.--It is the state's policy on gaming that:

A. limited gaming activities should be allowed in the state if those activities are strictly regulated to ensure honest and competitive gaming that is free from criminal and corruptive elements and influences; and

B. the holder of any license issued by the state in connection with the regulation of gaming activities has a revocable privilege only and has no property right or vested interest in the license.

Section 5

Section 5. DEFINITIONS.--As used in the Gaming Control Act:

A. "affiliate" means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with a specified person;

B. "affiliated company" means a company that:

(1) controls, is controlled by or is under common control with a company licensee; and

(2) is involved in gaming activities or involved in the ownership of property on which gaming is conducted;

C. "applicant" means a person who has applied for a license or for approval of an act or transaction for which approval is required or allowed pursuant to the provisions of the Gaming Control Act;

D. "application" means a request for the issuance of a license or for approval of an act or transaction for which approval is required or allowed pursuant to the provisions of the Gaming Control Act, but "application" does not include a supplemental form or information that may be required with the application;

E. "associated equipment" means equipment or a mechanical, electromechanical or electronic contrivance, component or machine used in connection with gaming;

F. "board" means the gaming control board;

G. "certification" means a notice of approval by the board of a person required to be certified by the board;

H. "certified technician" means a person certified by a manufacturer licensee to repair and service gaming devices, but who is prohibited from programming gaming devices;

I. "company" means a corporation, partnership, limited partnership, trust, association, joint stock company, joint venture, limited liability company or other form of business organization that is not a natural person;

J. "distributor" means a person who supplies gaming devices to a gaming operator but does not manufacture gaming devices;

K. "equity security" means an interest in a company that is evidenced by:

(1) voting stock or similar security;

(2) a security convertible into voting stock or similar security, with or without consideration, or a security carrying a warrant or right to subscribe to or purchase voting stock or similar security;

(3) a warrant or right to subscribe to or purchase voting stock or similar security; or

(4) a security having a direct or indirect participation in the profits of the issuer;

L. "executive director" means the chief administrative officer appointed by the board pursuant to Section 9 of the Gaming Control Act;

M. "finding of suitability" means a certification of approval issued by the board permitting a person to be involved directly or indirectly with a licensee, relating only to the specified involvement for which it is made;

N. "game" means an activity in which, upon payment of consideration, a player receives a prize or other thing of value, the award of which is determined by chance even though accompanied by some skill; "game" does not include an activity played in a private residence in which no person makes money for operating the activity except through winnings as a player;

O. "gaming" means offering a game for play;

P. "gaming activity" means any endeavor associated with the manufacture or distribution of gaming devices or the conduct of gaming;

Q. "gaming device" means associated equipment or a gaming machine and includes a system for processing information that can alter the normal criteria of random selection that affects the operation of a game or determines the outcome of a game; "gaming device" does not include a system or device that affects a game solely by stopping its operation so that the outcome remains undetermined;

R. "gaming employee" means a person connected directly with a gaming activity; "gaming employee" does not include:

(1) bartenders, cocktail servers or other persons engaged solely in preparing or serving food or beverages;

(2) secretarial or janitorial personnel;

(3) stage, sound and light technicians; or

(4) other nongaming personnel;

S. "gaming establishment" means the premises on or in which gaming is conducted;

T. "gaming machine" means a mechanical, electromechanical or electronic contrivance or machine that, upon insertion of a coin, token or similar object, or upon payment of any consideration, is available to play or operate a game, whether the payoff is made automatically from the machine or in any other manner;

U. "gaming operator" means a person who conducts gaming;

V. "holding company" means a company that directly or indirectly owns or has the power or right to control a company that is an applicant or licensee, but a company that does not have a beneficial ownership of more than ten percent of the equity securities of a publicly traded corporation is not a holding company;

W. "immediate family" means natural persons who are related to a specified natural person by affinity or consanguinity in the first through the third degree;

X. "independent administrator" means a person who administers an annuity, who is not associated in any manner with the gaming operator licensee for which the annuity was purchased and is in no way associated with the person who will be receiving the annuity;

Y. "institutional investor" means a state or federal government pension plan or a person that meets the requirements of a qualified institutional buyer as defined in Rule 144A of the federal Securities Act of 1933, and is:

(1) a bank as defined in Section 3(a)(6) of the federal Securities Exchange Act of 1934;

(2) an insurance company as defined in Section 2(a)(17) of the federal Investment Company Act of 1940;

(3) an investment company registered under Section 8 of the federal Investment Company Act of 1940;

(4) an investment adviser registered under Section 203 of the federal Investment Advisers Act of 1940;

(5) collective trust funds as defined in Section 3(c)(11) of the federal Investment Company Act of 1940;

(6) an employee benefit plan or pension fund that is subject to the federal Employee Retirement Income Security Act of 1974, excluding an employee benefit plan or pension fund sponsored by a publicly traded corporation registered with the board; or

(7) a group comprised entirely of persons specified in Paragraphs (1) through (6) of this subsection;

Z. "intermediary company" means a company that:

(1) is a holding company with respect to a company that is an applicant or licensee; and

(2) is a subsidiary with respect to any holding company;

AA. "key executive" means an executive of a licensee or other person having the power to exercise significant influence over decisions concerning any part of the licensed operations of the licensee or whose compensation exceeds an amount established by the board in a regulation;

BB. "license" means an authorization required by the board for engaging in gaming activities;

CC. "licensee" means a person to whom a valid license has been issued;

DD. "manufacturer" means a person who manufactures, fabricates, assembles, produces, programs or makes modifications to any gaming device for use or play in New Mexico or for sale, lease or distribution outside New Mexico from any location within New Mexico;

EE. "net take" means the total of the following, less the total of all cash paid out as losses to winning patrons and those amounts paid to purchase annuities to fund losses paid to winning patrons over several years by independent administrators:

(1) cash received from patrons for playing a game;

(2) cash received in payment for credit extended by a licensee to a patron for playing a game; and

(3) compensation received for conducting a game in which the licensee is not a party to a wager;

FF. "nonprofit organization" means:

(1) a bona fide chartered or incorporated branch, lodge, order or association, in existence in New Mexico prior to January 1, 1997, of a fraternal organization that is described in Section 501(c)(8) or (10) of the federal Internal Revenue Code of 1986 and that is exempt from federal income taxation pursuant to Section 501(a) of that code; or

(2) a bona fide chartered or incorporated post, auxiliary unit or society of, or a trust or foundation for the post or auxiliary unit, in existence in New Mexico prior to January 1, 1997, of a veterans' organization that is described in Section 501(c)(19) or (23) of the federal Internal Revenue Code of 1986 and that is exempt from federal income taxation pursuant to Section 501(a) of that code;

GG. "person" means a legal entity;

HH. "premises" means land, together with all buildings, improvements and personal property located on the land;

II. "progressive jackpot" means a prize that increases over time or as gaming machines that are linked to a progressive system are played and upon conditions established by the board may be paid by an annuity;

JJ. "progressive system" means one or more gaming machines linked to one or more common progressive jackpots;

KK. "publicly traded corporation" means a corporation that:

(1) has one or more classes of securities registered pursuant to the securities laws of the United States or New Mexico;

(2) is an issuer subject to the securities laws of the United States or New Mexico; or

(3) has one or more classes of securities registered or is an issuer pursuant to applicable foreign laws that the board finds provide protection for institutional investors that is comparable to or

greater than the stricter of the securities laws of the United States or New Mexico;

LL. "registration" means a board action that authorizes a company to be a holding company with respect to a company that holds or applies for a license or that relates to other persons required to be registered pursuant to the Gaming Control Act;

MM. "subsidiary" means a company, all or a part of whose outstanding equity securities are owned, subject to a power or right of control or held, with power to vote, by a holding company or intermediary company; and

NN. "work permit" means a card, certificate or permit issued by the board, whether denominated as a work permit, registration card or otherwise, authorizing the employment of the holder as a gaming employee.

Section 6

Section 6. LIMITED GAMING ACTIVITY PERMITTED.--Gaming activity is permitted in New Mexico only if it is conducted in compliance with and pursuant to:

A. the Gaming Control Act; or

B. a state or federal law other than the Gaming Control Act that expressly permits the activity or exempts it from the application of the state criminal law, or both.

Section 7

Section 7. GAMING CONTROL BOARD CREATED.--

A. The "gaming control board" is created and consists of five members. Three members are appointed by the governor with the advice and consent of the senate, and two members are ex officio: the chairman of the state racing commission and the chairman of the board of the New Mexico lottery authority. All members of the board shall be residents of New Mexico and citizens of the United States. One appointed member of the board shall have a minimum of five years of previous employment in a supervisory and administrative position in a law enforcement agency; one appointed member of the board shall be a certified public accountant in New Mexico who has had at least five years of experience in public accountancy; and one appointed member of the board shall be an attorney who has been admitted to practice before the supreme court of New Mexico.

B. The appointed members of the board shall be appointed for terms of five years, except, of the members who are first appointed, the member with law enforcement experience shall be appointed for a term of five years; the member who is a certified public accountant shall be appointed for a term of four years; and the member who is an attorney shall be appointed for a term of three years. Thereafter, all members shall be appointed for terms of five years. No person shall serve as a board member for more than two consecutive terms or ten years total.

C. No person appointed to the board may be employed in any other capacity or shall in any manner receive compensation for services rendered to any person or entity other than the board while a member of the board.

D. A vacancy on the board of an appointed member shall be filled within thirty days by the governor with the advice and consent of the senate for the unexpired portion of the term in which the vacancy occurs. A person appointed to fill a vacancy shall meet all qualification requirements of the office established in this section.

E. The governor shall choose a chairman annually from the board's appointed membership.

F. No more than three members of the board shall be from the same political party.

G. The appointed members of the board shall be full-time state officials and shall receive a salary set by the governor.

H. The department of public safety shall conduct background investigations of all members of the board prior to confirmation by the senate. To assist the department in the background investigation, a prospective board member shall furnish a disclosure statement to the department on a form provided by the department containing that information deemed by the department as necessary for completion of a detailed and thorough background investigation. The required information shall include at least:

(1) a full set of fingerprints made by a law enforcement agency on forms supplied by the department;

(2) complete information and details with respect to the prospective board member's antecedents, habits, immediate family, character, criminal record, business activities, financial affairs and business associates covering at least a ten-year period

immediately preceding the date of submitting the disclosure statement;

(3) complete disclosure of any equity interest held by the prospective board member or a member of his immediate family in a company that is an applicant or licensee or an affiliate, affiliated company, intermediary company or holding company in respect to an applicant or licensee; and

(4) the names and addresses of members of the immediate family of the prospective board member.

I. No person may be appointed or confirmed as a member of the board if that person or member of his immediate family holds an equity interest in a company that is an applicant or licensee or an affiliate, affiliated company, intermediary company or holding company in respect to an applicant or licensee.

J. A prospective board member shall provide assistance and information requested by the department of public safety or the governor and shall cooperate in any inquiry or investigation of the prospective board member's fitness or qualifications to hold the office to which he is appointed. The senate shall not confirm a prospective board member if it has reasonable cause to believe that the prospective board member has:

(1) knowingly misrepresented or omitted a material fact required in a disclosure statement;

(2) been convicted of a felony, a gaming related offense or a crime involving fraud, theft or moral turpitude within ten years immediately preceding the date of submitting a disclosure statement required pursuant to the provisions of Subsection H of this section;

(3) exhibited a history of willful disregard for the gaming laws of this or any other state or the United States; or

(4) had a permit or license issued pursuant to the gaming laws of this or any other state or the United States permanently suspended or revoked for cause.

K. At the time of taking office, each board member shall file with the secretary of state a sworn statement that he is not disqualified under the provisions of Subsection I of this section.

Section 8

Section 8. BOARD--MEETINGS--QUORUM--RECORDS.--

A. A majority of the qualified membership of the board then in office constitutes a quorum. No action may be taken by the board unless at least three members concur.

B. Written notice of the time and place of each board meeting shall be given to each member of the board at least ten days prior to the meeting.

C. Meetings of the board shall be open and public in accordance with the Open Meetings Act, except that the board may close a meeting to hear confidential security and investigative information and other information made confidential by the provisions of the Gaming Control Act.

D. All proceedings of the board shall be recorded by audiotape or other equivalent verbatim audio recording device.

E. The chairman of the board, the executive director or a majority of the members of the board then in office may call a special meeting of the board upon at least five days' prior written notice to all members of the board and the executive director.

Section 9

Section 9. BOARD'S POWERS AND DUTIES.--

A. The board shall implement the state's policy on gaming consistent with the provisions of the Gaming Control Act. It has the duty to fulfill all responsibilities assigned to it pursuant to that act, and it has all authority necessary to carry out those responsibilities. It may delegate authority to the executive director, but it retains accountability. The board is an adjunct agency.

B. The board shall:

(1) employ the executive director;

(2) make the final decision on issuance, denial, suspension and revocation of all licenses pursuant to and consistent with the provisions of the Gaming Control Act;

(3) develop, adopt and promulgate all regulations necessary to implement and administer the provisions of the Gaming Control Act;

(4) conduct itself, or employ a hearing officer to conduct, all hearings required by the provisions of the Gaming Control Act and other hearings it deems appropriate to fulfill its responsibilities;

(5) meet at least once each month; and

(6) prepare and submit an annual report in December of each year to the governor and the legislature, covering activities of the board in the most recently completed fiscal year, a summary of gaming activities in the state and any recommended changes in or additions to the laws relating to gaming in the state.

C. The board may:

(1) impose civil fines not to exceed twenty-five thousand dollars ($25,000) for the first violation and fifty thousand dollars ($50,000) for subsequent violations of any prohibitory provision of the Gaming Control Act or any prohibitory provision of a regulation adopted pursuant to that act;

(2) conduct investigations;

(3) subpoena persons and documents to compel access to or the production of documents and records, including books and memoranda, in the custody or control of any licensee;

(4) compel the appearance of employees of a licensee or persons for the purpose of ascertaining compliance with provisions of the Gaming Control Act or a regulation adopted pursuant to its provisions;

(5) administer oaths and take depositions to the same extent and subject to the same limitations as would apply if the deposition were pursuant to discovery rules in a civil action in the district court;

(6) sue and be sued subject to the limitations of the Tort Claims Act;

(7) contract for the provision of goods and services necessary to carry out its responsibilities;

(8) conduct audits of applicants, licensees and persons affiliated with licensees;

(9) inspect, examine, photocopy and audit all documents and records of an applicant or licensee relevant to his gaming activities in the presence of the applicant or licensee or his agent;

(10) require verification of income and all other matters pertinent to the gaming activities of an applicant or licensee affecting the enforcement of any provision of the Gaming Control Act;

(11) inspect all places where gaming activities are conducted and inspect all property connected with gaming in those places;

(12) summarily seize, remove and impound from places inspected any gaming devices, property connected with gaming, documents or records for the purpose of examination or inspection;

(13) inspect, examine, photocopy and audit all documents and records of any affiliate of an applicant or licensee who the board knows or reasonably suspects is involved in the financing, operation or management of the applicant or licensee. The inspection, examination, photocopying and audit shall be in the presence of a representative of the affiliate or its agent when practicable; and

(14) except for the powers specified in Paragraphs (1) and (4) of this subsection, carry out all or part of the foregoing powers and activities through the executive director.

D. The board shall monitor all activity authorized in an Indian Gaming Compact between the state and an Indian nation, tribe or pueblo. The board shall appoint the state gaming representative for the purposes of the compact.

Section 10

Section 10. BOARD REGULATIONS--DISCRETIONARY REGULATIONS--PROCEDURE--REQUIRED PROVISIONS.--

A. The board may adopt any regulation:

(1) consistent with the provisions of the Gaming Control Act; and

(2) it decides is necessary to implement the provisions of the Gaming Control Act.

B. No regulation shall be adopted, amended or repealed without a public hearing on the proposed action before the board or a hearing officer designated by it. The public hearing shall be held in Santa Fe. 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 persons may present their views and the method by which copies of the proposed regulation, amendment or repeal may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation 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. All regulations and actions taken on regulations shall be filed in accordance with the State Rules Act.

C. The board shall adopt regulations:

(1) prescribing the method and form of application to be followed by an applicant;

(2) prescribing the information to be furnished by an applicant or licensee concerning his antecedents, immediate family, habits, character, associates, criminal record, business activities and financial affairs, past or present;

(3) prescribing the manner and procedure of all hearings conducted by the board or a hearing officer;

(4) prescribing the manner and method of collection and payment of fees;

(5) prescribing the manner and method of the issuance of licenses, permits, registrations, certificates and other actions of the board not elsewhere prescribed in the Gaming Control Act;

(6) defining the area, games and gaming devices allowed and the methods of operation of the games and gaming devices for authorized gaming;

(7) prescribing under what conditions the nonpayment of winnings is grounds for suspension or revocation of a license of a gaming operator;

(8) governing the manufacture, sale, distribution, repair and servicing of gaming devices;

(9) prescribing accounting procedures, security, collection and verification procedures required of licensees and matters regarding financial responsibility of licensees;

(10) prescribing what shall be considered to be an unsuitable method of operating gaming activities;

(11) restricting access to confidential information obtained pursuant to the provisions of the Gaming Control Act and ensuring that the confidentiality of that information is maintained and protected;

(12) prescribing financial reporting and internal control requirements for licensees;

(13) prescribing the manner in which winnings, compensation from gaming activities and net take shall be computed and reported by a gaming operator licensee;

(14) prescribing the frequency of and the matters to be contained in audits of and periodic financial reports from a gaming operator licensee consistent with standards prescribed by the board;

(15) prescribing the procedures to be followed by a gaming operator licensee for the exclusion of persons from gaming establishments;

(16) establishing criteria and conditions for the operation of progressive systems;

(17) establishing criteria and conditions for approval of procurement by the board of personal property valued in excess of twenty thousand dollars ($20,000), including background investigation requirements for a person submitting a bid or proposal; and

(18) establishing an applicant fee schedule for processing applications that is based on costs of the application

review incurred by the board whether directly or through payment by the board for costs charged for investigations of applicants by state departments and agencies other than the board, which regulation shall set a maximum fee of one hundred thousand dollars ($100,000).

Section 11

Section 11. EXECUTIVE DIRECTOR--EMPLOYMENT--QUALIFICATIONS.--

A. The executive director shall be employed by, report directly to and serve at the pleasure of the board.

B. The executive director shall have had at least five years of responsible supervisory administrative experience in a governmental gaming regulatory agency.

C. The executive director shall receive an annual salary to be set by the board, but not to exceed eighty-five thousand dollars ($85,000) per year.

Section 12

Section 12. EXECUTIVE DIRECTOR--POWERS--DUTIES.--

A. The executive director shall implement the policies of the board.

B. The executive director shall employ all personnel who work for the board. The employees shall be covered employees pursuant to the provisions of the Personnel Act. Among those personnel he shall employ and designate an appropriate number of individuals as law enforcement officers subject to proper certification pursuant to the Law Enforcement Training Act.

C. The executive director shall establish organizational units he determines are appropriate to administer the provisions of the Gaming Control Act.

D. The executive director:

(1) may delegate authority to subordinates as he deems necessary and appropriate, clearly delineating the delegated authority and the limitations on it, if any;

(2) shall take administrative action by issuing orders and instructions consistent with the Gaming Control Act and regulations of the board to assure implementation of and compliance with the provisions of that act and those regulations;

(3) may conduct research and studies that will improve the operations of the board and the provision of services to the citizens of the state;

(4) may provide courses of instruction and practical training for employees of the board and other persons involved in the activities regulated by the board with the objectives of improving operations of the board and achieving compliance with the law and regulations;

(5) shall prepare an annual budget for the board and submit it to the board for approval; and

(6) shall make recommendations to the board of proposed regulations and any legislative changes needed to provide better administration of the Gaming Control Act and fair and efficient regulation of gaming activities in the state.

Section 13

Section 13. INVESTIGATION OF EXECUTIVE DIRECTOR CANDIDATES AND EMPLOYEES.--

A. A person who is under consideration in the final selection process for appointment as the executive director shall file a disclosure statement pursuant to the requirements of this section, and the board shall not make an appointment of a person as executive director until a background investigation is completed by the department of public safety and a report is made to the board.

B. A person who has reached the final selection process for employment by the executive director shall file a disclosure statement pursuant to the requirements of this section if the executive director or the board has directed the person do so. The person shall not be further considered for employment until a background investigation is completed by the department of public safety and a report is made to the executive director.

C. Forms for the disclosure statements required by this section shall be developed by the board in cooperation with the

department of public safety. At least the following information shall be required of a person submitting a statement:

(1) a full set of fingerprints made by a law enforcement agency on forms supplied by the board;

(2) complete information and details with respect to the person's antecedents, habits, immediate family, character, criminal record, business activities and business associates, covering at least a ten-year period immediately preceding the date of submitting the disclosure statement; and

(3) a complete description of any equity interest held in a business connected with the gaming industry.

D. In preparing an investigative report, the department of public safety may request and receive criminal history information from the federal bureau of investigation or any other law enforcement agency or organization. The department of public safety shall maintain confidentiality regarding information received from a law enforcement agency that may be imposed by the agency as a condition for providing the information to the department.

E. A person required to file a disclosure statement shall provide any assistance or information requested by the department of public safety or the board and shall cooperate in any inquiry or investigation.

F. If information required to be included in a disclosure statement changes or if information is added after the statement is filed, the person required to file it shall provide that information in writing to the person requesting the investigation. The supplemental information shall be provided within thirty days after the change or addition.

G. The board shall not appoint a person as executive director, and the executive director shall not employ a person, if the board or the executive director has reasonable cause to believe that the person has:

(1) knowingly misrepresented or omitted a material fact required in a disclosure statement;

(2) been convicted of a felony, a gaming related offense or a crime involving fraud, theft or moral turpitude within ten

years immediately preceding the date of submitting a disclosure statement required pursuant to this section;

(3) exhibited a history of willful disregard for the gaming laws of this or any other state or the United States; or

(4) had a permit or license issued pursuant to the gaming laws of this or any other state or the United States permanently suspended or revoked for cause.

H. Both the board and the executive director may exercise absolute discretion in exercising their respective appointing and employing powers.

Section 14

Section 14. CONFLICTS OF INTEREST--BOARD--EXECUTIVE DIRECTOR.--

A. In addition to all other provisions of New Mexico law regarding conflicts of interest of state officials and employees, a member of the board, the executive director, or a person in the immediate family of or residing in the household of any of the foregoing persons, shall not:

(1) directly or indirectly, as a proprietor or as a member, stockholder, director or officer of a company, have an interest in a business engaged in gaming activities in this or another jurisdiction; or

(2) accept or agree to accept any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality or service having an aggregate value of one hundred dollars ($100) or more in any calendar year from a licensee or applicant.

B. If a member of the board, the executive director or a person in the immediate family of or residing in the household of a member of the board or the executive director violates a provision of this section, the member of the board or executive director shall be removed from office. A board member shall be removed by the governor, and the executive director shall be removed from his position by the board.

Section 15. ACTIVITIES REQUIRING LICENSING.--

A. A person shall not conduct gaming unless he is licensed as a gaming operator.

B. A person shall not sell, supply or distribute any gaming device or associated equipment for use or play in this state or for use or play outside of this state from a location within this state unless he is licensed as a distributor or manufacturer, but a gaming operator licensee may sell or trade in a gaming device or associated equipment to a gaming operator licensee, distributor licensee or manufacturer licensee.

C. A person shall not manufacture, fabricate, assemble, program or make modifications to a gaming device or associated equipment for use or play in this state or for use or play outside of this state from any location within this state unless he is a manufacturer licensee. A manufacturer licensee may sell, supply or distribute only the gaming devices or associated equipment that he manufactures, fabricates, assembles, programs or modifies.

D. A gaming operator licensee or a person other than a manufacturer licensee or distributor licensee shall not possess or control a place where there is an unlicensed gaming machine. Any unlicensed gaming machine, except one in the possession of a licensee while awaiting transfer to a gaming operator licensee for licensure of the machine, is subject to forfeiture and confiscation by any law enforcement agency or peace officer.

E. A person shall not service or repair a gaming device or associated equipment unless he is licensed as a manufacturer, is employed by a manufacturer licensee or is a technician certified by a manufacturer and employed by a distributor licensee or a gaming operator licensee.

F. A person shall not engage in any activity for which the board requires a license or permit without obtaining the license or permit.

G. Except as provided in Subsection B of this section, a person shall not purchase, lease or acquire possession of a gaming device or associated equipment except from a licensed distributor or manufacturer.

H. A distributor licensee may receive a percentage of the amount wagered, the net take or other measure related to the operation of a gaming machine as a payment pursuant to a lease or other arrangement for furnishing a gaming machine, but the board shall adopt a regulation setting the maximum allowable percentage.

Section 16

Section 16. LICENSURE--APPLICATION.--

A. The board shall establish and issue the following categories of licenses:

(1) manufacturer;

(2) distributor;

(3) gaming operator; and

(4) gaming machine.

B. The board shall issue certifications of findings of suitability for key executives and other persons for whom certification is required.

C. The board shall issue work permits for gaming employees.

D. A licensee shall not be issued more than one type of license, but this provision does not prohibit a licensee from owning, leasing, acquiring or having in his possession licensed gaming machines if that activity is otherwise allowed by the provisions of the Gaming Control Act. A licensee shall not own a majority interest in, manage or otherwise control a holder of another type of license issued pursuant to the provisions of that act.

E. Applicants shall apply on forms provided by the board and furnish all information requested by the board. Submission of an application constitutes consent to a credit check of the applicant and all persons having a substantial interest in the applicant and any other background investigations required pursuant to the Gaming Control Act or deemed necessary by the board.

F. All licenses issued by the board pursuant to the provisions of this section shall be reviewed for renewal annually unless revoked, suspended, canceled or terminated.

G. A license shall not be transferred or assigned.

H. The application for a license shall include:

(1) the name of the applicant;

(2) the location of the proposed operation;

(3) the gaming devices to be operated, manufactured, distributed or serviced;

(4) the names of all persons having a direct or indirect interest in the business of the applicant and the nature of such interest; and

(5) such other information and details as the board may require.

I. The board shall furnish to the applicant supplemental forms that the applicant shall complete and file with the application. Such supplemental forms shall require complete information and details with respect to the applicant's antecedents, habits, immediate family, character, criminal record, business activities, financial affairs and business associates, covering at least a ten-year period immediately preceding the date of filing of the application.

Section 17

Section 17. LICENSE, CERTIFICATION AND WORK PERMIT FEES.--

A. License and other fees shall be established by board regulation but shall not exceed the following amounts:

(1) manufacturer's license, twenty thousand dollars ($20,000) for the initial license and five thousand dollars ($5,000) for annual renewal;

(2) distributor's license, ten thousand dollars ($10,000) for the initial license and one thousand dollars ($1,000) for annual renewal;

(3) gaming operator's license for a racetrack, fifty thousand dollars ($50,000) for the initial license and ten thousand dollars ($10,000) for annual renewal;

(4) gaming operator's license for a nonprofit organization, one thousand dollars ($1,000) for the initial license and two hundred dollars ($200) for annual renewal;

(5) for each separate gaming machine licensed to a person holding an operators license, five hundred dollars ($500) for the initial license and one hundred dollars ($100) for annual renewal; and

(6) work permit, one hundred dollars ($100) annually.

B. The board shall establish the fee for certifications or other actions by regulation, but no fee established by the board shall exceed one thousand dollars ($1,000), except for fees established pursuant to Paragraph (18) of Subsection C of Section 10 of the Gaming Control Act.

C. All license, certification or work permit fees shall be paid to the board at the time and in the manner established by regulations of the board.

Section 18

Section 18. ACTION BY BOARD ON APPLICATIONS.--

A. A person that the board determines is qualified to receive a license pursuant to the provisions of the Gaming Control Act may be issued a license. The burden of proving qualifications is on the applicant.

B. A license shall not be issued unless the board is satisfied that the applicant is:

(1) a person of good moral character, honesty and integrity;

(2) a person whose prior activities, criminal record, reputation, habits and associations do not pose a threat to the public interest or to the effective regulation and control of gaming or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto; and

(3) in all other respects qualified to be licensed consistent with the laws of this state.

C. A license shall not be issued unless the applicant has satisfied the board that:

(1) the applicant has adequate business probity, competence and experience in business and gaming;

(2) the proposed financing of the applicant is adequate for the nature of the proposed license and from a suitable source; any lender or other source of money or credit that the board finds does not meet the standards set forth in Subsection B of this section shall be deemed unsuitable; and

(3) the applicant is sufficiently capitalized under standards set by the board to conduct the business covered by the license.

D. An application to receive a license, certification or work permit constitutes a request for a determination of the applicant's general moral character, integrity and ability to participate or engage in or be associated with gaming. Any written or oral statement made in the course of an official proceeding of the board or by a witness testifying under oath that is relevant to the purpose of the proceeding is absolutely privileged and does not impose liability for defamation or constitute a ground for recovery in any civil action.

E. The board shall not issue a license or certification to an applicant who has been denied a license or certification in this state or another state, who has had a certification, permit or license issued pursuant to the gaming laws of a state or the United States permanently suspended or revoked for cause or who is currently under suspension or subject to any other limiting action in this state or another state involving gaming activities or licensure for gaming activities.

F. The board shall investigate the qualifications of each applicant before a license, certification or work permit is issued by the board and shall continue to observe and monitor the conduct of all licensees, work permit holders, persons certified as being suitable and the persons having a material involvement directly or indirectly with a licensee.

G. The board has the authority to deny an application or limit, condition, restrict, revoke or suspend a license, certification or permit for any cause.

H. After issuance, a license, certification or permit shall continue in effect upon proper payment of the initial and renewal fees, subject to the power of the board to revoke, suspend, condition or limit licenses, certifications and permits.

I. The board has full and absolute power and authority to deny an application for any cause it deems reasonable. If an application is denied, the board shall prepare and file its written decision on which its order denying the application is based.

Section 19

Section 19. INVESTIGATION FOR LICENSES, CERTIFICATIONS AND PERMITS.--

The board shall initiate an investigation of the applicant within thirty days after an application is filed and supplemental information that the board may require is received.

Section 20

Section 20. ELIGIBILITY REQUIREMENTS FOR COMPANIES.--In order to be eligible to receive a license, a company shall:

A. be incorporated or otherwise organized and in good standing in this state or incorporated or otherwise organized in another state, qualified to do business in this state and in good standing in this state and in the state of incorporation;

B. comply with all of the requirements of the laws of this state pertaining to the company;

C. maintain a ledger in the principal office of the company in this state, which shall:

(1) at all times reflect the ownership according to company records of every class of security issued by the company; and

(2) be available for inspection by the board at all reasonable times without notice; and

D. file notice of all changes of ownership of all classes of securities issued by the company with the board within thirty days of the change.

Section 21

Section 21. REGISTRATION WITH BOARD BY COMPANY APPLICANTS--REQUIRED INFORMATION.--A company applicant shall provide the following information to the board on forms provided by the board:

A. the organization, financial structure and nature of the business to be operated, including the names and personal histories of all officers, directors and key executives;

B. the rights and privileges acquired by the holders of different classes of authorized securities;

C. the terms and conditions of all outstanding loans, mortgages, trust deeds, pledges or any other indebtedness or security interest evidenced by a security instrument pertaining to the proposed gaming operation or other licensed activity in this state and the name and address of the person who is servicing the loan, mortgage, trust deed, pledge or other indebtedness or security interest;

D. remuneration to persons, other than directors, officers and key executives, exceeding fifty thousand dollars ($50,000) per year;

E. bonus and profit-sharing arrangements within the company;

F. management and service contracts pertaining to the proposed gaming activity in this state;

G. balance sheets and profit and loss statements for at least the three preceding fiscal years, or, if the company has not been in business for a period of three years, balance sheets and profit and loss statements from the time of its commencement of business operations and projected for three years from the time of its commencement of business operations. All balance sheets and profit and loss statements shall be certified by independent certified public accountants; and

H. any further financial data that the board deems necessary or appropriate.

Section 22

Section 22. INDIVIDUAL CERTIFICATION OF OFFICERS, DIRECTORS AND OTHER PERSONS.--An officer, director, equity security holder of five percent or more, partner, general partner, limited partner, trustee or beneficiary of the company that holds or has applied for a license shall be certified individually, according to the provisions of the Gaming Control Act, and if in the judgment of the board the public interest is served by requiring any or all of the company's key executives to be certified, the company shall require those persons to apply for certification. A person who is

required to be certified pursuant to this section shall apply for certification within thirty days after becoming an officer, director, equity security holder of five percent or more, partner, general partner, limited partner of five percent or more, trustee, beneficiary or key executive. A person who is required to be certified pursuant to a decision of the board shall apply for certification within thirty days after the board so requests.

Section 23

Section 23. REQUIREMENTS IF COMPANY IS OR BECOMES A SUBSIDIARY--INVESTIGATIONS--RESTRICTIONS ON UNSUITABLE PERSONS--OTHER REQUIREMENTS.--

A. If the company applicant or licensee is or becomes a subsidiary, each nonpublicly traded holding company and intermediary company with respect to the subsidiary company shall:

(1) qualify to do business in New Mexico; and

(2) register with the board and furnish to the board the following information:

(a) a complete list of all beneficial owners of five percent or more of its equity securities, which shall be updated within thirty days after any change;

(b) the names of all company officers and directors within thirty days of their appointment or election;

(c) its organization, financial structure and nature of the business it operates;

(d) the terms, position, rights and privileges of the different classes of its outstanding securities;

(e) the terms on which its securities are to be, and during the preceding three years have been, offered;

(f) the holder of and the terms and conditions of all outstanding loans, mortgages, trust deeds, pledges or any other indebtedness or security interest pertaining to the applicant or licensee;

(g) the extent of the securities holdings or other interest in the holding company or intermediary company of all officers, directors, key executives, underwriters, partners, principals, trustees or any direct or beneficial owners, and the amount of any

remuneration paid them as compensation for their services in the form of salary, wages, fees or by contract pertaining to the licensee;

(h) remuneration to persons other than directors, officers and key executives exceeding fifty thousand dollars ($50,000) per year;

(i) bonus and profit-sharing arrangements within the holding company or intermediary company;

(j) management and service contracts pertaining to the licensee or applicant;

(k) options existing or to be created in respect to the company's securities or other interests;

(l) balance sheets and profit and loss statements, certified by independent certified public accountants, for not more than the three preceding fiscal years, or, if the holding company or intermediary company has not been in existence more than three years, balance sheets and profit and loss statements from the time of its establishment, together with projections for three years from the time of its establishment;

(m) any further financial statements necessary or appropriate to assist the board in making its determinations; and

(n) a current annual profit and loss statement, a current annual balance sheet and a copy of the company's most recent federal income tax return within thirty days after the return is filed.

B. All holders of five percent or more of the equity security of a holding company or intermediary company shall apply for a finding of suitability.

C. The board may in its discretion perform the investigations concerning the officers, directors, key executives, underwriters, security holders, partners, principals, trustees or direct or beneficial owners of any interest in any holding company or intermediary company as it deems necessary, either at the time of initial registration or at any time thereafter.

D. If at any time the board finds that any person owning, controlling or holding with power to vote all or any part of any class

of securities of, or any interest in, any holding company or intermediary company is unsuitable to be connected with a licensee, it shall so notify both the unsuitable person and the holding company or intermediary company. The unsuitable person shall immediately offer the securities or other interest to the issuing company for purchase. The company shall purchase the securities or interest offered upon the terms and within the time period ordered by the board.

E. Beginning on the date when the board serves notice that a person has been found to be unsuitable pursuant to Subsection D of this section, it is unlawful for the unsuitable person to:

(1) receive any dividend or interest upon any securities held in the holding company or intermediary company, or any dividend, payment or distribution of any kind from the holding company or intermediary company;

(2) exercise, directly or indirectly or through a proxy, trustee or nominee, any voting right conferred by the securities or interest; or

(3) receive remuneration in any form from the licensee, or from any holding company or intermediary company with respect to that licensee, for services rendered or otherwise.

F. A holding company or intermediary company subject to the provisions of Subsection A of this section shall not make any public offering of any of its equity securities unless such public offering has been approved by the board.

G. This section does not apply to a holding company or intermediary company that is a publicly traded corporation, the stock of which is traded on recognized stock exchanges, which shall instead comply with the provisions of Section 24 of the Gaming Control Act.

Section 24

Section 24. REGISTRATION AND CERTIFICATION OF PUBLICLY TRADED CORPORATIONS.--

A. If a company applicant or company licensee is or becomes a publicly traded corporation, it shall register with the board and provide the following information:

(1) as of the date the company became a publicly traded corporation, and on any later date when the information changes, the names of all stockholders of record who hold five percent or more of the outstanding shares of any class of equity securities issued by the publicly traded corporation;

(2) the names of all officers within thirty days of their respective appointments;

(3) the names of all directors within thirty days of their respective elections or appointments;

(4) the organization, financial structure and nature of the businesses the publicly traded corporation operates;

(5) the terms, position, rights and privileges of the different classes of securities outstanding as of the date the company became a publicly traded corporation;

(6) the terms on which the company's securities were issued during the three years preceding the date on which the company became a publicly traded corporation and the terms on which the publicly traded corporation's securities are to be offered to the public as of the date the company became a publicly traded corporation;

(7) the terms and conditions of all outstanding indebtedness and evidence of security pertaining directly or indirectly to the publicly traded corporation;

(8) remuneration exceeding fifty thousand dollars ($50,000) per year paid to persons other than directors, officers and key executives who are actively and directly engaged in the administration or supervision of the gaming activities of the publicly traded corporation;

(9) bonus and profit-sharing arrangements within the publicly traded corporation directly or indirectly relating to its gaming activities;

(10) management and service contracts of the corporation pertaining to its gaming activities;

(11) options existing or to be created pursuant to its equity securities;

(12) balance sheets and profit and loss statements, certified by independent certified public accountants, for not less than the three fiscal years preceding the date the company became a publicly traded corporation;

(13) any further financial statements deemed necessary or appropriate by the board; and

(14) a description of the publicly traded corporation's affiliated companies and intermediary companies and gaming licenses, permits and approvals held by those entities.

B. The board shall consider the following criteria in determining whether to certify a publicly traded corporation:

(1) the business history of the publicly traded corporation, including its record of financial stability, integrity and success of its gaming operations in other jurisdictions;

(2) the current business activities and interests of the applicant, as well as those of its officers, promoters, lenders and other sources of financing, or any other persons associated with it;

(3) the current financial structure of the publicly traded corporation as well as changes that could reasonably be expected to occur to its financial structure as a consequence of its proposed action;

(4) the present and proposed compensation arrangements between the publicly traded corporation and its directors, officers, key executives, securities holders, lenders or other sources of financing;

(5) the equity investment, commitment or contribution of present or prospective directors, key executives, investors, lenders or other sources of financing; and

(6) the dealings and arrangements, prospective or otherwise, between the publicly traded corporation and its investment bankers, promoters, finders or lenders and other sources of financing.

C. The board may issue a certification upon receipt of a proper application and consideration of the criteria set forth in Subsection B of this section if it finds that the certification would not

be contrary to the public interest or the policy set forth in the Gaming Control Act.

Section 25

Section 25. FINDING OF SUITABILITY REQUIRED FOR DIRECTORS, OFFICERS AND KEY EXECUTIVES--REMOVAL FROM POSITION IF FOUND UNSUITABLE--SUSPENSION OF SUITABILITY BY BOARD.--

A. Each officer, director and key executive of a holding company, intermediary company or publicly traded corporation that the board determines is or is to become actively and directly engaged in the administration or supervision of, or any other significant involvement with, the activities of the subsidiary licensee or applicant shall apply for a finding of suitability.

B. If any officer, director or key executive of a holding company, intermediary company or publicly traded corporation required to be found suitable pursuant to Subsection A of this section fails to apply for a finding of suitability within thirty days after being requested to do so by the board, or is not found suitable by the board, or if his finding of suitability is revoked after appropriate findings by the board, the holding company, intermediary company or publicly traded corporation shall immediately remove that officer, director or key executive from any office or position in which the person is engaged in the administration or supervision of, or any other involvement with, the activities of the certified subsidiary until the person is thereafter found to be suitable. If the board suspends the finding of suitability of any officer, director or key executive, the holding company, intermediary company or publicly traded corporation shall immediately and for the duration of the suspension suspend that officer, director or key executive from performance of any duties in which he is actively and directly engaged in the administration or supervision of, or any other involvement with, the activities of the subsidiary licensee.

Section 26

Section 26. SUITABILITY OF INDIVIDUALS ACQUIRING BENEFICIAL OWNERSHIP OF VOTING SECURITY IN PUBLICLY TRADED CORPORATION--REPORT OF ACQUISITION--APPLICATION--PROHIBITION.--

A. Each person who, individually or in association with others, acquires, directly or indirectly, beneficial ownership of five percent or more of any voting securities in a publicly traded corporation registered with the board may be required to be found

suitable if the board has reason to believe that the acquisition of the ownership would otherwise be inconsistent with the declared policy of this state.

B. Each person who, individually or in association with others, acquires, directly or indirectly, beneficial ownership of five percent or more of any class of voting securities of a publicly traded corporation certified by the board shall notify the board within ten days after acquiring such interest.

C. Each person who, individually or in association with others, acquires, directly or indirectly, the beneficial ownership of more than ten percent of any class of voting securities of a publicly traded corporation certified by the board shall apply to the board for a finding of suitability within thirty days after acquiring such interest.

D. Institutional investors that have been exempted from or have received a waiver of suitability requirements pursuant to regulations adopted by the board are not required to comply with this section.

E. Any person required by the board or by the provisions of this section to be found suitable shall apply for a finding of suitability within thirty days after the board requests that he do so.

F. Any person required by the board or the provisions of this section to be found suitable who subsequently is found unsuitable by the board shall not hold directly or indirectly the beneficial ownership of any security of a publicly traded corporation that is registered with the board beyond that period of time prescribed by the board.

G. The board may, but is not required to, deem a person qualified to hold a license or be found suitable as required by this section if the person currently holds a valid license issued by, or has been found suitable by, gaming regulatory authorities in another jurisdiction, provided that the board finds that the other jurisdiction has conducted a thorough investigation of the applicant and has criteria substantially similar to those of the board to determine when a person is to be found suitable or to obtain a license.

Section 27

Section 27. REPORT OF PROPOSED ISSUANCE OR TRANSFER OF SECURITIES--REPORT OF CHANGE IN CORPORATE OFFICERS AND DIRECTORS--APPROVAL OF BOARD.--

A. Before a company licensee, other than a publicly traded corporation, may issue or transfer five percent or more of its securities to any person, it shall file a report of its proposed action with the board, which report shall request the approval of the board. The board shall have ninety days within which to approve or deny the request. If the board fails to act in ninety days, the request is deemed approved. If the board denies the request, the company shall not issue or transfer five percent or more of its securities to the person about whom the request was made.

B. A company licensee shall file a report of each change of the corporate officers and directors with the board within thirty days of the change. The board shall have ninety days from the date the report is filed within which to approve or disapprove such change. During the ninety-day period and thereafter, if the board does not disapprove the change, an officer or director is entitled to exercise all powers of the office to which he was elected or appointed.

C. A company licensee shall report to the board in writing any change in company personnel who have been designated as key executives. The report shall be made no later than thirty days after the change.

D. The board may require that a company licensee furnish the board with a copy of its federal income tax return within thirty days after the return is filed.

Section 28

Section 28. GAMING OPERATOR LICENSEES--GENERAL PROVISIONS--BUSINESS PLAN--PLAYER AGE LIMIT--RESTRICTIONS.--

A. An applicant for licensure as a gaming operator shall submit with the application a plan for assisting in the prevention, education and treatment of compulsive gambling. The plan shall include regular educational training sessions for employees. Plan approval is a condition of issuance of the license.

B. An applicant for licensure as a gaming operator shall submit with the application a proposed business plan. The plan shall include at least:

(1) a floor plan of the area to be used for gaming machine operations;

(2) an advertising and marketing plan;

(3) the proposed placement and number of gaming machines;

(4) a financial control plan;

(5) a security plan;

(6) a staffing plan for gaming machine operations; and

(7) details of any proposed progressive systems.

C. A gaming operator licensee shall be granted a license to operate a specific number of machines at a gaming establishment identified in the license application and shall be granted a license for each gaming machine.

D. A gaming operator licensee who desires to change the number of machines in operation at a gaming establishment shall apply to the board for an amendment to his license authorizing a change in the number of machines.

E. Gaming machines may be available for play only in an area restricted to persons twenty-one years of age or older.

F. A gaming operator licensee shall erect a permanent physical barrier to allow for multiple uses of the premises by persons of all ages. For purposes of this subsection, "permanent physical barrier" means a floor-to-ceiling wall separating the general areas from the restricted areas. The entrance to the area where gaming machines are located shall display a sign that the premises are restricted to persons twenty-one years of age or older. Persons under the age of twenty-one shall not enter the area where gaming machines are located.

G. A gaming operator licensee shall not have automated teller machines in the area restricted pursuant to Subsection F of this section.

H. A gaming operator licensee shall not provide, allow, contract or arrange to provide alcohol or food for no charge or at reduced prices as an incentive or enticement for patrons to game.

I. Only a racetrack licensed by the state racing commission or a nonprofit organization may apply for or be issued a gaming operator's license. No other persons are qualified to apply for or be issued a gaming operator's license pursuant

to the Gaming Control Act.

Section 29

Section 29. GAMING OPERATOR LICENSEES--SPECIAL CONDITIONS FOR RACETRACKS--NUMBER OF GAMING MACHINES--DAYS AND HOURS OF OPERATIONS.--

A. A racetrack licensed by the state racing commission pursuant to the Horse Racing Act to conduct live horse races or simulcast races may be issued a gaming operator's license to operate gaming machines on its premises where live racing is conducted.

B. A racetrack's gaming operator's license shall automatically become void if:

(1) the racetrack no longer holds an active license to conduct pari-mutuel wagering; or

(2) the racetrack fails to maintain a minimum of three live race days a week with at least nine live races on each race day during its licensed race meet in the 1997 calendar year and in the 1998 and subsequent calendar years, four live race days a week with at least nine live races on each race day during its licensed race meet.

C. A gaming operator licensee that is a racetrack may have up to three hundred licensed gaming machines, but the number of gaming machines to be located on the licensee's premises shall be specified in the gaming operator's license.

D. Except as provided in Subsection F of this section, gaming machines on a racetrack gaming operator licensee's premises may be played only on days when the racetrack is either conducting live horse races or simulcasting horse race meets. A gaming operator licensee that is a racetrack shall be permitted to conduct such games on only the aforementioned days for a daily period not to exceed twelve hours at the discretion of such licensee.

E. Alcoholic beverages shall not be sold, served, delivered or consumed in the area restricted pursuant to Subsection F of Section 28 of the Gaming Control Act.

F. A gaming operator licensee that is a racetrack located on state land within the boundaries of a municipality with a population of more than two hundred thousand persons according to the 1990 decennial census shall not operate gaming machines later than 10:00 p.m. on any day of the year.

Section 30

Section 30. GAMING OPERATOR LICENSEES--SPECIAL CONDITIONS FOR NONPROFIT ORGANIZATIONS--NUMBER OF GAMING MACHINES--DAYS AND HOURS OF OPERATIONS.--

A. A nonprofit organization may be issued a gaming operator's license to operate licensed gaming machines on its premises to be played only by active and auxiliary members.

B. No more than fifteen gaming machines may be offered for play on the premises of a nonprofit organization gaming operator licensee.

C. No gaming machine on the premises of a nonprofit organization gaming operator licensee may award a prize that exceeds four thousand dollars ($4,000).

D. Gaming machines may be played on the premises of a nonprofit organization gaming operator licensee from 12:00 noon until 12:00 midnight every day.

E. Alcoholic beverages shall not be sold, served, delivered or consumed in the area where gaming machines are installed and operated on the premises of a nonprofit organization gaming operator licensee.

Section 31

Section 31. LICENSING OF MANUFACTURERS OF GAMING DEVICES--EXCEPTION--DISPOSITION OF GAMING DEVICES.--

A. It is unlawful for any person to operate, carry on, conduct or maintain any form of manufacturing of any gaming device or associated equipment for use or play in New Mexico or any form of manufacturing of any gaming device or associated equipment in

New Mexico for use or play outside of New Mexico without first obtaining and maintaining a manufacturer's license.

B. If the board revokes a manufacturer's license:

(1) no new gaming device manufactured by the manufacturer may be approved for use in this state;

(2) any previously approved gaming device manufactured by the manufacturer is subject to revocation of approval if the reasons for the revocation of the license also apply to that gaming device;

(3) no new gaming device or associated equipment made by the manufacturer may be distributed, sold, transferred or offered for use or play in New Mexico; and

(4) any association or agreement between the manufacturer and a distributor licensee or gaming operator licensee in New Mexico shall be terminated.

C. An agreement between a manufacturer licensee and a distributor licensee or a gaming operator licensee in New Mexico shall be deemed to include a provision for its termination without liability for the termination on the part of either party upon a finding by the board that either party is unsuitable. Failure to include that condition in the agreement is not a defense in any action brought pursuant to this section to terminate the agreement.

D. A gaming device shall not be used and offered for play by a gaming operator licensee unless it is identical in all material aspects to a model that has been specifically tested and approved by:

(1) the board;

(2) a laboratory selected by the board; or

(3) gaming officials in Nevada or New Jersey for current use.

E. The board may inspect every gaming device that is manufactured:

(1) for use in New Mexico; or

(2) in New Mexico for use outside of New Mexico.

F. The board may inspect every gaming device that is offered for play within New Mexico by a gaming operator licensee.

G. The board may inspect all associated equipment that is manufactured and sold for use in New Mexico or manufactured in New Mexico for use outside of New Mexico.

H. In addition to all other fees and charges imposed pursuant to the Gaming Control Act, the board may determine, charge and collect from each manufacturer an inspection fee, which shall not exceed the actual cost of inspection and investigation.

I. The board may prohibit the use of a gaming device by a gaming operator licensee if it finds that the gaming device does not meet the requirements of this section.

Section 32

Section 32. LICENSING OF DISTRIBUTORS OF GAMING DEVICES.--

A. It is unlawful for any person to operate, carry on, conduct or maintain any form of distribution of any gaming device for use or play in New Mexico without first obtaining and maintaining a distributor's or manufacturer's license.

B. If the board revokes a distributor's license:

(1) no new gaming device distributed by the person may be approved;

(2) any previously approved gaming device distributed by the distributor is subject to revocation of approval if the reasons for the revocation of the license also apply to that gaming device;

(3) no new gaming device or associated equipment distributed by the distributor may be distributed, sold, transferred or offered for use or play in New Mexico; and

(4) any association or agreement between the distributor and a gaming operator licensee shall be terminated. An agreement between a distributor licensee and a gaming operator licensee shall be deemed to include a provision for its termination without liability on the part of either party upon a finding by the board

that the other party is unsuitable. Failure to include that condition in the agreement is not a defense in any action brought pursuant to this section to terminate the agreement.

C. The board may inspect every gaming device that is distributed for use in New Mexico.

D. In addition to all other fees and charges imposed by the Gaming Control Act, the board may determine, charge and collect from each distributor an inspection fee, which shall not exceed the actual cost of inspection and investigation.

Section 33

Section 33. SUITABILITY OF CERTAIN PERSONS FURNISHING SERVICES OR PROPERTY OR DOING BUSINESS WITH GAMING OPERATORS--TERMINATION OF ASSOCIATION.--

A. The board may determine the suitability of any person who furnishes services or property to a gaming operator licensee under any arrangement pursuant to which the person receives compensation based on earnings, profits or receipts from gaming. The board may require the person to comply with the requirements of the Gaming Control Act and with the regulations of the board. If the board determines that the person is unsuitable, it may require the arrangement to be terminated.

B. The board may require a person to apply for a finding of suitability to be associated with a gaming operator licensee if the person:

(1) does business on the premises of a gaming establishment; or

(2) provides any goods or services to a gaming operator licensee for compensation that the board finds to be grossly disproportionate to the value of the goods or services.

C. If the board determines that a person is unsuitable to be associated with a gaming operator licensee, the association shall be terminated. Any agreement that entitles a business other than gaming to be conducted on the premises of a gaming establishment, or entitles a person other than a licensee to conduct business with the gaming operator licensee, is subject to termination upon a finding of unsuitability of the person seeking association with a gaming operator licensee. Every agreement shall be deemed to

include a provision for its termination without liability on the part of the gaming operator licensee upon a finding by the board of the unsuitability of the person seeking or having an association with the gaming operator licensee. Failure to include that condition in the agreement is not a defense in any action brought pursuant to this section to terminate the agreement. If the application is not presented to the board within thirty days following demand or the unsuitable association is not terminated, the board may pursue any remedy or combination of remedies provided in the Gaming Control Act.

Section 34

Section 34. REASONS FOR INVESTIGATIONS BY BOARD--COMPLAINT BY BOARD--BOARD TO APPOINT HEARING EXAMINER--REVIEW BY BOARD--ORDER OF BOARD.--

A. The board shall make appropriate investigations to:

(1) determine whether there has been any violation of the Gaming Control Act or of any regulations adopted pursuant to that act;

(2) determine any facts, conditions, practices or matters that it deems necessary or proper to aid in the enforcement of the Gaming Control Act or regulations adopted pursuant to that act;

(3) aid in adopting regulations;

(4) secure information as a basis for recommending legislation relating to the Gaming Control Act; or

(5) determine whether a licensee is able to meet its financial obligations, including all financial obligations imposed by the Gaming Control Act, as they become due.

B. If after an investigation the board is satisfied that a license, registration, finding of suitability or prior approval by the board of any transaction for which approval was required by the provisions of the Gaming Control Act should be limited, conditioned, suspended or revoked, or that a fine should be levied, the board shall initiate a hearing by filing a complaint and transmitting a copy of it to the licensee, together with a summary of evidence in its possession bearing on the matter and the transcript of testimony at any investigative hearing conducted by or on behalf of the board.

The complaint shall be a written statement of charges that sets forth in ordinary and concise language the acts or omissions with which the respondent is charged. It shall specify the statutes or regulations that the respondent is alleged to have violated but shall not consist merely of charges raised in the language of the statutes or regulations. The summary of the evidence shall be confidential and made available only to the respondent until such time as it is offered into evidence at any public hearing on the matter.

C. The respondent shall file an answer within thirty days after service of the complaint.

D. Upon filing the complaint the board shall appoint a hearing examiner to conduct further proceedings.

E. The hearing examiner shall conduct proceedings in accordance with the Gaming Control Act and the regulations adopted by the board. At the conclusion of the proceedings, the hearing examiner may recommend that the board take any appropriate action, including revocation, suspension, limitation or conditioning of a license or imposition of a fine not to exceed fifty thousand dollars ($50,000) for each violation or any combination or all of the foregoing actions.

F. The hearing examiner shall prepare a written decision containing his recommendation to the board and shall serve it on all parties. Any respondent who disagrees with the hearing examiner's recommendation may request the board, within ten days of service of the recommendation, to review the recommendation.

G. Upon proper request, the board shall review the recommendation. The board may remand the case to the hearing examiner for the presentation of additional evidence upon a showing of good cause why such evidence could not have been presented at the previous hearing.

H. The board shall by a majority vote accept, reject or modify the recommendation.

I. If the board limits, conditions, suspends or revokes any license or imposes a fine or limits, conditions, suspends or revokes any registration, finding of suitability or prior approval, it shall issue a written order specifying its action.

J. The board's order is effective unless and until reversed upon judicial review, except that the board may stay its

order pending a rehearing or judicial review upon such terms and conditions as it deems proper.

Section 35

Section 35. EMERGENCY ORDERS OF BOARD.--

The board may issue an emergency order for suspension, limitation or conditioning of a license, registration, finding of suitability or work permit or may issue an emergency order requiring a gaming operator licensee to exclude an individual licensee from the premises of the gaming operator licensee's gaming establishment or not to pay an individual licensee any remuneration for services or any profits, income or accruals on his investment in the licensed gaming establishment in the following manner:

A. an emergency order may be issued only when the board believes that:

(1) a licensee has willfully failed to report, pay or truthfully account for and pay over any fee imposed by the provisions of the Gaming Control Act or willfully attempted in any manner to evade or defeat any fee or payment thereof;

(2) a licensee or gaming employee has cheated at a game; or

(3) the emergency order is necessary for the immediate preservation of the public peace, health, safety, morals, good order or general welfare;

B. the emergency order shall set forth the grounds upon which it is issued, including a statement of facts constituting the alleged emergency necessitating such action;

C. the emergency order is effective immediately upon issuance and service upon the licensee or resident agent of the licensee or gaming employee or, in cases involving registration or findings of suitability, upon issuance and service upon the person or entity involved or resident agent of the entity involved; the emergency order may suspend, limit, condition or take other action in relation to the license of one or more persons in an operation without affecting other individual licensees or the gaming operator licensee. The emergency order remains effective until further order of the board or final disposition of the case; and

D. within five days after issuance of an emergency order, the board shall cause a complaint to be filed and served upon the person or entity involved; thereafter, the person or entity against whom the emergency order has been issued and served is entitled to a hearing before the board and to judicial review of the decision and order of the board in accordance with the provisions of the board's regulations.

Section 36

Section 36. EXCLUSION OR EJECTION OF CERTAIN PERSONS FROM GAMING ESTABLISHMENTS--PERSONS INCLUDED.--

A. The board shall by regulation provide for the establishment of a list of persons who are to be excluded or ejected from a gaming establishment. The list may include any person whose presence in the gaming establishment is determined by the board to pose a threat to the public interest or licensed gaming activities.

B. In making the determination in Subsection A of this section, the board may consider a:

(1) prior conviction for a crime that is a felony under state or federal law, a crime involving moral turpitude or a violation of the gaming laws of any jurisdiction;

(2) violation or conspiracy to violate the provisions of the Gaming Control Act relating to:

(a) the failure to disclose an interest in a gaming activity for which the person must obtain a license; or

(b) willful evasion of fees or taxes;

(3) notorious or unsavory reputation that would adversely affect public confidence and trust that the gaming industry is free from criminal or corruptive influences; or

(4) written order of any other governmental agency in this state or any other state that authorizes the exclusion or ejection of the person from an establishment at which gaming is conducted.

C. A gaming operator licensee has the right, without a list established by the board, to exclude or eject a person from its

gaming establishment who poses a threat to the public interest or for any business reason.

D. Race, color, creed, national origin or ancestry, age, disability or sex shall not be grounds for placing the name of a person on the list or for exclusion or ejection under Subsection A or C of this section.

Section 37

Section 37. INTERNAL CONTROL SYSTEMS.--

A. Each gaming operator licensee shall adopt internal control systems that shall include provisions for:

(1) safeguarding its assets and revenues, especially the recording of cash and evidences of indebtedness;

(2) making and maintaining reliable records, accounts and reports of transactions, operations and events, including reports to the board; and

(3) a system by which the amount wagered on each gaming machine and the amount paid out by each gaming machine is recorded on a daily basis, which results may be obtained by the board by appropriate means as described in regulations adopted by the board; all manufacturers are required to have such a system available for gaming operators for the gaming machines that it supplies for use in New Mexico, and all distributors shall make such a system available to gaming operators.

B. The internal control system shall be designed to reasonably ensure that:

(1) assets are safeguarded;

(2) financial records are accurate and reliable;

(3) transactions are performed only in accordance with management's general or specific authorization;

(4) transactions are recorded adequately to permit proper reporting of gaming revenue and of fees and taxes and to maintain accountability of assets;

(5) access to assets is allowed only in accordance with management's specific authorization;

(6) recorded accountability for assets is compared with actual assets at reasonable intervals and appropriate action is taken with respect to any discrepancies; and

(7) functions, duties and responsibilities are appropriately segregated and performed in accordance with sound accounting and management practices by competent, qualified personnel.

C. A gaming operator licensee and an applicant for a gaming operator's license shall describe, in the manner the board may approve or require, its administrative and accounting procedures in detail in a written system of internal control. A gaming operator licensee and an applicant for a gaming operator's license shall submit a copy of its written system to the board. Each written system shall include:

(1) an organizational chart depicting appropriate segregation of functions and responsibilities;

(2) a description of the duties and responsibilities of each position shown on the organizational chart;

(3) a detailed, narrative description of the administrative and accounting procedures designed to satisfy the requirements of Subsection A of this section;

(4) a written statement signed by the licensee's chief financial officer and either the licensee's chief executive officer or a licensed owner attesting that the system satisfies the requirements of this section;

(5) if the written system is submitted by an applicant, a letter from an independent certified public accountant stating that the applicant's written system has been reviewed by the accountant and complies with the requirements of this section; and

(6) other items as the board may require.

D. The board shall adopt and publish minimum standards for internal control procedures.

Section 38

Section 38. GAMING EMPLOYEES--ISSUANCE OF WORK PERMITS--REVOCATION OF WORK PERMITS.--

A. A person shall not be employed as a gaming employee unless the person holds a valid work permit issued by the board.

B. A work permit shall be issued and may be revoked by the board as provided in regulations adopted by the board.

C. Any person whose work permit has been denied or revoked may seek judicial review.

Section 39

Section 39. AGE REQUIREMENT FOR PATRONS AND GAMING EMPLOYEES.--A person under the age of twenty-one years shall not:

A. play, be allowed to play, place wagers on or collect winnings from, whether personally or through an agent, any game authorized or offered to play pursuant to the Gaming Control Act; or

B. be employed as a gaming employee.

Section 40

Section 40. CALCULATION OF NET TAKE--CERTAIN EXPENSES NOT DEDUCTIBLE.--

In calculating net take from gaming machines, the actual cost to the licensee of any personal property distributed to a patron as the result of a legitimate wager may be deducted as a loss, except for travel expenses, food, refreshments, lodging or services. For the purposes of this section, "as the result of a legitimate wager" means that the patron must make a wager prior to receiving the personal property, regardless of whether the receipt of the personal property is dependent on the outcome of the wager.

Section 41

Section 41. LIMITATIONS ON TAXES AND LICENSE FEES.--

A political subdivision of the state shall not impose a license fee or tax on any licensee licensed pursuant to the Gaming Control Act except for the imposition of property taxes, local option gross receipts taxes with respect to receipts not subject to the gaming tax

and the distribution provided for and determined pursuant to Subsection C of Section

60-1-15 and Section 60-1-15.2 NMSA 1978.

Section 42

Section 42. USE OF CHIPS, TOKENS OR LEGAL TENDER REQUIRED FOR ALL GAMING.--

All gaming shall be conducted with chips, tokens or other similar objects approved by the board or with the legal currency of the United States.

Section 43

Section 43. COMMUNICATION OR DOCUMENT OF APPLICANT OR LICENSEE ABSOLUTELY CONFIDENTIAL--CONFIDENTIALITY NOT WAIVED--DISCLOSURE OF CONFIDENTIAL INFORMATION PROHIBITED.--

A. Any communication or document of an applicant or licensee is confidential and does not impose liability for defamation or constitute a ground for recovery in any civil action if it is required by:

(1) law or the regulations of the board; or

(2) a subpoena issued by the board to be made or transmitted to the board.

B. The confidentiality created pursuant to Subsection A of this section is not waived or lost because the document or communication is disclosed to the board.

C. Notwithstanding the powers granted to the board by the Gaming Control Act, the board:

(1) may release or disclose any confidential information, documents or communications provided by an applicant or licensee only with the prior written consent of the applicant or licensee or pursuant to a lawful court order after timely notice of the proceedings has been given to the applicant or licensee;

(2) shall maintain all confidential information, documents and communications in a secure place accessible only to members of the board; and

(3) shall adopt procedures and regulations to protect the confidentiality of information, documents and communications provided by an applicant or licensee.

Section 44

Section 44. MOTION FOR RELEASE OF CONFIDENTIAL INFORMATION.--

An application to a court for an order requiring the board to release any information declared by law to be confidential shall be made only by petition in district court. A hearing shall be held on the petition not less than ten days and not more than twenty days after the date of service of the petition on the board, the attorney general and all persons who may be affected by the entry of that order. A copy of the petition, all papers filed in support of it and a notice of hearing shall be served.

Section 45

Section 45. GAMING MACHINE CENTRAL SYSTEM.--

The board shall develop and operate a central system into which all licensed gaming machines are connected. The central system shall be capable of:

A. monitoring continuously, retrieving and auditing the operations, financial data and program information of the network;

B. disabling from operation or play any gaming machine in the network that does not comply with the provisions of the Gaming Control Act or the regulations of the board;

C. communicating, through program modifications or other means equally effective, with all gaming machines licensed by the board;

D. interacting, reading, communicating and linking with gaming machines from a broad spectrum of manufacturers and associated equipment; and

E. providing linkage to each gaming machine in the network at a reasonable and affordable cost to the state and the gaming operator licensee and allowing for program modifications and system updating at a reasonable cost.

Section 46

Section 46. MACHINE SPECIFICATIONS.--

To be eligible for licensure, each gaming machine shall meet all specifications established by regulations of the board and:

A. be unable to be manipulated in a manner that affects the random probability of winning plays or in any other manner determined by the board to be undesirable;

B. have at least one mechanism that accepts coins or currency, but does not accept bills of denominations greater than twenty dollars ($20.00);

C. be capable of having play suspended through the central system by the executive director until he resets the gaming machine;

D. house nonresettable mechanical and electronic meters within a readily accessible locked area of the gaming machine that maintain a permanent record of all money inserted into the machine, all cash payouts of winnings, all refunds of winnings, all credits played for additional games and all credits won by players;

E. be capable of printing out, at the request of the executive director, readings on the electronic meters of the machine;

F. for machines that do not dispense coins or tokens directly to players, be capable of printing a ticket voucher stating the value of a cash prize won by the player at the completion of each game, the date and time of day the game was played in a twenty-four-hour format showing hours and minutes, the machine serial number, the sequential number of the ticket voucher and an encrypted validation number for determining the validity of a winning ticket voucher;

G. be capable of being linked to the board's central system for the purpose of being monitored continuously as required by the board;

H. provide for a payback value for each credit wagered, determined over time, of not less than eighty percent or more than ninety-

six percent;

I. meet the standards and specifications set by laws or regulations of the states of Nevada and New Jersey for gaming machines, whichever are more stringent;

J. offer only games authorized and examined by the board; and

K. display the gaming machine license issued for that machine in an easily accessible place, before and during the time that a machine is available for use.

Section 47

Section 47. POSTING OF GAMING MACHINE ODDS**.--**

The odds of winning on each gaming machine shall be posted on or near each gaming machine. The board shall provide the manner in which the odds shall be determined and posted by regulation.

Section 48

Section 48. EXAMINATION OF GAMING DEVICES--COST ALLOCATION.--

A. The board shall examine prototypes of gaming devices of manufacturers seeking a license as required.

B. The board by regulation shall require a manufacturer to pay the anticipated actual costs of the examination of a gaming device in advance and, after the completion of the examination, shall refund overpayments or charge and collect amounts sufficient to reimburse the board for underpayment of actual costs.

C. The board may contract for the examination of gaming devices to meet the requirements of this section.

Section 49

Section 49. GAMING TAX--IMPOSITION--ADMINISTRATION.--

A. An excise tax is imposed on the privilege of engaging in gaming activities in the state. This tax shall be known as the "gaming tax".

B. The gaming tax is an amount equal to ten percent of the gross receipts of manufacturer licensees from the sale, lease or other transfer of gaming devices in or into the state, except receipts

of a manufacturer from the sale, lease or other transfer to a licensed distributor for subsequent sale or lease may be excluded from gross receipts; ten percent of the gross receipts of distributor licensees from the sale, lease or other transfer of gaming devices in or into the state; and twenty-five percent of the net take of every gaming operator licensee.

C. The gaming tax imposed on a licensee is in lieu of all state and local gross receipts taxes on that portion of the licensee's gross receipts attributable to gaming activities.

D. The gaming tax shall be administered and collected by the taxation and revenue department in cooperation with the board. The provisions of the Tax Administration Act apply to the collection and administration of the tax.

E. In addition to the gaming tax, a gaming operator licensee that is a racetrack shall pay twenty percent of the net take to purses to be distributed in accordance with regulations adopted by the state racing commission. A racetrack gaming operator licensee shall spend no less than one-fourth of one percent of the net take of its gaming machines to fund or support programs for the treatment and assistance of compulsive gamblers.

F. A nonprofit gaming operator licensee shall distribute at least eighty-eight percent of the balance of net take, after payment of the gaming tax and any income taxes, for charitable or educational purposes.

Section 50

Section 50. CIVIL ACTIONS TO RESTRAIN VIOLATIONS OF GAMING CONTROL ACT.--

A. The attorney general, at the request of the board, may institute a civil action in any court of this state against any person to enjoin a violation of a prohibitory provision of the Gaming Control Act.

B. An action brought against a person pursuant to this section shall not preclude a criminal action or administrative proceeding against that person.

Section 51

Section 51. TESTIMONIAL IMMUNITY.--

A. The board may order a person to answer a question or produce evidence and confer immunity pursuant to this section. If, in the course of an investigation or hearing conducted pursuant to the Gaming Control Act, a person refuses to answer a question or produce evidence on the ground that he will be exposed to criminal prosecution by doing so, then the board may by approval of three members, after the written approval of the attorney general, issue an order to answer or to produce evidence with immunity.

B. If a person complies with an order issued pursuant to Subsection A of this section, he shall be immune from having a responsive answer given or responsive evidence produced, or evidence derived from either, used to expose him to criminal prosecution, except that the person may be prosecuted for any perjury committed in the answer or production of evidence and may also be prosecuted for contempt for failing to act in accordance with the order of the board. An answer given or evidence produced pursuant to the grant of immunity authorized by this section may be used against the person granted immunity in a prosecution of the person for perjury or a proceeding against him for contempt.

Section 52

Section 52. CRIME--MANIPULATION OF GAMING DEVICE WITH INTENT TO CHEAT.--A person who manipulates, with the intent to cheat, any component of a gaming device in a manner contrary to the designed and normal operational purpose of the component, including varying the pull of the handle of a slot machine with knowledge that the manipulation affects the outcome of the game or with knowledge of any event that affects the outcome of the game, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

Section 53

Section 53. CRIME--USE OF COUNTERFEIT OR UNAPPROVED TOKENS, CURRENCY OR DEVICES--POSSESSION OF CERTAIN DEVICES, EQUIPMENT, PRODUCTS OR MATERIALS.--

A. A person who, in playing any game designed to be played with, to receive or to be operated by tokens approved by the board or by lawful currency of the United States, knowingly uses tokens other than those approved by the board, uses currency that is not lawful currency of the United States or uses currency not of the same denomination as the currency intended to be used in that game is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

B. A person who knowingly has on his person or in his possession within a gaming establishment any device intended to be used by him to violate the provisions of the Gaming Control Act is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. A person, other than a duly authorized employee of a gaming operator acting in furtherance of his employment within a gaming establishment, who knowingly has on his person or in his possession within a gaming establishment any key or device known by him to have been designed for the purpose of and suitable for opening, entering or affecting the operation of any game, dropbox or any electronic or mechanical device connected to the game or dropbox or for removing money or other contents from them is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

D. A person who knowingly and with intent to use them for cheating has on his person or in his possession any paraphernalia for manufacturing slugs is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. As used in this subsection, "paraphernalia for manufacturing slugs" means the equipment, products and materials that are intended for use or designed for use in manufacturing, producing, fabricating, preparing, testing, analyzing, packaging, storing or concealing a counterfeit facsimile of tokens approved by the board or a lawful coin of the United States, the use of which is unlawful pursuant to the Gaming Control Act. The term includes:

(1) lead or lead alloy;

(2) molds, forms or similar equipment capable of producing a likeness of a gaming token or coin;

(3) melting pots or other receptacles;

(4) torches; and

(5) tongs, trimming tools or other similar equipment.

E. Possession of more than two items of the equipment, products or material described in Subsection D of this section permits a rebuttable inference that the possessor intended to use them for cheating.

Section 54

Section 54. CRIME--CHEATING.--A person who knowingly cheats at any game is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

Section 55

Section 55. CRIME--POSSESSION OF GAMING DEVICE MANUFACTURED, SOLD OR DISTRIBUTED IN VIOLATION OF LAW.--A person who knowingly possesses any gaming device that has been manufactured, sold or distributed in violation of the Gaming Control Act is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

Section 56

Section 56. CRIME--REPORTING AND RECORD VIOLATIONS--PENALTY.--A person who, in an application, book or record required to be maintained by the Gaming Control Act or by a regulation adopted under that act or in a report required to be submitted by that act or a regulation adopted under that act, knowingly makes a statement or entry that is false or misleading or fails to maintain or make an entry the person knows is required to be maintained or made is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

Section 57

Section 57. CRIME--UNLAWFUL MANUFACTURE, SALE, DISTRIBUTION, MARKING, ALTERING OR MODIFICATION OF DEVICES ASSOCIATED WITH GAMING--UNLAWFUL INSTRUCTION--PENALTY.--

A. A person who manufactures, sells or distributes a device that is intended by him to be used to violate any provision of the Gaming Control Act is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

B. A person who marks, alters or otherwise modifies any gaming device in a manner that affects the result of a wager by determining win or loss or alters the normal criteria of random selection that affects the operation of a game or that determines the outcome of a game is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

Section 58

Section 58. UNDERAGE GAMING--PENALTY FOR PERMITTING OR PARTICIPATION.--

A. A person who knowingly permits an individual who the person knows is younger than twenty-one years of age to participate in gaming is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

B. An individual who participates in gaming when he is younger than twenty-one years of age at the time of participation is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

Section 59

Section 59. CRIME--GENERAL PENALTIES FOR VIOLATION OF ACT.--

A person who willfully violates, attempts to violate or conspires to violate any of the provisions of the Gaming Control Act specifying prohibited acts, the classification of which is not specifically stated in that act, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

Section 60

Section 60. DETENTION AND QUESTIONING OF A PERSON SUSPECTED OF VIOLATING ACT--LIMITATIONS ON LIABILITY--POSTING OF NOTICE.--

A. A gaming operator licensee or its officers, employees or agents may question a person in its gaming establishment suspected of violating any of the provisions of the Gaming Control Act. No gaming operator licensee or any of its officers, employees or agents is criminally or civilly liable:

(1) on account of any such questioning; or

(2) for reporting to the board or law enforcement authorities the person suspected of the violation.

B. A gaming operator licensee or any of its officers, employees or agents who has reasonable cause for believing that there has been a violation of the Gaming Control Act in the gaming establishment by a person may detain that person in the gaming establishment in a reasonable manner and for a reasonable length of time. Such a detention does not render the gaming operator

licensee or his officers, employees or agents criminally or civilly liable unless it is established by clear and convincing evidence detention was unreasonable under the circumstances.

C. No gaming operator licensee or its officers, employees or agents are entitled to the immunity from liability provided for in Subsection B of this section unless there is displayed in a conspicuous place in the gaming establishment a notice in boldface type clearly legible and in substantially this form:

"Any gaming operator licensee or any of his officers, employees or agents who have reasonable cause for believing that any person has violated any provision of the Gaming Control Act prohibiting cheating in gaming may detain that person in the establishment.".

Section 61

Section 61. ADMINISTRATIVE APPEAL OF BOARD ACTION.--

A. Any person aggrieved by an action taken by the board or one of its agents may request and receive a hearing for the purpose of reviewing the action. To obtain a hearing the aggrieved person shall file a request for hearing with the board within thirty days after the date the action is taken. Failure to file the request within the specified time is an irrevocable waiver of the right to a hearing, and the action complained of shall be final with no further right to review, either administratively or by a court.

B. The board shall adopt procedural regulations to govern the procedures to be followed in administrative hearings pursuant to the provisions of this section. At a minimum, the regulations shall provide:

(1) for the hearings to be public;

(2) for the appointment of a hearing officer to conduct the hearing and make his recommendation to the board not more than ten days after the completion of the hearing;

(3) procedures for discovery;

(4) assurance that procedural due process requirements are satisfied;

(5) for the maintenance of a record of the hearing proceedings and assessment of costs of any transcription of testimony that is required for judicial review purposes; and

(6) for the hearing to be held in Santa Fe for enforcement hearings and hearings on actions of statewide application, and to be held in the place or area affected for enforcement hearings and hearings on actions of limited local concern.

C. Actions taken by the board after a hearing pursuant to the provisions of this section shall be:

(1) written and shall state the reasons for the action;

(2) made public when taken;

(3) communicated to all persons who have made a written request for notification of the action taken; and

(4) taken not more than thirty days after the submission of the hearing officer's report to the board.

Section 62

Section 62. JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS.--

A. Any person adversely affected by an action taken by the board after review pursuant to the provisions of Section 61 of the Gaming Control Act may appeal the action to the court of appeals. The appeal shall be on the record made at the hearing. To support his appeal, the appellant shall make arrangements with the board for a sufficient number of transcripts of the record of the hearing on which the appeal is based. The appellant shall pay for the preparation of the transcripts.

B. On appeal, the court of appeals shall set aside the administrative action only if it is found to be:

(1) arbitrary, capricious or an abuse of discretion;

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

(3) otherwise not in accordance with law.

Section 63

Section 63. LIEN ON 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 board 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 gaming machine amount in excess of six hundred dollars ($600), the board 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 winner is on the list of persons owing a debt to or collected by the agency, the board shall make a good-faith attempt to notify the human services department, and the department then has a lien against the winnings in the amount of the debt owed to or collected by the agency. The board has no liability to the human services department or the person on whose behalf the department is collecting the debt if the board 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 board with written notice of a support lien promptly within five working days after the board notifies the department of a match.

D. If the amount won is to be paid directly by the board, the amount of the debt owed to or collected by the human services department shall be held by the board for a period of thirty days from the board'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 board shall release the amount won to the winner.

E. The human services department, in its discretion, may release or partially release the support lien upon written notice to the board.

F. A support lien under this section is in addition to any other lien created by law.

Section 64

Section 64. Section 7-1-2 NMSA 1978 (being Laws 1965, Chapter 248, Section 2, as amended) is amended to read:

"7-1-2. APPLICABILITY.--The Tax Administration Act applies to and governs:

A. the administration and enforcement of the following taxes or tax acts as they now exist or may hereafter be amended:

(1) Income Tax Act;

(2) Withholding Tax Act;

(3) Gross Receipts and Compensating Tax Act and any state gross receipts tax;

(4) Liquor Excise Tax Act;

(5) Local Liquor Excise Tax Act;

(6) any municipal local option gross receipts tax;

(7) any county local option gross receipts tax;

(8) Special Fuels Supplier Tax Act;

(9) Gasoline Tax Act;

(10) petroleum products loading fee, which fee shall be considered a tax for the purpose of the Tax Administration Act;

(11) Alternative Fuel Tax Act;

(12) Cigarette Tax Act;

(13) Estate Tax Act;

(14) Railroad Car Company Tax Act;

(15) Investment Credit Act;

(16) Corporate Income and Franchise Tax Act;

(17) Uniform Division of Income for Tax Purposes Act;

(18) Multistate Tax Compact;

(19) Tobacco Products Tax Act;

(20) Filmmaker's Credit Act; and

(21) the telecommunications relay service surcharge imposed by Section 63-9F-11 NMSA 1978, which surcharge shall be considered a tax for the purposes of the Tax Administration Act;

B. the administration and enforcement of the following taxes, surtaxes, advanced payments or tax acts as they now exist or may hereafter be amended:

(1) Resources Excise Tax Act;

(2) Severance Tax Act;

(3) any severance surtax;

(4) Oil and Gas Severance Tax Act;

(5) Oil and Gas Conservation Tax Act;

(6) Oil and Gas Emergency School Tax Act;

(7) Oil and Gas Ad Valorem Production Tax Act;

(8) Natural Gas Processors Tax Act;

(9) Oil and Gas Production Equipment Ad Valorem Tax Act;

(10) Copper Production Ad Valorem Tax Act; and

(11) any advance payment required to be made by any act specified in this subsection, which advance payment shall be considered a tax for the purposes of the Tax Administration Act;

C. the administration and enforcement of the following taxes, surcharges, fees or acts as they now exist or may hereafter be amended:

(1) Weight Distance Tax Act;

(2) Special Fuels Tax Act;

(3) the workers' compensation fee authorized by Section 52-5-19 NMSA 1978, which fee shall be considered a tax for purposes of the Tax Administration Act;

(4) Uniform Unclaimed Property Act;

(5) 911 emergency surcharge and the network and database surcharge, which surcharges shall be considered taxes for purposes of the Tax Administration Act;

(6) the solid waste assessment fee authorized by the Solid Waste Act, which fee shall be considered a tax for purposes of the Tax Administration Act;

(7) the water conservation fee imposed by Section 74-1-13 NMSA 1978, which fee shall be considered a tax for the purposes of the Tax Administration Act; and

(8) the gaming tax imposed pursuant to the Gaming Control Act; and

D. the administration and enforcement of all other laws, with respect to which the department is charged with responsibilities pursuant to the Tax Administration Act, but only to the extent that the other laws do not conflict with the Tax Administration Act."

Section 65

Section 65. Section 10-15-1 NMSA 1978 (being Laws 1974, Chapter 91, Section 1, as amended) is amended to read:

"10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS.--

A. In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them. The formation of public policy or the conduct of business by vote shall not be conducted in closed meeting. All meetings of any public body except the legislature and the courts shall be public meetings, and all persons so desiring shall be permitted to attend

and listen to the deliberations and proceedings. Reasonable efforts shall be made to accommodate the use of audio and video recording devices.

B. All meetings of a quorum of members of any board, commission, administrative adjudicatory body or other policymaking body of any state agency, any agency or authority of any county, municipality, district or any political subdivision, held for the purpose of formulating public policy, including the development of personnel policy, rules, regulations or ordinances, discussing public business or for the purpose of taking any action within the authority of or the delegated authority of any board, commission or other policymaking body are declared to be public meetings open to the public at all times, except as otherwise provided in the constitution of New Mexico or the Open Meetings Act. No public meeting once convened that is otherwise required to be open pursuant to the Open Meetings Act shall be closed or dissolved into small groups or committees for the purpose of permitting the closing of the meeting.

C. If otherwise allowed by law or rule of the public body, a member of a public body may participate in a meeting of the public body by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting are able to hear any member of the public body who speaks during the meeting.

D. Any meetings at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs and at which a majority or quorum of the body is in attendance, and any closed meetings, shall be held only after reasonable notice to the public. The affected body shall determine at least annually in a public meeting what notice for a public meeting is reasonable when applied to that body. That notice shall include broadcast stations licensed by the federal communications commission and newspapers of general circulation that have provided a written request for such notice.

E. A public body may recess and reconvene a meeting to a day subsequent to that stated in the meeting notice if, prior to recessing, the public body specifies the date, time and place for continuation of the meeting and, immediately following the recessed meeting, posts notice of the date, time and place for the reconvened

meeting on or near the door of the place where the original meeting was held and in at least one other location appropriate to provide public notice of the continuation of the meeting. Only matters appearing on the agenda of the original meeting may be discussed at the reconvened meeting.

F. Meeting notices shall include an agenda containing a list of specific items of business to be discussed or transacted at the meeting or information on how the public may obtain a copy of such an agenda. Except in the case of an emergency, the agenda shall be available to the public at least twenty-four hours prior to the meeting. Except for emergency matters, a public body shall take action only on items appearing on the agenda. For purposes of this subsection, an "emergency" refers to unforeseen circumstances that, if not addressed immediately by the public body, will likely result in injury or damage to persons or property or substantial financial loss to the public body.

G. The board, commission or other policymaking body shall keep written minutes of all its meetings. The minutes shall include at a minimum the date, time and place of the meeting, the names of members in attendance and those absent, the substance of the proposals considered and a record of any decisions and votes taken that show how each member voted. All minutes are open to public inspection. Draft minutes shall be prepared within ten working days after the meeting and shall be approved, amended or disapproved at the next meeting where a quorum is present. Minutes shall not become official until approved by the policymaking body.

H. The provisions of Subsections A, B and G of this section do not apply to:

(1) meetings pertaining to issuance, suspension, renewal or revocation of a license, except that a hearing at which evidence is offered or rebutted shall be open. All final actions on the issuance, suspension, renewal or revocation of a license shall be taken at an open meeting;

(2) limited personnel matters; provided that for purposes of the Open Meetings Act, "limited personnel matters" means the discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of complaints or charges against any individual public employee; provided further that this subsection is not to be construed as to exempt final actions on personnel from being taken at open public meetings, nor does it preclude an aggrieved public employee from

demanding a public hearing. Judicial candidates interviewed by any commission shall have the right to demand an open interview;

(3) deliberations by a public body in connection with an administrative adjudicatory proceeding. For purposes of this paragraph, an "administrative adjudicatory proceeding" means a proceeding brought by or against a person before a public body in which individual legal rights, duties or privileges are required by law to be determined by the public body after an opportunity for a trial-type hearing. Except as otherwise provided in this section, the actual administrative adjudicatory proceeding at which evidence is offered or rebutted and any final action taken as a result of the proceeding shall occur in an open meeting;

(4) the discussion of personally identifiable information about any individual student, unless the student, his parent or guardian requests otherwise;

(5) meetings for the discussion of bargaining strategy preliminary to collective bargaining negotiations between the policymaking body and a bargaining unit representing the employees of that policymaking body and collective bargaining sessions at which the policymaking body and the representatives of the collective bargaining unit are present;

(6) that portion of meetings at which a decision concerning purchases in an amount exceeding two thousand five hundred dollars ($2,500) that can be made only from one source and that portion of meetings at which the contents of competitive sealed proposals solicited pursuant to the Procurement Code are discussed during the contract negotiation process. The actual approval of purchase of the item or final action regarding the selection of a contractor shall be made in an open meeting;

(7) meetings subject to the attorney-client privilege pertaining to threatened or pending litigation in which the public body is or may become a participant;

(8) meetings for the discussion of the purchase, acquisition or disposal of real property or water rights by the public body;

(9) those portions of meetings of committees or boards of public hospitals that receive less than fifty percent of their operating budget from direct public funds and appropriations where strategic and long-range business plans are discussed; and

(10) that portion of a meeting of the gaming control board dealing with information made confidential pursuant to the provisions of the Gaming Control Act.

I. If any meeting is closed pursuant to the exclusions contained in Subsection H of this section, the closure:

(1) if made in an open meeting, shall be approved by a majority vote of a quorum of the policymaking body; the authority for the closure and the subject to be discussed shall be stated with reasonable specificity in the motion calling for the vote on a closed meeting; the vote shall be taken in an open meeting; and the vote of each individual member shall be recorded in the minutes. Only those subjects announced or voted upon prior to closure by the policymaking body may be discussed in a closed meeting; and

(2) if called for when the policymaking body is not in an open meeting, shall not be held until public notice, appropriate under the circumstances, stating the specific provision of the law authorizing the closed meeting and stating with reasonable specificity the subject to be discussed is given to the members and to the general public.

J. Following completion of any closed meeting, the minutes of the open meeting that was closed or the minutes of the next open meeting if the closed meeting was separately scheduled shall state that the matters discussed in the closed meeting were limited only to those specified in the motion for closure or in the notice of the separate closed meeting. This statement shall be approved by the public body under Subsection G of this section as part of the minutes."

Section 66

Section 66. 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:

(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

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. "gambling device" means a contrivance other than an antique gambling device that is not licensed for use pursuant to the Gaming Control Act and 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, whether or not the prize is automatically paid by the device;

D. "gambling place" means a building or tent, a vehicle, whether self-propelled or not, or a room within any of them that is not within the premises of a person licensed as a lottery retailer or that is not licensed pursuant to the Gaming Control Act, 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; and

E. "lottery" means an enterprise 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. "Lottery" does not include the New Mexico state lottery established and operated pursuant to the New Mexico Lottery Act or gaming that is licensed and operated pursuant to the Gaming Control Act. As used in this subsection, "consideration" means anything of pecuniary value required to be paid to the promoter in order to participate in a gambling or gaming enterprise."

Section 67

Section 67. A new section of Chapter 40, Article 3 NMSA 1978 is enacted to read:

"GAMBLING DEBTS ARE SEPARATE DEBTS OF SPOUSE INCURRING DEBT.--A gambling debt incurred by a married person as a result of legal gambling is a separate debt of the spouse incurring the debt."

Section 68

Section 68. Section 60-7A-19 NMSA 1978 (being Laws 1981, Chapter 39, Section 96) is amended to read:

"60-7A-19. COMMERCIAL GAMBLING ON LICENSED PREMISES.--

A. It is a violation of the Liquor Control Act for a licensee to knowingly allow commercial gambling on the licensed premises.

B. In addition to any criminal penalties, any person who violates Subsection A of this section may have his license suspended or revoked or a fine imposed, or both, pursuant to the Liquor Control Act.

C. As used in this section:

(1) "commercial gambling" means:

(a) participating in the earnings of or operating a gambling place;

(b) receiving, recording or forwarding bets or offers to bet;

(c) possessing facilities with the intent to receive, record or forward bets or offers to bet;

(d) for gain, becoming a custodian of anything of value bet or offered to be bet;

(e) conducting a lottery where both the consideration and the prize are money, or whoever with intent to conduct a lottery possesses facilities to do so; or

(f) setting up for use for the purpose of gambling, or collecting the proceeds of, any gambling device or game; and

(2) "commercial gambling" does not mean:

(a) activities authorized pursuant to the New Mexico Lottery Act;

(b) the conduct of activities pursuant to Subsection D of Section 30-19-6 NMSA 1978; and

(c) gaming authorized pursuant to the Gaming Control Act on the premises of a gaming operator licensee licensed pursuant to that act."

Section 69

Section 69. SEVERABILITY.--

If any part or application of the Gaming Control Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 70

Section 70. DELAYED EFFECTIVE DATE.--

The provisions of the Gaming Control Act shall be effective on the date that a tribal gaming compact agreed upon and executed by an

Indian nation, tribe or pueblo and the state is approved pursuant to the provisions of the Indian Gaming Regulatory Act, 25 USCA Section 2701, et

seq.

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE SUBSTITUTE FOR HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR HOUSE BILL 399, AS AMENDED WITH CERTIFICATE OF CORRECTION

Approved April 10, 1997

CHAPTER 191

RELATING TO HIGHWAYS; ADOPTING THE MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT; DECLARING AN EMERGENCY.

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

Section 1

Section 1. ENACTMENT AND JOINDER WITH OTHER JURISDICTIONS.--The Multistate Highway Transportation Agreement is adopted and entered into with all other jurisdictions legally joining therein in the form substantially set forth in Section 2.

Section 2

Section 2. PROVISIONS OF AGREEMENT.--The provisions of this multistate agreement are as follows:

"MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT

ARTICLE I. FINDINGS AND PURPOSE

(a) The participating jurisdictions find that:

(1) Highway transportation is the major mode for movement of people and goods in the western states.

(2) Uniform application of state vehicle regulations and laws may result in a reduction of pollution, congestion, fuel consumption, and related transportation costs, which are necessary to permit increased productivity.

(b) The purposes of this agreement are to:

(1) Adhere to the principle that each participating jurisdiction has the freedom to develop vehicle size and weight standards that it determines to be most appropriate to its economy and highway system.

(2) Establish a system that would promote more efficient operation of vehicles traveling between two or more participating jurisdictions regarding necessary state government vehicle laws and regulations.

(3) Encourage uniformity among participating jurisdictions in vehicle size and weight standards on the basis of the objectives set forth in this agreement when the objectives are compatible with the safe operation of the vehicles on each member's highway system, and when these size and weight standards do not have an adverse impact on state and local highway, street or road maintenance programs.

(4) Encourage uniformity, insofar as possible, of administrative procedures in the enforcement of recommended vehicle size and weight standards.

(5) Provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in paragraph (a) of this article.

ARTICLE II. DEFINITIONS

(a) As used in this agreement:

(1) "Designated representative" means a legislator or other person authorized to represent the jurisdiction.

(2) "Jurisdiction" means a state of the United States or the District of Columbia.

(3) "Vehicle" means any vehicle as defined by statute to be subject to size and weight standards and which operates in two or more participating jurisdictions.

ARTICLE III. GENERAL PROVISIONS

(a) Participation in this agreement is open to jurisdictions which subscribe to the findings, purpose and objectives of this agreement and which seek legislation necessary to accomplish these objectives.

(b) The particular jurisdictions, working through their designated representatives, shall cooperate and assist each other in achieving the desired goals of this agreement pursuant to appropriate statutory authority.

(c) Article headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any article or paragraph hereof.

(d) This agreement shall not authorize the operation of a vehicle in any participating jurisdiction contrary to the laws or rules or regulations thereof.

(e) The final decisions regarding the interpretation of questions at issue relating to this agreement shall be reached by unanimous joint action of the participating jurisdictions acting through their designated representatives. Results of all such actions shall be in writing.

(f) This agreement may be amended by unanimous joint action of the participating jurisdictions acting through their designated representatives. Any amendments shall be in writing and shall become a part of the agreement.

(g) Any jurisdiction entering this agreement shall provide each of the other participating jurisdictions with a list of any of its restrictions, conditions, or limitations on the general terms of this agreement.

(h) Any jurisdiction may become a member of this agreement by signing and accepting the terms of the agreement.

ARTICLE IV. COOPERATING COMMITTEE

(a) Pursuant to paragraph (b) of Article III, the designated representatives of the participating jurisdictions shall constitute a committee which shall have the power to:

(1) Collect, correlate, analyze, and evaluate information resulting or derivable from research and testing activities in relation to vehicle size, vehicle weight-related matters, highway safety and bridge maintenance problems caused by heavy vehicles.

(2) Recommend and encourage the undertaking of research and testing in any aspect of vehicle size and weight or related matter when in their collective judgment, appropriate or sufficient research or testing has not been undertaken.

(3) Recommend changes in law or policy, including the compatibility of laws and uniformity of rules and regulations which would assist effective governmental action or coordination in the field of vehicle size and weight-related matters.

(b) Each participating jurisdiction shall be entitled to one vote only. No action of the committee shall be binding unless a majority of the participating jurisdictions are in favor thereof.

(c) The committee shall meet at least once annually and shall elect, from among its members, a vice chairman and a secretary.

(d) The committee shall submit annually to the legislature of each participating jurisdiction, not later than November 1, a report setting forth the work of the committee during the preceding year and including recommendations developed by the committee. The committee may submit such additional reports as it deems appropriate or desirable. Copies of all such reports shall be made available to the Transportation Committee of the Western Conference, Council of State Governments, and to the Western Association of State Highway and Transportation Officials.

ARTICLE V. OBJECTIVES OF THE PARTICIPATING JURISDICTIONS

(a) The participating jurisdictions hereby declare that:

(1) It is the objective of the participating jurisdictions to obtain safer, more economical transportation by motor vehicles among the participating jurisdictions.

(2) It is the further objective of the participating jurisdictions that in the event the operation of a vehicle, or combination of vehicles pursuant to the objectives stated in paragraph (1) of subdivision (b) would result in withholding or forfeiture of federal-aid funds, the operation of such vehicle, or combination of vehicles shall be authorized

under special permit authority by each participating jurisdiction which can legally issue such permits.

(3) The authority of any participating jurisdiction to issue special permits for the movement of any vehicle, or combination of vehicles, having dimensions or weights, or both, in excess of the maximum statutory limits in each participating jurisdiction shall not be affected.

(4) It is the further objective of the participating jurisdictions to facilitate and expedite the operation of any vehicle, or combination of vehicles, among the participating jurisdictions. To that end the participating jurisdictions hereby agree, through their designated representatives, to meet and cooperate in the consideration of vehicle size weight-related matters including, but not limited to, the development of uniform enforcement procedures; additional vehicle size and weight standards; operational standards; agreements or compacts to facilitate regional application and administration of vehicle size and weight standards; uniform permit procedures; uniform application forms; rules and regulations for the operation of vehicles, including equipment requirements, driver qualifications, and operating practices; traffic safety and highway maintenance; and such other matters as may be pertinent.

(5) In recognition of the desire for a degree of national uniformity of size and weight regulations, it is the further objective of the participating jurisdictions to encourage the development of broad, uniform size and weight standards on a national basis under this agreement that are compatible with national standards.

ARTICLE VI. ENTRY INTO FORCE AND WITHDRAWAL

(a) This agreement shall be in force in the State of New Mexico for a period of three years when enacted into law by two or more jurisdictions. Thereafter, this agreement shall become effective as to any other jurisdiction upon its enactment thereof, except as otherwise provided in paragraph (g) of Article III. Not later than July 1, 2000, the Secretary of Highway and Transportation shall recommend to the Legislature whether or not this agreement should be continued based upon its usefulness to the State of New Mexico.

(b) Any participating jurisdiction may withdraw from this agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until 30 days after the designated representative of the withdrawing jurisdiction has given notice in writing of the withdrawal to all the other participating jurisdictions.

ARTICLE VII. CONSTRUCTION AND SEVERABILITY

(a) This agreement shall be liberally construed so as to effectuate the purposes thereof.

(b) The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any participating jurisdiction or of the United States, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement shall not be affected thereby. If this agreement shall be held contrary to the constitution of any jurisdiction participating herein, the agreement shall remain in full force and effect as to the remaining participating jurisdictions and in full force and effect as to the jurisdictions affected as to all severable matters.

ARTICLE VIII. FILING OF DOCUMENTS

(a) A copy of this agreement, its amendments, and rules and regulations promulgated thereunder and interpretations thereof, shall be filed in the highway department of each participating jurisdiction and shall be made available for review by interested parties."

Section 3

Section 3. DESIGNATED REPRESENTATIVE TO COOPERATING COMMITTEE--APPOINTMENT--TERM OF OFFICE.--

The designated representative to the cooperating committee established by Article IV of the Multistate Highway Transportation Agreement shall be jointly appointed by the speaker of the house of representatives and the president pro tempore of the senate. The designated representative may be represented by an alternate jointly appointed by the speaker and the president pro tempore.

Section 4

Section 4. STATUTES PRESCRIBING WEIGHT AND SIZE STANDARDS AND RELATING TO SPECIAL PERMITS--

CONTINUATION.--All statutes prescribing weight and size standards and all statutes relating to special permits shall continue in effect until amended or repealed.

Section 5

Section 5. COOPERATION BY STATE AGENCY WITH COOPERATING COMMITTEE.--Any state agency may cooperate with and assist the cooperating committee within the scope of its authority.

Section 6

Section 6. COOPERATING COMMITTEE REPORT.--A copy of the report submitted to the legislature pursuant to paragraph (d) of Article IV of the Multistate Highway Transportation Agreement shall also be submitted to the state highway and transportation department. All notices required by the cooperating committee bylaws shall be given to the designated representative or his alternate.

Section 7

Section 7. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 1000, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 10, 1997

CHAPTER 192

RELATING TO TAXATION; AMENDING THE GASOLINE TAX ACT, THE PETROLEUM PRODUCTS LOADING FEE ACT AND THE SPECIAL FUELS SUPPLIER TAX ACT; CHANGING THE BOND REQUIREMENTS FOR CERTAIN TAXPAYERS; AMENDING AND ENACTING 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 7-13-2 NMSA 1978 (being Laws 1971, Chapter 207, Section 2, as amended) is amended to read:

"7-13-2. DEFINITIONS.--As used in the Gasoline Tax Act:

A. "aviation gasoline" means gasoline sold for use in aircraft propelled by engines other than turbo-prop or jet-type engines;

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. "distributor" means any person, not including the United States of America or any of its agencies except to the extent now or hereafter permitted by the constitution and laws thereof, who receives gasoline in this state; "distributor" shall be construed so that a person simultaneously may be both a distributor and a retailer or importer;

D. "drip gasoline" means a combustible hydrocarbon liquid formed as a product of condensation from either associated or nonassociated natural or casing head gas and that remains a liquid at room temperature and pressure;

E. "ethanol blended fuel" means gasoline containing a minimum of ten percent by volume of denatured ethanol, of at least one hundred ninety-nine proof, exclusive of denaturants;

F. "fuel 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 gasoline or gasoline is delivered into it;

G. "gallon" means the quantity of liquid necessary to fill a standard United States gallon liquid measure 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;

H. "gasoline" means any flammable liquid hydrocarbon used primarily as fuel for the propulsion of motor vehicles, motorboats or aircraft except for diesel engine fuel, kerosene, liquefied petroleum gas, compressed or liquefied natural gas and products specially prepared and sold for use in aircraft propelled by turbo-prop or jet-type engines;

I. "government-licensed vehicle" means a motor vehicle lawfully displaying a registration plate, as defined in the Motor Vehicle Code, issued by the United States or any state identifying the motor vehicle as belonging to the United States or any of its agencies or instrumentalities or an Indian nation, tribe or pueblo or any of its political subdivisions, agencies or instrumentalities;

J. "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 regardless of whether it is temporarily closed for the purpose of construction, reconstruction, maintenance or repair;

K. "motor vehicle" means any self-propelled vehicle or device that is either subject to registration under Section 66-3-1 NMSA 1978 or used or that 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;

L. "person" means an individual or any other entity, including, to the extent permitted by law, any federal, state or other government or any department, agency, instrumentality or political subdivision of any federal, state or other government;

M. "rack operator" means the operator of a refinery in this state or the owner of gasoline stored at a pipeline terminal in this state;

N. "received" means:

(1)

(a) gasoline 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 gasoline is delivered at the refinery or pipeline terminal to another person registered as a distributor under the Gasoline Tax Act, then it is "received" by the distributor to whom it is so delivered;

(c) when such gasoline is delivered at the refinery or pipeline terminal to another person not registered as a distributor under the Gasoline Tax Act for the account of a person that is so registered, it is "received" by the distributor for whose account it is delivered; and

(d) when gasoline is shipped to a distributor, or for the account of a distributor, away from the refinery or pipeline terminal, it is "received" by the distributor where it is unloaded;

(2) notwithstanding the provisions of Paragraph (1) of this subsection, when gasoline is shipped or delivered from a refinery or pipeline terminal to another refinery or pipeline terminal, such gasoline 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, gasoline 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 distributor, in which case such registered distributor is considered as having received the gasoline;

O. "retailer" means a person who sells gasoline generally in quantities of thirty-five gallons or less and delivers such gasoline into the fuel supply tanks of motor vehicles. "Retailer" shall be construed so that a person simultaneously may be both a retailer and a distributor or wholesaler;

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

Q. "taxpayer" means a person required to pay gasoline tax;

R. "unloaded" means removal of gasoline from tank cars, tank trucks, tank wagons or other types of transportation equipment into a nonmobile container at the place at which the unloading takes place; and

S. "wholesaler" means a person who is not a distributor and who sells gasoline in quantities of thirty-five gallons or more and does not deliver such gasoline into the fuel supply tanks of motor vehicles. "Wholesaler" shall be construed so that a person simultaneously may be a wholesaler and a retailer."

Section 2

Section 2. Section 7-13-4 NMSA 1978 (being Laws 1991, Chapter 9, Section 32) is amended to read:

"7-13-4. DEDUCTIONS--GASOLINE TAX.--In computing the gasoline tax due, the following amounts of gasoline may be deducted from the total amount of gasoline received in New Mexico during the tax period, provided that satisfactory proof thereof is furnished to the department:

A. gasoline received in New Mexico, but exported from this state by a rack operator, distributor or wholesaler other than in the fuel supply tank of a motor vehicle or sold for export by a rack operator or distributor; provided that, in either case:

(1) the person exporting the gasoline is registered in or licensed by the destination state to pay that state's gasoline or equivalent fuel tax;

(2) proof is submitted that the destination state's gasoline or equivalent fuel tax has been paid or is not due with respect to the gasoline; or

(3) the destination state's gasoline or equivalent fuel tax is paid to New Mexico in accordance with the terms of an agreement entered into pursuant to Section 9-11-12 NMSA 1978 with the destination state;

B. gasoline received in New Mexico sold to the United States or any agency or instrumentality thereof for the exclusive use of the United States or any agency or instrumentality thereof. Gasoline sold to the United States includes gasoline delivered into the supply tank of a government-licensed vehicle of the United States; and

C. gasoline received in New Mexico sold to an Indian nation, tribe or pueblo or any political subdivision, agency or instrumentality of that Indian nation, tribe or pueblo for the exclusive use of the Indian nation, tribe or pueblo or any political subdivision, agency or instrumentality thereof. Gasoline sold to an Indian nation, tribe or pueblo includes gasoline delivered into the supply tank of a government-licensed vehicle of the Indian nation, tribe or pueblo."

Section 3

Section 3. A new section of the Gasoline Tax Act is enacted to read:

"BOND REQUIRED OF TAXPAYERS.--

A. Except as provided in Subsection H of this section, every taxpayer shall file with the department a bond on a form approved by the attorney general with a surety company authorized by the state corporation commission to transact business in this state as a surety and upon which bond the taxpayer is the principal obligor and the state the obligee. The bond shall be conditioned upon the prompt filing of true reports and the payment by the taxpayer to the department of all taxes levied by the Gasoline Tax Act, together with all applicable penalties and interest thereon.

B. In lieu of the bond, the taxpayer may elect to file with the department cash or bonds of the United States or New Mexico or of any political subdivision of the state.

C. The total amount of the bond, cash or securities required of any taxpayer shall be fixed by the department and may be increased or reduced by the department at any time, subject to the limitations provided in this section.

D. In fixing the total amount of the bond, cash or securities required of any taxpayer required to post bond, the department shall require an equivalent in total amount to at least two times the amount of the department's estimate of the taxpayer's monthly gasoline tax, determined in such manner as the secretary may deem proper; provided, however, the total amount of bond, cash or securities required of a taxpayer shall never be less than one thousand dollars ($1,000).

E. In the event the department decides that the amount of the existing bond, cash or securities is insufficient to insure payment to this state of the amount of the gasoline tax and any penalties and interest for which the taxpayer is or may at any time become liable, then the taxpayer, upon written demand of the department mailed to the last known address of the taxpayer as shown on the records of the department, shall file an additional bond, cash or securities in the manner, form and amount determined by the department to be necessary to secure at all times the payment by the taxpayer of all taxes, penalties and interest due under the Gasoline Tax Act.

F. A surety on a bond furnished by a taxpayer as required by this section shall be released and discharged from all liability accruing on the bond after the expiration of ninety days from the date upon which the surety files with the department a written request to be released and discharged; provided, however, that such request shall not operate to release or discharge the surety from any liability already accrued or that shall accrue before the expiration of the ninety-day period, unless a new bond is filed during the ninety-day period, in which case the previous bond may be canceled as of the effective date of the new bond. On receipt of notice of such request, the department promptly shall notify the taxpayer who furnished the bond that the taxpayer, on or before the expiration of the ninety-day period, shall file with the department a new bond with a surety satisfactory to the department in the amount and form required in this section.

G. The taxpayer required to file bond with or provide cash or securities to the department in accordance with this section and who is required by another state law to file another bond with or provide cash or securities to the department may elect to file a combined bond or provide cash or securities applicable to the provisions of both this section and the other law, with the approval of the secretary. The amount of the combined bond, cash or securities shall be determined by the department, and the form of the combined bond shall be approved by the attorney general.

H. Every taxpayer who, for the twenty-four month period immediately preceding July 1, 1994, has not been a delinquent taxpayer pursuant to the Gasoline Tax Act is exempt from the requirement pursuant to this section to file a bond. A taxpayer required to file a bond pursuant to the

provisions of this section who, for a twenty-four consecutive month period ending after July 1, 1994, has not been a delinquent taxpayer pursuant to the Gasoline Tax Act may request to be exempt from the requirement to file a bond beginning with the first day of the first month following the end of the twenty-four month period. If a taxpayer exempted pursuant to this subsection subsequently becomes a delinquent taxpayer under the Gasoline Tax Act, the department may terminate the exemption and require the filing of a bond in accordance with this section. If the department terminates the exemption, the termination shall not be effective any earlier than ten days after the date the department notifies the taxpayer in writing of the termination."

Section 4

Section 4. Section 7-13A-2 NMSA 1978 (being Laws 1990, Chapter 124, Section 15, as amended) 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 or required to be registered as a rack operator or distributor for purposes of the Gasoline Tax Act and any person registered or required to be registered as a rack operator or special fuel supplier for purposes of the Special Fuels Supplier Tax Act;

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. "load" means eight thousand gallons of petroleum product;

E. "loading" means the act of placing or causing to be placed any 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 into tank cars, tank trucks, tank wagons or other types of transportation equipment or into any tank or other container from which sales or deliveries not involving transportation are made;

F. "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;

G. "petroleum product" means gasoline as defined in the Gasoline Tax Act and special fuel as defined in the Special Fuels Supplier Tax Act; and

H. "secretary" means, unless the context indicates another meaning, the secretary of taxation and revenue or the secretary's delegate; and

I. "unobligated balance of the corrective action fund" means corrective action fund equity less all known or anticipated liabilities against the fund."

Section 5

Section 5. 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 the 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 issued by:

(1) the United States or any state identifying the motor vehicle as belonging to the United States or any of its agencies or instrumentalities;

(2) the state of New Mexico identifying the vehicle as belonging to the state of New Mexico or any of its political subdivisions, agencies or instrumentalities; or

(3) 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 either subject to registration pursuant to Section 66-3-1 NMSA 1978 or 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 entity, including, to the extent permitted by law, any federal, state or other government or any department, agency, instrumentality or political subdivision of any federal, state or other government;

J. "rack operator" means the operator of a refinery in this state, any person who blends special fuel in this state or the owner of special fuel stored at a pipeline terminal in this state;

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 or kerosene used for the generation of power to propel a motor vehicle;

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 a rack operator or 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;

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 pursuant to the Special Fuels Supplier Tax Act; and

T. "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 6

Section 6. A new section of the Special Fuels Supplier Tax Act, Section 7-16A-2.1 NMSA 1978, is enacted to read:

"7-16A-2.1. WHEN SPECIAL FUEL RECEIVED OR USED--WHO IS REQUIRED TO PAY TAX.--

A. A rack operator receives special fuel at the time and place when the rack operator first loads the special fuel at the refinery or pipeline terminal into tank cars, tank trucks, tank wagons or any other type of transportation equipment or when the rack operator places the special fuel into any tank or other container in this state from which sales or deliveries not involving transportation are made. A rack operator who receives special fuel is required to pay special fuel excise tax on the special fuel received, except as provided otherwise in Subsection B of this section. Special fuel is not received when it is shipped from one refinery or pipeline terminal to another refinery or pipeline terminal.

B. When the rack operator first loads special fuel at the refinery or pipeline terminal into tank cars, tank trucks, tank wagons or any other type of transportation equipment for the account of another person who is registered with the department as a supplier and is taxable under the Special Fuels Supplier Tax Act, however, that person receives the special fuel and is required to pay the special fuel excise tax.

C. Special fuel imported into New Mexico by any means other than in the supply tank of a motor vehicle or by pipeline is received at the time and place it is imported into this state. The person who owns the special fuel at the time of importation receives the special fuel and is required to pay the special fuel excise tax.

D. If special fuel is received within the exterior boundaries of an Indian reservation or pueblo grant and the person required to pay the special

fuel excise tax is immune from state taxation, the special fuel is also received when the special fuel is transported off the reservation or pueblo grant by any means other than in the fuel supply tank of a motor vehicle or by pipeline. Any person who owns special fuel after the special fuel is transported off the reservation or pueblo grant receives the special fuel and is the person required to pay the special fuel excise tax, unless the special fuel excise tax has been paid by a previous owner.

E. Special fuel is used in New Mexico when it is put into the supply tank of any motor vehicle registered, owned or operated by a special fuel user, consumed by a special fuel user in the propulsion of a motor vehicle on the highways of this state or any activity ancillary to that propulsion, or imported into the state in the fuel supply tank of any motor vehicle for the propulsion of the motor vehicle on New Mexico highways."

Section 7

Section 7. Section 7-16A-8 NMSA 1978 (being Laws 1992, Chapter 51, Section 8, as amended) is amended to read:

"7-16A-8. SPECIAL BULK STORAGE USER PERMIT.--

A. The department may issue to a user a special bulk storage user permit that shall entitle that user to own, operate, utilize or maintain bulk storage for the sole purpose of placing special fuel from it into the supply tank of an allowable motor vehicle registered, owned or operated by that user. The fee for the special bulk storage user permit shall be ten dollars ($10.00) per year. Permits shall be issued on a calendar year basis but may be issued for one, two or three years at a time.

B. To secure a special bulk storage user permit, an applicant shall:

(1) file with the department upon a form furnished by the department an application for a special bulk storage user permit;

(2) indicate on the application the number of years, to a maximum of three, for which the applicant requests the permit to be valid;

(3) accompany the application with payment of the special bulk storage user permit fee in the amount of ten dollars ($10.00) per year requested; and

(4) accompany the application with a signed affidavit to the effect that the signer shall use the special fuel from the special bulk storage only for the purpose of placing it into the supply tanks of specified allowable motor vehicles registered, owned or operated by the signer.

C. It is a violation of the Special Fuels Supplier Tax Act for any special bulk storage user to:

(1) sell special fuel from the user's special bulk storage to any other person; or

(2) deliver special fuel from the user's special bulk storage into the supply tank of any motor vehicle except specified allowable motor vehicles registered, owned or operated by the special bulk storage user.

D. "Allowable motor vehicles", for the purposes of this section, includes but is not limited to motor vehicles used primarily for or suitable for use in construction or farming, such as road graders, backhoes, rubber-tired rollers, front loaders, rubber-tired draglines, farm tractors, self-propelled combines or self-propelled reapers.

E. The department may revoke, after due notice and hearing as provided in Section 7-1-24 NMSA 1978, the special bulk storage user permit of any user found to be in violation of any provision of the Special Fuels Supplier Tax Act.

F. Special fuel purchased for bulk storage under a special bulk storage user permit shall not be subject to the special fuel excise tax at the time of purchase, but special fuel excise tax shall be due on any special fuel removed from bulk storage if delivered into the supply tank of a motor vehicle that is operated on the highways of this state.

G. All special fuel acquired, purchased or received under a special bulk storage user permit shall be acquired, purchased or received from a registered supplier. It is unlawful for any person to sell special fuel in bulk quantities to special bulk storage users unless that person is registered pursuant to the Special Fuels Supplier Tax Act."

Section 8

Section 8. Section 7-16A-9 NMSA 1978 (being Laws 1992, Chapter 51, Section 9) is amended to read:

"7-16A-9. TAX RETURNS--PAYMENT OF TAX.--Rack operators and special fuel suppliers shall file special 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 special fuel is received in New Mexico. Payment of the special fuel excise tax shall be made with or prior to filing of the return."

Section 9

Section 9. Section 7-16A-10 NMSA 1978 (being Laws 1992, Chapter 51, Section 10, as amended) is amended to read:

"7-16A-10. DEDUCTIONS--SPECIAL FUEL EXCISE TAX--SPECIAL FUEL SUPPLIERS.--In computing the special fuel excise tax due, the following amounts of special fuel may be deducted from the total amount of special fuel received in New Mexico during the tax period, provided that satisfactory proof thereof is furnished to the department:

A. special fuel received in New Mexico, but exported from this state by a rack operator, special fuel supplier or dealer, other than in the fuel supply tank of a motor vehicle or sold for export by a rack operator or distributor; provided that, in either case:

(1) the person exporting the special fuel is registered in or licensed by the destination state to pay that state's special fuel or equivalent fuel tax;

(2) proof is submitted that the destination state's special fuel or equivalent fuel tax has been paid or is not due with respect to the special fuel; or

(3) the destination state's special fuel or equivalent fuel tax is paid to New Mexico in accordance with the terms of an agreement entered into pursuant to Section 9-11-12 NMSA 1978 with the destination state;

B. special fuel sold to the United States or any agency or instrumentality thereof for the exclusive use of the United States or any agency or instrumentality thereof; special fuel sold to the United States includes special fuel delivered into the supply tank of a government-licensed vehicle;

C. special fuel sold to 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; special fuel sold to the state of New Mexico includes special fuel delivered into the supply tank of a government-licensed vehicle;

D. special fuel sold to 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; special fuel sold to an Indian nation, tribe or pueblo includes special fuel delivered into the supply tank of a government-licensed vehicle;

E. special fuel sold to the holder of a special bulk storage user permit and delivered into special bulk storage pursuant to the provisions of Section 7-16A-8 NMSA 1978; and

F. special fuel used in any manner other than for propulsion of motor vehicles on the highways of this state or activities ancillary to that propulsion."

Section 10

Section 10. Section 7-16A-12 NMSA 1978 (being Laws 1992, Chapter 51, Section 12) is amended to read:

"7-16A-12. CREDIT--SPECIAL FUEL EXCISE TAX--SPECIAL FUEL USERS.--In computing any special fuel excise tax due, all special fuel excise tax paid on special fuel used during the reporting period may be credited against the calculated special fuel excise tax due for that reporting period, provided that satisfactory proof of the special fuel excise tax paid is furnished to the department."

Section 11

Section 11. Section 7-16A-14 NMSA 1978 (being Laws 1992, Chapter 51, Section 14) is amended to read:

"7-16A-14. REGISTRATION NECESSARY TO ENGAGE IN BUSINESS AS RACK OPERATOR, SPECIAL FUEL SUPPLIER OR DEALER.--Each person engaged in the business of selling special fuel in New Mexico as a rack operator, special fuel supplier or dealer shall register as such under the provisions of Section 7-1-12 NMSA 1978."

Section 12

Section 12. Section 7-16A-15 NMSA 1978 (being Laws 1992, Chapter 51, Section 15, as amended) is amended to read:

"7-16A-15. BOND REQUIRED OF SUPPLIER.--

A. Except as provided in Subsection H of this section, every supplier shall file with the department a bond on a form approved by the attorney general with a surety company authorized by the state corporation commission to transact business in this state as a surety and upon which bond the supplier is the principal obligor and the state the obligee. The bond shall be conditioned upon the prompt filing of true reports and the payment by the supplier to the department of all taxes levied by the Special Fuels Supplier Tax Act, together with all applicable penalties and interest thereon.

B. In lieu of the bond, the supplier may elect to file with the department cash or bonds of the United States or New Mexico or of any political subdivision of the state.

C. The total amount of the bond, cash or securities required of any supplier shall be fixed by the department and may be increased or reduced by the department at any time, subject to the limitations provided in this section.

D. In fixing the total amount of the bond, cash or securities required of any supplier required to post bond, the department shall require an equivalent in total amount to at least two times the amount of the department's estimate of the supplier's monthly special fuel excise tax, determined in such manner as the secretary may deem proper; provided, however, the total amount of bond, cash or securities required of a supplier shall never be less than one thousand dollars ($1,000).

E. In the event the department decides that the amount of the existing bond, cash or securities is insufficient to insure payment to this state of the amount of the special fuel excise tax and any penalties and interest for which the supplier is or may at any time become liable, then the supplier shall forthwith, upon written demand of the department mailed to the last known address of the supplier as shown on the records of the department, file an additional bond, cash or securities in the manner, form and amount determined by the department to be necessary to secure at all times the payment by the supplier of all taxes, penalties and interest due pursuant to the Special Fuels Supplier Tax Act.

F. Any surety on any bond furnished by any supplier as required by this section shall be released and discharged from all liability accruing on the bond after the expiration of ninety days from the date upon which the surety files with the department a written request to be released and discharged; provided, however, the request shall not operate to release or discharge the surety from any liability already accrued or that shall accrue before the expiration of the ninety-day period, unless a new bond is filed during the ninety-day period, in which case the previous bond may be canceled as of the effective date of the new bond. On receipt of notice of such request, the department shall notify promptly the supplier who furnished the bond that the supplier shall, on or before the expiration of the ninety-day period, file with the department a new bond with a surety satisfactory to the department in the amount and form required in this section.

G. The supplier required to file bond with or provide cash or securities to the department in accordance with this section and who is required by any other state law to file another bond with or provide cash or securities to the department may elect to file a combined bond or provide cash or securities applicable to the provisions of both this section and the other law, with the approval of the secretary. The amount of the combined bond, cash or securities shall be determined by the department, and the form of the combined bond shall be approved by the attorney general.

H. On July 1, 1994, every supplier who, for the twenty-four month period immediately preceding that date, has not been a delinquent taxpayer under the Special Fuels Supplier Tax Act or the Special Fuels Tax Act is exempt from the requirement pursuant to this section to file a bond. A supplier required to file a bond pursuant to the provisions of this section who, for a twenty-four consecutive month period ending after July 1, 1994, has not been a delinquent taxpayer pursuant to either the Special Fuels Supplier Tax Act or the Special Fuels Tax Act may request to be exempt from the requirement to

file a bond beginning with the first day of the first month following the end of the twenty-four month period. If a supplier exempted pursuant to this subsection subsequently becomes a delinquent taxpayer pursuant to the Special Fuels Supplier Tax Act, the department may terminate the exemption and require the filing of a bond in accordance with this section. If the department terminates the exemption, the termination shall not be effective any earlier than ten days after the date the department notifies the supplier in writing of the termination."

Section 13

Section 13. Section 7-16A-19 NMSA 1978 (being Laws 1992, Chapter 51, Section 19, as amended) is amended to read:

"7-16A-19. TEMPORARY SPECIAL FUEL USER PERMITS.--

A. To prevent evasion of the special fuel excise tax, special fuel users whose vehicles are not registered with the department shall acquire a temporary special fuel user permit from the department before operating the unregistered motor vehicle on the highways of New Mexico. The temporary special fuel user permit shall be valid for one entrance and one exit of the state, within a period that shall not exceed forty-eight hours from the time of issuance.

B. The fee for a temporary special fuel user permit is five dollars ($5.00) for each motor vehicle.

C. It is a violation of the Special Fuels Supplier Tax Act for any person to act as a temporary special fuel user without obtaining a valid temporary special fuel user permit from the department."

Section 14

Section 14. A new section of the Special Fuels Supplier Tax Act is enacted to read:

"MANIFEST OR BILL OF LADING REQUIRED WHEN TRANSPORTING SPECIAL FUELS.--Every person transporting special fuels from a refinery or other facility at which special fuel is produced, refined, manufactured, blended or compounded or from a pipeline terminal in this state, importing special fuels into this state or exporting special fuels from this state, other than by pipeline or in the fuel supply tanks of motor vehicles, shall carry a manifest or bill of lading in form and content as prescribed by or acceptable to the department. The manifest or bill of lading shall be signed by the consignor and by every person accepting the special fuel or any part of it, with a notation as to the amount accepted. If a manifest or bill of lading is not required to be carried by the terms of this section, any person transporting special fuels without such a manifest or bill of lading shall, upon demand, furnish proof acceptable to the department that the special fuels so transported

were legally acquired by a registered supplier who assumed liability for payment of the tax imposed by the Special Fuels Supplier Tax Act."

Section 15

Section 15. TEMPORARY PROVISION.--Gasoline received by a distributor pursuant to the Gasoline Tax Act or special fuel received by a supplier pursuant to the Special Fuels Supplier Tax Act prior to the effective date of this act shall be subject to gasoline tax or special fuel excise tax, as appropriate, pursuant to the provisions of the Gasoline Tax Act or Special Fuels Supplier Tax Act in effect immediately prior to the effective date of this act.

Section 16

Section 16. EFFECTIVE DATE.--The effective date of the provisions of this act is June 1, 1997, provided that, if this act is enacted without an emergency clause, the effective date is July 1, 1997.

Section 17

Section 17. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 1257, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 10, 1997

CHAPTER 193

RELATING TO SCHOOL DISTRICTS; ENACTING THE EDUCATION TECHNOLOGY EQUIPMENT ACT; AMENDING A CERTAIN SECTION OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

SECTION 1. SHORT TITLE.--Sections 1 through 16 of this act may be cited as the "Education Technology Equipment Act".

SECTION 2. PURPOSE--The purpose of the Education Technology Equipment Act is to implement the provision of Article IX, Section 11 of the constitution of New Mexico, as approved by the voters of the state of New Mexico at the general election held in November, 1996, which declares that a school district may create a debt under the constitution of New Mexico by entering into a lease-purchase arrangement to

acquire education technology equipment without submitting the proposition to a vote of the qualified electors of the school district.

Section 3

Section 3. DEFINITIONS.--As used in the Education Technology Equipment Act:

A. "debt" means an obligation payable from ad

valorem property tax revenues or the general fund of a school district and that may be secured by the full faith and credit of a school district and a pledge of its taxing powers;

B. "education technology equipment" means tools used in the educational process that constitute learning resources and may include closed-circuit television systems, educational television and radio broadcasting, cable television, satellite, copper and fiber optic transmission, computer, video and audio laser and CD ROM discs, video and audio tapes or other technologies and the maintenance, equipment and computer infrastructure information, techniques and tools used to implement technology in classrooms and library and media centers;

C. "lease-purchase arrangement" means a financing arrangement constituting debt of a school district pursuant to which periodic lease payments composed of principal and interest components are to be paid to the holder of the lease-purchase arrangement and pursuant to which the owner of the education technology equipment may retain title to or a security interest in the equipment and may agree to release the security interest or transfer title to the equipment to the school district for nominal consideration after payment of the final periodic lease payment. "Lease-

purchase arrangement" also means any debt of the school district incurred for the purpose of acquiring education technology equipment pursuant to the Education Technology Act whether designated as a lease, bond, note, loan, warrant, debenture, obligation or other instrument evidencing a debt of the school district;

D. "local school board" means the governing body of a school district; and

E. "school district" means an area of land established as a political subdivision of the state for the administration of public schools and segregated geographically for taxation and bonding purposes.

Section 4

Section 4. NOTICE OF PROPOSED LEASE-PURCHASE ARRANGEMENTS.--When a school district contemplates entering into a lease-purchase arrangement payable in whole or in part from ad valorem taxes, the local school board, before initiating any proceedings for approval of such lease-purchase arrangement, shall forward to the school budget planning unit of the state department of public education, a written notice of the proposed lease-purchase arrangement.

Section 5

Section 5. SCHOOL BUDGET PLANNING UNIT OF THE STATE DEPARTMENT OF PUBLIC EDUCATION TO FURNISH INFORMATION, TRANSCRIPTS OF PROCEEDINGS AND DISPOSITION.--The school budget planning unit of the state department of public education, upon the receipt of the notice mentioned in Section 4 of the Education Technology Equipment Act shall furnish all necessary information with reference to the valuation, present outstanding bonded indebtedness, present outstanding lease-purchase arrangements and limitations as to tax rates and debt contracting power and other information useful to the local school board in the consideration of a proposed lease-purchase arrangement. Upon entering into a lease-purchase arrangement, the local school board shall prepare two true and complete transcripts of proceedings relating to the lease-purchase arrangement, one to be immediately filed with the school budget planning unit of the department of public education and one to be kept by the local school board.

Section 6

Section 6. TAX LEVY FOR PAYMENT OF LEASE-PURCHASE AGREEMENT.--The officials charged by law with the duty of levying ad valorem taxes for the payment of bonds and interest shall, in the manner provided by law, make an annual levy sufficient to meet the payments due on lease-purchase arrangements. Nothing herein contained shall be so construed as to prevent a school district from applying any other funds that may be in its general fund or investment income actually received from investments and available for that purpose to the payments due or any prepayment premium payable in connection with such lease-purchase arrangements as the same become due; and upon such payments, the levy or levies herein provided may thereupon to that extent be reduced.

Section 7

Section 7. LEASE-PURCHASE ARRANGEMENTS--TERMS.--Lease purchase arrangements may:

A. have interest, appreciated principal value, or any part thereof, payable at intervals or at maturity as may be determined by the local school board;

B. be subject to prior redemption or prepayment at the option of the local school board as 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 local school board;

C. have a final payment date or mature at any time or times not exceeding five years after the date of issuance;

D. be payable at one time or in installments or may be in such other form as may be determined by the local school board;

E. be priced 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. be sold or issued at public sale, negotiated sale or private sale to the New Mexico finance authority.

Section 8

Section 8. RESOLUTION AUTHORIZING LEASE-PURCHASE ARRANGEMENTS.--At a regular or special meeting called for the purpose of approving a lease-purchase arrangement as authorized in the Education Technology Equipment Act, the local school board may authorize and approve a lease purchase arrangement by adoption of a resolution that:

A. declares the necessity for entering into the lease-purchase arrangement;

B. authorizes entering into the lease-purchase arrangement by an affirmative vote of a majority of all the members of the local school board; and

C. designates the sources of payment for the lease-purchase arrangement.

Section 9

Section 9. PUBLICATION OF NOTICE--VALIDATION--LIMITATION OF ACTION.--

A. After adoption of a resolution approving a lease-purchase arrangement, the local school board shall publish notice of the adoption of the resolution once in a newspaper of general circulation in the school district.

B. After the passage of thirty days from the publication required by Subsection A of this section, any action attacking the validity of the proceedings taken by the local school board preliminary to and in the authorization of and entering into the lease-purchase arrangement described in the notice is perpetually barred.

Section 10

Section 10. REFUNDING OR REFINANCING LEASE-PURCHASE ARRANGEMENTS.--School districts are authorized to enter into lease-purchase arrangements for the purpose of refunding or refinancing any lease-purchase arrangements then outstanding, including the payment of any prepayment of redemption premiums thereon and any interest accrued or to accrue to the date of purchase, prepayment, redemption or maturity of the outstanding lease-purchase arrangements. Until the proceeds of the lease-purchase arrangements issued for the purpose of refunding or refinancing outstanding lease-purchase arrangements are applied to the purchase, prepayment, redemption or retirement of the outstanding lease-purchase arrangements, the proceeds may be placed in escrow and invested and reinvested. The interest, income and profits, if any, earned or realized on any such investment may, in the discretion of the local school board, also be applied to the payment of the outstanding lease-purchase arrangements to be refunded or refinanced by purchase, prepayment, redemption or retirement, as the case may be. After the terms of the escrow have been fully satisfied and carried out, any balance of such proceeds and interest, if any, earned or realized on the investments thereof may be returned to the local school board to be used for payment of the refunding or refinancing lease-purchase arrangement. All such refunding or refinancing lease-purchase arrangement shall be entered into under, secured and subject to the provisions of the Education Technology Equipment Act in the same manner and to the same extent as any other lease-purchase arrangements entered into pursuant to that act.

Section 11

Section 11. AGREEMENT OF THE STATE.--The state does hereby pledge to and agree with the holders of any lease-purchase arrangement entered into under the Education Technology Equipment Act that the state will not limit or alter the rights hereby vested in school districts to fulfill the terms of any lease-purchase arrangement or in any way impair the rights and remedies of the holders of lease-purchase arrangements until the payments due thereon, and all costs and expenses in connection with any action or proceedings by or on behalf of those holders, are fully met and discharged. School districts are authorized to include this pledge and agreement of the state in any lease-purchase arrangement.

Section 12

Section 12. LEGAL INVESTMENTS FOR PUBLIC OFFICERS AND FIDUCIARIES.--Lease-purchase arrangements entered into under the authority of the

Education Technology Equipment Act shall be legal investments in which all insurance companies, banks and savings and loan associations organized under the laws of the state, public officers and public bodies and all administrators, guardians, executors, trustees and other fiduciaries may properly and legally invest funds.

Section 13

Section 13. TAX EXEMPTION.--The state covenants with the purchasers and all subsequent holders and transferees of lease-purchase arrangements entered into by the local school boards, in consideration of the acceptance of and payment for the lease-purchase arrangements entered into pursuant to Technology Equipment Act, that lease-purchase arrangements and the income from the lease-purchase arrangements shall at all times be free from taxation by the state, except for estate or gift taxes and taxes on transfers.

Section 14

Section 14. CUMULATIVE AND COMPLETE AUTHORITY.--The Education Technology Equipment Act shall be deemed to provide an additional and alternative method for acquiring education technology equipment authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as a derogation of any powers now existing. The act shall be deemed to provide complete authority for acquiring education technology equipment and entering into lease-purchase arrangements contemplated thereby and no other approval of any state agency or officer, except as provided therein, shall be required with respect to any lease-purchase arrangements and the local school board acting thereunder need not comply with the requirements of any other law applicable to the issuance of debt by school districts.

Section 15

Section 15. LIBERAL INTERPRETATION.--The Education Technology Equipment Act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to the effect of the purposes of the act.

Section 16

Section 16. SEVERABILITY.--If any part or application of the Education Technology Equipment Act is held invalid, the remainder or its application to other circumstances shall not be affected.

Section 17

Section 17. Section 7-37-8 NMSA 1978 (being Laws 1978, Chapter 128, Section 1, as amended) is amended to read:

"7-37-8. SCHOOL TAX RATES.--No later than August 15 of each year, the state department of public education shall submit to the secretary of finance and administration the property tax rates for the succeeding tax year for each school district and the commission on higher education shall submit to the secretary of finance and administration the property tax rates for the succeeding tax year for each technical and vocational district, area vocational school district, junior college district and branch community college district. The rates required to be submitted pursuant to this section shall separately state by county and by school district the rate to be levied for operational purposes and the rate to be levied for payment of principal and interest on general obligation debt issued or entered into by the district."

Section 18

Section 18. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 1304, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 10, 1997

CHAPTER 194

RELATING TO EDUCATION; ELIMINATING THE COMPULSORY SCHOOL ATTENDANCE EXEMPTION FOR CERTAIN SPECIAL PERSONS.

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

Section 1

Section 1. Section 22-12-2 NMSA 1978 (being Laws 1967, Chapter 16, Section 170, as amended) is amended to read:

"22-12-2. COMPULSORY SCHOOL ATTENDANCE--

RESPONSIBILITY.--

A. Any qualified student and any person who because of his age is eligible to become a qualified student as defined by the Public School Finance Act until attaining the age of majority shall attend a public school, a private school, a home school or a state institution. A person shall be excused from this requirement if:

(1) the person is specifically exempted by law from the provisions of this section;

(2) the person has graduated from a high school;

(3) the person is at least sixteen years of age and has been excused by the local school board or its authorized representative upon a finding that the person will be employed in a gainful trade or occupation or engaged in an alternative form of education sufficient for the person's educational needs and the parent, guardian or other person having custody and control consents; or

(4) with consent of the parent, guardian or person having custody and control of the person to be excused, the person is excused from the provisions of this section by the superintendent of schools of the school district in which the person is a resident and the person is under eight years of age.

B. A person subject to the provisions of the Compulsory School Attendance Law shall attend school for at least the length of time of the school year that is established in the school district in which the person is a resident.

C. Any parent, guardian or person having custody and control of a person subject to the provisions of the Compulsory School Attendance Law is responsible for the school attendance of that person."

SENATE BILL 382

Approved April 10, 1997

CHAPTER 195

RELATING TO CREDIT UNIONS; MAKING CHANGES IN THE PROVISIONS OF THE CREDIT UNION REGULATORY ACT, INCLUDING CHANGING ITS SHORT TITLE; AMENDING AND

REPEALING SECTIONS OF THE NMSA 1978; REPEALING LAWS 1987, CHAPTER 311, SECTION 68.

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

Section 1

Section 1. Section 58-11-1 NMSA 1978 (being Laws 1987, Chapter 311, Section 1) is amended to read:

"58-11-1. SHORT TITLE.--Chapter 58, Article 11 NMSA 1978 may be cited as the "Credit Union Act"."

Section 2

Section 2. Section 58-11-2 NMSA 1978 (being Laws 1987, Chapter 311, Section 2, as amended) is amended to read:

"58-11-2. DEFINITIONS.--As used in the Credit Union Act:

A. "board member" means a member of the board of directors of a credit union;

B. "capital" means share accounts, membership shares, reserves and undivided earnings;

C. "credit union" means a cooperative, nonprofit, financial institution organized under or subject to the Credit Union Act for the purposes of encouraging thrift among its members, creating a source of credit at fair and reasonable rates of interest and providing an opportunity for its members to use and control their own money on a democratic basis in order to improve their economic and social condition;

D. "deposit account" means a balance held by a credit union and established by a person in accordance with standards specified by the credit union, including balances designated as deposits, deposit certificates, checking accounts or other names. Ownership of a deposit account does not confer membership or voting rights and does not represent an interest in the capital of the credit union upon dissolution or conversion to another type of institution;

E. "director" means the director of the financial institutions division of the regulation and licensing department;

F. "division" means the financial institutions division of the regulation and licensing department;

G. "executive officer" means any person who is responsible for the management of the credit union as provided in the bylaws of the credit union and includes the chief executive officer, the president, a vice president, the credit union manager, an assistant manager or a person who is assigned and performs the management duties appropriate to those offices;

H. "governmental unit" means any board, agency, department, authority, instrumentality or other unit or organization of the United States, this state or any political subdivision thereof;

I. "immediate family" means persons related by blood or marriage as well as foster and adopted children;

J. "insolvent" means the condition that results when the cash value of assets is less than the liabilities and members' share and deposit accounts;

K. "insuring organization" means the national credit union administration or any other insurer which has been approved by the director to provide aid and financial assistance to credit unions that are in the process of liquidation or are incurring financial difficulty in order that the share and deposit accounts in credit unions shall be protected or guaranteed against loss without limit or up to a specified level for each account;

L. "membership share" means a balance held by a credit union and established by a member in accordance with standards specified by the credit union. Each member may own only one membership share. Ownership of a membership share represents an interest in the capital of the credit union upon dissolution or conversion to another type of institution;

M. "organization" means any corporation, association, partnership, society, firm, syndicate, trust or other legal entity;

N. "person" means any individual, organization or governmental unit;

O. "risk assets" means all assets of the credit union except those exempted by the director by regulation;

P. "service facility" means any building, machine or device, whether mechanical, electronic or otherwise, that is operated or maintained, in whole or in part, to provide services to members; and

Q. "share account" means a balance held by a credit union and established by a member in accordance with standards specified by the credit union, including balances designated as shares, share certificates, share draft accounts or other similar names. Ownership of a share account confers membership and voting rights and represents an interest in the capital of the credit union upon dissolution or conversion to another type of institution."

Section 3

Section 3. Section 58-11-3 NMSA 1978 (being Laws 1987, Chapter 311, Section 3, as amended) is amended to read:

"58-11-3. SUPERVISION AND REGULATION.--

A. The director shall be responsible for the supervision and regulation of credit unions organized under the Credit Union Act or previously organized under the Credit Union Act.

B. The director may delegate to any officer or employee of the division the power to perform any of his duties, except those authorized under Subsection D, E, F, G, H, I, J, L or M of this section.

C. The director may prescribe rules or regulations to implement any provision of the Credit Union Act and to define any term not defined in that act. Such rules or regulations shall serve to foster and maintain an effective level of credit union services and the security of member accounts. Prior to establishment of a rule or regulation, the director shall give written notice to all credit unions affected by the terms and general contents of a proposed rule or regulation. The director may hold a public hearing to consider whether to adopt a proposed rule or regulation. If within twenty days after the notice is given at least two credit unions request a public hearing, it shall be held to consider whether to adopt the proposed rule or regulation. The director shall conduct any hearing held to consider a proposed rule or regulation.

D. The director may require a credit union to establish or activate the use of membership shares when it is deemed necessary for the safety and soundness of that credit union.

E. The director may restrict withdrawals from share accounts or deposit accounts or both from any credit union when he finds circumstances make that restriction necessary for the proper protection of shareholders or depositors.

F. The director may, after providing at least thirty days' prior notice and a hearing, issue cease and desist orders whenever it appears to him upon competent and substantial evidence that a credit union is engaged or has engaged in an unsafe or unsound practice or is violating or has violated a material provision of the credit union's bylaws, any law, rule or regulation or any condition imposed in writing by the director or any written agreement made with the director.

G. The director may remove from office and prohibit from further participation in any manner in the conduct of the affairs of a credit union any board member, executive officer or committee member if the director determines that the board member, executive officer or committee member:

(1) has violated any law, rule, regulation or final cease and desist order;

(2) has engaged or participated in an unsafe or unsound practice in connection with the credit union; or

(3) has committed or engaged in any act, omission or practice that constitutes a breach of such party's fiduciary responsibility, and:

(a) the credit union has suffered or will probably suffer financial loss or other damage;

(b) the interest of the credit union's members have been or could be prejudiced; or

(c) such party has received financial gain or other benefit by reason of such violation, practice or breach, and: 1) involves personal dishonesty on the part of such party; or 2) demonstrates such party's unfitness to serve as a board member, executive officer or committee member or to otherwise participate in the conduct of the affairs of a credit union.

H. Whenever the director makes the determination to remove any board member, executive officer or committee member from office or to prohibit any further participation by the person in the

conduct of the affairs of the credit union, he shall give notice of his intention in writing, stating the grounds for such removal or prohibition from participation and providing for a hearing no earlier than thirty days or later than sixty days after such notice has been served on the board member, executive officer or committee member.

I. If the director determines that, pending the hearing for removal or prohibition from participating in the conduct of the affairs of the credit union, it is in the best interest of the credit union, he may suspend the board member, executive officer or committee member. Any suspension order shall be in writing and shall become effective upon service.

J. Unless a suspension order is stayed by a district court in the judicial district where the principal office of the credit union is located or in the first judicial district court of the state of New Mexico within ten days after the service of the order on the party suspended, it shall remain in force until a final order is issued after the hearing for removal. The district courts named in this paragraph shall have jurisdiction to stay such suspension or prohibition.

K. The director has the power to subpoena witnesses, compel their attendance, require the production of evidence, administer oaths and examine any person under oath in connection with any subject relating to a duty imposed upon or a power vested in the director.

L. If it appears that any credit union has willfully violated the Credit Union Act or its bylaws or is operating in an unsafe and unsound manner, the director may issue an order temporarily suspending the credit union's operations. The following provisions shall then apply:

(1) the board of directors of the credit union shall be given notice by certified mail of such suspension, which notice shall include a list of the reasons for such suspension and a list of the specific violation of the Credit Union Act or the credit union's bylaws, if any. The director shall also notify the insuring organization of the credit union of any such suspension;

(2) upon receipt of such suspension notice, the credit union shall cease all operations except those authorized by the director. The board of directors shall then file with the director a reply to the suspension notice and may request a hearing to present a plan of corrective actions proposed if the board desires to continue operations. The board may request that the credit union be declared insolvent and a liquidating agent be appointed;

(3) upon receipt from the suspended credit union of evidence that the conditions causing the order of suspension have been corrected, the director may revoke the suspension notice, permit the credit union to resume normal operations and notify the insuring organization of such action;

(4) if the director, after issuing notice of suspension and providing for a hearing, rejects the credit union's plan to continue operations, he may issue a notice of involuntary liquidation and appoint a liquidating agent. The credit union, within thirty days of issuance of the notice, may apply to the court of appeals for an order to stay execution of such action;

(5) if within the suspension period the credit union fails to answer the suspension notice or request a hearing, the director may then revoke the credit union's charter, appoint a liquidating agent and liquidate the credit union; and

(6) in the event of liquidation, the assets of the credit union or the proceeds from any disposition of the assets shall be applied and distributed in the following sequence:

(a) costs and expenses of liquidation;

(b) secured creditors up to the value of their collateral;

(c) wages due the employees of the credit union;

(d) costs and expenses incurred by creditors in successfully opposing the release of the credit union from certain debts as allowed by the director or liquidating agent;

(e) taxes owed to the United States or any other governmental units;

(f) debts owed to the United States or other governmental units;

(g) general creditors, secured creditors to the extent their claims exceed the value of their collateral and owners of deposit accounts to the extent such accounts are uninsured; and

(h) members, to the extent of uninsured share accounts and the organization that insured the accounts of the credit union.

M. The director has the following authority with respect to the liquidation or conservatorship of any credit union:

(1) the director may, at his sole discretion and without notice, appoint himself, the insuring organization or any other person as conservator to immediately take possession and control of the business and assets of any credit union in any case in which the director determines that such action is necessary to conserve the assets of the credit union or to protect the interests of the members of that credit union. Any credit union may, by a resolution of its board of directors, consent to any such action by the director;

(2) not later than ten days after the date of which the director or his designee takes possession and control of the business and assets of a credit union pursuant to Paragraph (1) of this subsection, the credit union may apply to the court of appeals for an order requiring the director to show cause why he or his designee should not be enjoined from continuing such possession and control;

(3) except as provided in Paragraph (2) of this subsection, the director or his designee may maintain possession and control of the business and assets of the credit union and may operate the credit union until such time as:

(a) the director permits the credit union to continue business, subject to such terms and conditions as he imposes; or

(b) the credit union is liquidated in accordance with this section;

(4) the director may appoint such agents as he considers necessary in order to assist in carrying out the duties of the conservator under this section; and

(5) all expenses incurred by the director in exercising his authority under this section with respect to the liquidation or conservatorship of any credit union shall be paid out of the assets of that credit union."

Section 4

Section 4. Section 58-11-5 NMSA 1978 (being Laws 1987, Chapter 311, Section 5, as amended) is amended to read:

"58-11-5. EXAMINATIONS--SUPERVISION FEES.--

A. The director shall examine or cause to be examined each credit union. A credit union and any of its board members, executive officers, agents and employees shall give the director or his representatives full access to all books, papers, securities, records and other desired sources of information under their control.

B. A copy of the report of any such examination shall be forwarded to the board of directors of the credit union examined within thirty days after completion of the report. The report shall contain comments relative to the management of the affairs of the credit union and its general financial condition. The board of directors shall meet to consider matters contained in the report and shall respond to the director in writing, acknowledging receipt of the report and setting forth corrective measures taken or contemplated with respect to any adverse comments by the examiner.

C. In lieu of examination, the director may accept an audit report of the condition of a credit union, conducted by a certified public accountant or other qualified person or firm approved by the director. The cost of the audit shall be borne by the credit union.

D. Each credit union shall annually pay to the director a supervision fee in accordance with the following schedule:

If the credit union's total assets are--		The fee is--		
Over	But Not Over	This Amount	Plus	Of Excess Over
- 0 -	49,999	400.00		
50,000	100,000	400.00	1.7227	1,000 50,000
100,001	250,000	400.00	1.1021	1,000 100,000
250,001	500,000	400.00	0.9095	1,000 250,000
500,001	1,000,000	575.13	0.5136	1,000 500,000
1,000,001	2,000,000	833.42	0.3959	1,000 1,000,000
2,000,001	5,000,000	1,226.04	0.3470	1,000 2,000,000
5,000,001	20,000,000	2,267.21	0.1800	1,000 5,000,000
20,000,001	50,000,000	4,898.96	0.1680	1,000 20,000,000
50,000,001	100,000,000	9,854.85	0.1551	1,000 50,000,000
100,000,001		17,642.07	0.1423	1,000 100,000,000.

The supervision fee shall be calculated as of December 31. The fee shall be paid on or before the March 1 following the asset computation. For failure to pay the supervision fee when due, unless excused for cause by the director, the credit union shall pay to the division fifty dollars ($50.00) for each day of its delinquency. The director may prescribe lower supervision fees by regulation and in determining those fees, he may use criteria other than the total assets of the credit union paying the fee.

E. If at any time the director deems it necessary to examine a credit union more than once in any calendar year and if the credit union is determined to have violated the Credit Union Act or other state laws or federal laws or regulations, the credit union shall pay to the director reimbursement of the actual costs of that examination or those examinations."

Section 5

Section 5. Section 58-11-9 NMSA 1978 (being Laws 1987, Chapter 311, Section 9, as amended) is amended to read:

"58-11-9. CONFLICTS OF INTEREST.--No officer or employee of the division having supervisory authority over credit unions shall be a member, executive officer, director, attorney or employee of any credit union incorporated under or subject to the provisions of the Credit Union Act; receive, directly or indirectly, any payment of gratuity from any such credit union; or be indebted to or engage in the negotiation of loans for others with any such credit union."

Section 6

Section 6. Section 58-11-10 NMSA 1978 (being Laws 1987, Chapter 311, Section 10) is amended to read:

"58-11-10. FORMATION OF CREDIT UNION.--

A. Any seven or more residents of this state of legal age that share the common bond referred to in Section 58-11-21 NMSA 1978 may organize a credit union and become charter members thereof by complying with this section.

B. The organizers shall prepare, adopt and execute in triplicate articles of organization and agree to the terms thereof. The articles shall state:

(1) the credit union's name and the location of the proposed credit union's principal place of business;

(2) that the existence of the credit union shall be perpetual;

(3) the names and addresses of the organizers; and

(4) that each member shall subscribe to one share of the credit union.

C. The organizers shall prepare, adopt and execute in duplicate bylaws consistent with the Credit Union Act for the general governance of the credit union.

D. The organizers shall select at least five persons who are eligible for membership and who agree to become members and serve on the board of directors and at least three other persons who are eligible for membership and who agree to become members and serve on the supervisory committee. The persons selected to serve on the board of directors and supervisory committee shall execute an agreement to serve in these capacities until the first annual meeting or until the election of their respective successors, whichever is later.

E. The organizers shall forward the triplicate articles of organization, the duplicate bylaws and the agreements to serve to the director who shall act upon the application within sixty days. The director shall issue a certificate of approval if the articles and bylaws are in conformity with applicable provisions of the Credit Union Act and he is satisfied that:

(1) the characteristics of the common bond set forth in the proposed bylaws are favorable to the economic viability of the

proposed credit union;

(2) the reputation and character of the initial board of directors and supervisory committee provide assurance that the credit union's affairs will be properly administered; and

(3) the share and deposit insurance requirements of Section 58-11-48 NMSA 1978 will be met.

F. The following provisions apply to issuance and denial of certificate:

(1) if the director issues a certificate of approval, he shall return a copy of the bylaws to the organizers and, upon payment of the required fee, file the triplicate originals of the articles of organization with the state corporation commission; and

(2) if the director denies a certificate of approval, he shall notify the organizers and set forth his reasons for the denial. The organizers may appeal his decision to the court of appeals within thirty days after receipt of the notice of denial.

G. The organizers shall not transact any credit union business until a certificate of approval has been received and shall accept no payments on shares or deposit until insurance of accounts has been obtained as provided by Section 58-11-48 NMSA 1978.

H. Any credit union, the articles of organization of which have been approved by the director, shall commence business within six months after satisfactory proof has been filed with the director showing that insurance of share and deposit accounts has been obtained. Upon showing of good cause for failure to commence business within this time, the director may grant a reasonable extension to overcome the reason for delay. Failure to commence business as required in this section or failure to obtain insurance of accounts within one year from the date of approval of the articles of organization constitutes grounds for forfeiture of the credit union's articles of organization."

Section 7

Section 7. Section 58-11-11 NMSA 1978 (being Laws 1987, Chapter 311, Section 11) is amended to read:

"58-11-11. FORMS OF ARTICLES AND BYLAWS.--In order to simplify the organization of credit unions, the director shall cause to be prepared model articles of organization and bylaws, consistent with the Credit Union Act, which may be used by credit union organizers for their guidance. Such articles of organization and bylaws shall be available to persons desiring to organize a credit union."

Section 8

Section 8. Section 58-11-13 NMSA 1978 (being Laws 1987, Chapter 311, Section 13) is amended to read:

"58-11-13. USE OF NAME EXCLUSIVE.--

A. The name of every credit union organized under or subject to the Credit Union Act shall include the phrase "credit union". No credit union shall adopt a name either identical to the name of any other credit union doing business in this state or so similar to the name of any other credit union doing business in this state as to be misleading or to cause confusion.

B. No person other than a credit union organized under or subject to the Credit Union Act, the Federal Credit Union Act or a credit union authorized to do business in this state under Section 58-11-16 NMSA 1978, an association of credit unions or an organization, corporation or association whose membership or ownership is primarily limited to credit unions or credit union organizations shall use a name or title containing the phrase "credit union" or any derivation thereof, represent itself as a credit union or conduct business as a credit union.

C. Violation of this section is a fourth degree felony.

D. The director may petition the district court of Santa Fe county to enjoin a violation of this section."

Section 9

Section 9. Section 58-11-14 NMSA 1978 (being Laws 1987, Chapter 311, Section 14) is amended to read:

"58-11-14. SERVICE FACILITIES.--

A. A credit union may change its principal place of business within this state upon thirty days notice to the director.

B. A credit union may provide services through service facilities.

C. A credit union may individually or in conjunction with other credit unions or other financial organizations operate or maintain automated terminals or other service facilities."

Section 10

Section 10. Section 58-11-15 NMSA 1978 (being Laws 1987, Chapter 311, Section 15) is amended to read:

"58-11-15. FISCAL YEAR.--The fiscal year of each credit union organized under or subject to the Credit Union Act shall end on the last day of December."

Section 11

Section 11. Section 58-11-16 NMSA 1978 (being Laws 1987, Chapter 311, Section 16) is amended to read:

"58-11-16. OUT-OF-STATE CREDIT UNIONS.--A credit union organized under the laws of another state or territory of the United States may conduct business as a credit union in this state with the approval of the director. Before granting the approval, the supervisory authority of such credit union shall certify that the out-of-state credit union:

A. is a credit union organized under laws similar to the Credit Union Act;

B. is financially solvent;

C. has account insurance approved for credit unions incorporated under or subject to the Credit Union Act; and

D. needs to conduct business in this state to adequately serve its members in this state."

Section 12

Section 12. Section 58-11-17 NMSA 1978 (being Laws 1987, Chapter 311, Section 17) is amended to read:

"58-11-17. DOING BUSINESS OUTSIDE THIS STATE.--A credit union organized under or subject to the Credit Union Act may do business outside this state, provided that it is legal for it to do so in the foreign state or territory involved. If the director deems it necessary to conduct an examination of theout-of-state office of a credit union, the actual expenses of the examination shall be paid by the credit union examined if the director determines it has violated the provisions of the Credit Union Act or other state laws or federal laws or regulations."

Section 13

Section 13. Section 58-11-18 NMSA 1978 (being Laws 1987, Chapter 311, Section 18) is amended to read:

"58-11-18. POWERS OF CREDIT UNIONS.--In addition to the powers authorized elsewhere in the Credit Union Act, a credit union may:

A. enter into contracts of any nature;

B. sue and be sued;

C. adopt, use and display a corporate seal;

D. acquire, lease, hold, assign, pledge, hypothecate, sell and discount or otherwise dispose of property or assets, either in whole or in part, necessary or incidental to its operations;

E. lend funds to members;

F. borrow from any source, provided that a credit union shall have prior approval of the director before borrowing in excess of an aggregate of fifty percent of its capital;

G. purchase the assets of another credit union, subject to the approval of the director;

H. offer various financial services approved by the director;

I. hold membership in other credit unions organized under the Credit Union Act, the Federal Credit Union Act or other acts and in associations and organizations controlled by or fostering the interests of credit unions, including a central liquidity facility organized under state or federal law;

J. engage in activities and programs as requested by any governmental unit;

K. act as fiscal agent and receive payments on deposit accounts from a governmental unit; and

L. sell or offer to sell insurance to the same extent allowed by law to other state chartered lending institutions."

Section 14

Section 14. Section 58-11-19 NMSA 1978 (being Laws 1987, Chapter 311, Section 19) is amended to read:

"58-11-19. INCIDENTAL POWERS.--A credit union may exercise all incidental powers that are convenient, suitable or necessary to enable it to carry out its purposes as provided in its bylaws."

Section 15

Section 15. Section 58-11-20 NMSA 1978 (being Laws 1987, Chapter 311, Section 20) is amended to read:

"58-11-20. ADVANTAGEOUS FEDERAL POWERS.--In addition to other powers provided for the director and for credit unions organized under or subject to the Credit Union Act and notwithstanding any law to the contrary, the director may adopt such rules and regulations as he deems necessary and proper, granting to state credit unions any of the powers and authority that federal credit unions are or may hereafter be authorized, empowered, permitted or otherwise allowed to exercise under federal statutes, rules or regulations."

Section 16

Section 16. Section 58-11-22 NMSA 1978 (being Laws 1987, Chapter 311, Section 22, as amended) is amended to read:

"58-11-22. CENTRAL CREDIT UNIONS.--Central credit unions may be organized under the Credit Union Act, and such credit unions organized under prior law are subject to that act. In addition to the members referred to in Section 58-11-21 NMSA 1978, the membership of a central credit union may include:

A. executive officers, board members, committee members and employees of credit unions organized under any credit union act or the executive officers, directors and employees of an employer with insufficient numbers or with executive officers, directors and employees who do not desire to form or conduct the affairs of a separate credit union;

B. persons in the field of membership of liquidated credit unions that have entered into or are about to enter into voluntary or involuntary liquidation proceedings; and

C. members of the immediate families of members qualified pursuant to Subsection A or B of this section."

Section 17

Section 17. Section 58-11-23 NMSA 1978 (being Laws 1987, Chapter 311, Section 23) is amended to read:

"58-11-23. OTHER CREDIT UNIONS.--Any credit union organized under or subject to the Credit Union Act may accept as a member any other credit union organized under or subject to that act or any other act."

Section 18

Section 18. Section 58-11-24 NMSA 1978 (being Laws 1987, Chapter 311, Section 24) is amended to read:

"58-11-24. MEMBER ELIGIBILITY.--Members who cease to be eligible for membership in a credit union for reasons other than expulsion may be permitted to retain their membership in the credit union, subject to any restrictions which may be established by the bylaws."

Section 19

Section 19. Section 58-11-27 NMSA 1978 (being Laws 1987, Chapter 311, Section 27) is amended to read:

"58-11-27. DIRECTION OF AFFAIRS.--

A. A credit union shall be directed by a board of directors consisting of an odd number of members, as provided in the bylaws, but not less than five in number, to be elected annually by and from the members. The election shall be held at the annual meeting or in such other manner as the bylaws provide. All members of the board shall hold office for such terms as the bylaws provide.

B. The members shall elect as prescribed in the bylaws a supervisory committee of not less than three members at each annual election for the terms the bylaws provide.

C. The board of directors may delegate any or all of its authority to extend credit, including the determination of interest rates, to one or more committees or an executive officer provided that such person is not a member of the board. A committee may consist of one or more members."

Section 20

Section 20. Section 58-11-29 NMSA 1978 (being Laws 1987, Chapter 311, Section 29) is amended to read:

"58-11-29. VACANCIES.--The board of directors of a credit union shall fill any vacancies occurring in the board until successors elected at the next annual election have qualified. If more than fifty percent of the board positions become vacant at any one time, a special meeting of the members shall be called to fill all vacancies. The supervisory committee shall fill all vacancies in its own membership as they occur. If all of the supervisory committee positions become vacant at any one time, the board of directors shall fill all vacancies, and those appointed members may serve until the next election. The board shall fill vacancies occurring on all other committees."

Section 21

Section 21. Section 58-11-30 NMSA 1978 (being Laws 1987, Chapter 311, Section 30, as amended) is amended to read:

"58-11-30. COMPENSATION OF OFFICIALS.--No board or committee member may be compensated for services

performed in the regular course of duties pertaining to that board or committee position. Notwithstanding any provision of the Credit Union Act to the contrary, board or committee members may be compensated for those services provided to the credit union while temporarily serving in an additional capacity other than as a board or committee member. Reasonable life, health, accident and similar insurance protection shall not be considered compensation to a board or committee member. Board and committee members may be reimbursed for reasonable and necessary expenses incidental to the performance of official business of the credit union, provided that such expenses are documented."

Section 22

Section 22. Section 58-11-31 NMSA 1978 (being Laws 1987, Chapter 311, Section 31, as amended) is amended to read:

"58-11-31. CONFLICTS OF INTEREST.--No board member, committee member, executive officer, agent or employee of a credit union shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting his pecuniary interest, the pecuniary interest of his parents, children or siblings or spouses of any of those individuals or the pecuniary interest of any organization, other than the credit union, in which he is directly or indirectly interested."

Section 23

Section 23. Section 58-11-32 NMSA 1978 (being Laws 1987, Chapter 311, Section 32, as amended) is amended to read:

"58-11-32. OFFICERS.--

A. At an organizational meeting held within thirty days following each annual election, the board of directors shall elect from its own number a chairman, a vice chairman and a secretary. It shall also elect any other board officers that are specified in the bylaws.

B. The terms of the board officers shall be one year or until their successors are chosen and have been duly qualified.

C. The duties of the board officers shall be prescribed in the bylaws.

D. The board of directors shall employ, elect or appoint an executive officer of the credit union who shall be responsible for credit union operations. The executive officer may be a member of the board of directors if not receiving paid compensation as executive officer, but may not be an officer of the board of directors. The executive officer will serve at the pleasure of the board of directors.

E. The board of directors may provide for other executive officers and prescribe their duties and authority in the bylaws.

F. Notwithstanding any other provisions of the Credit

Union Act, a credit union may use any titles it chooses for the officials holding the positions described in this section, provided those titles are not misleading."

Section 24

Section 24. Section 58-11-33 NMSA 1978 (being Laws 1987, Chapter 311, Section 33) is amended to read:

"58-11-33. AUTHORITY AND RESPONSIBILITY OF BOARD MEMBERS.--The board of directors shall have the authority and

responsibility for providing the general direction of the business affairs, funds and records of the credit union. In addition to all other powers authorized in the Credit Union Act, the board of directors may:

A. limit the dollar amount of share and deposit accounts which may be owned by a member, provided such limitations shall equally apply to all members; and

B. authorize the credit union to contribute funds to any nonprofit civic, charitable, educational, research or service organization."

Section 25

Section 25. Section 58-11-36 NMSA 1978 (being Laws 1987, Chapter 311, Section 36, as amended) is amended to read:

"58-11-36. DUTIES OF BOARD MEMBERS.--

A. The board of directors shall:

(1) act upon applications for membership or to appoint one or more membership officers to approve applications for membership under such conditions as the board prescribes. A record of the actions taken by a membership officer shall be made available in writing to the board of directors for inspection. A person denied membership may appeal the denial to the board, and the person shall be informed of that right of appeal in writing by the credit union;

(2) authorize and require the purchase of adequate fidelity coverage as it determines to be necessary for the board members, committee members, executive officers or employees of the credit union with documentation made available to the director about who is covered;

(3) authorize and determine from time to time the interest rates that shall be charged on extensions of credit to members and authorize any interest refunds on extensions of credit under the conditions the board prescribes;

(4) establish written policies with respect to the terms and conditions for granting loans and the extension of credit, including the maximum amount that may be provided to any one member;

(5) declare dividends on share accounts and membership shares in the manner and form as provided in the bylaws,

which dividends shall not exceed the credit union's net earnings, including undivided earnings;

(6) have charge of the investment of funds, except that the board may designate an investment committee or investment officer under written investment policies established by the board;

(7) authorize the employment of persons to carry on the business of the credit union and establish the compensation of the executive officer;

(8) approve an annual operating budget for the credit union;

(9) authorize the conveyance of property;

(10) authorize the designation of depositories for the operating funds of the credit union;

(11) appoint any committees deemed necessary; and

(12) perform such other duties as the members from time to time direct and perform or authorize any action not inconsistent with the Credit Union Act and not specifically reserved by the bylaws to the members.

B. Any member of the supervisory committee or of any other committee established for the purposes of extending credit may be temporarily suspended or removed by the board of directors by a two-thirds vote of the board of directors at a meeting in which a quorum is present for failure to perform those duties in accordance with the Credit Union Act, the articles of organization or the bylaws and for no other reason. The suspension or removal of a supervisory committee member shall be acted upon by the members at a meeting to be held not less than seven or more than twenty-one days after such suspension or removal."

Section 26

Section 26. Section 58-11-38 NMSA 1978 (being Laws 1987, Chapter 311, Section 38, as amended) is amended to read:

"58-11-38. SUPERVISORY COMMITTEE.--

A. The supervisory committee shall make or cause to be made by a certified public accountant or other qualified person or firm a comprehensive annual audit of the books and affairs of the credit union. It shall submit a report of each annual audit to the board of directors and make the report available to the director, and a summary of the report shall be presented to the members at the next annual meeting of the credit union.

B. The supervisory committee shall make or cause to be made such supplementary audits, examinations and verifications of members' share and loan accounts as it deems necessary or as are required by the board of directors and submit reports of those audits to the board of directors. A complete verification of members' share and loan accounts shall be performed at least once every two years in accordance with standards established by the director.

C. The supervisory committee by a two-thirds vote of the entire committee may in its sole discretion suspend a person authorized to extend credit if the person is not a paid employee of the credit union and shall report the action to the board of directors for appropriate action. Paid employees of the credit union that are authorized to extend credit may be suspended for any reason but only by the executive officer of the credit union.

D. The supervisory committee by a two-thirds vote of the entire committee may suspend any member of the board of directors until the next members' meeting, which shall be held not less than seven or more than twenty-one days after such suspension. At that meeting, the suspension shall be acted upon by the members and the board member removed from or restored to his position.

E. The supervisory committee by a majority vote may call a special meeting of the members to consider any violation or potential violation of the Credit Union Act, the credit union's articles of organization or bylaws or any practice of the credit union deemed by the supervisory committee to be unsafe, unsound or unauthorized. The bylaws shall

prescribe the manner in which a special meeting of the members may be called by the members or by the board of directors."

Section 27

Section 27. Section 58-11-39 NMSA 1978 (being Laws 1987, Chapter 311, Section 39) is amended to read:

"58-11-39. MEMBERS' ACCOUNTS.--

A. The bylaws of a credit union may require the members to subscribe to and make payments on membership shares.

B. Share accounts, membership shares and deposit accounts shall be subscribed to and paid for in such manner as the bylaws prescribe.

C. The par value of shares and membership shares shall be as prescribed in the bylaws.

D. Membership shares may not be pledged as security on any extension of credit."

Section 28

Section 28. Section 58-11-40 NMSA 1978 (being Laws 1987, Chapter 311, Section 40) is amended to read:

"58-11-40. DIVIDENDS AND INTEREST.--

A. Periodically, and after provision for the required reserves, the board of directors may declare, dividends to be paid on share

accounts and membership shares. Dividends may be paid from the credit union's undivided earnings; provided, no such payment shall result in or increase a debit balance in the undivided earnings account.

B. Dividends may be paid at various rates with due regard to the conditions that pertain to each type of account, such as minimum balance, notice and time requirements.

C. Dividends need not be paid on membership shares, but if such a dividend is paid, it shall be added to the membership share held by each member.

D. A credit union may receive payments on deposit accounts from its members and other credit unions subject to such terms, rates and conditions as the board of directors establishes.

E. Interest may be paid on deposit accounts at various rates with due regard to the conditions that pertain to each type of account, such as minimum balance, notice and time requirements."

Section 29

Section 29. Section 58-11-43 NMSA 1978 (being Laws 1987, Chapter 311, Section 43) is amended to read:

"58-11-43. JOINT ACCOUNTS.--

A. A member may designate any person to own a share account or deposit account in joint tenancy with the right of survivorship, as a tenant in common or under any other form of joint ownership permitted by law, but no co-owner, unless also a member in his own right, shall be permitted to vote, obtain loans, hold office or be required to pay a membership fee.

B. Payment of part or all of those accounts to any of the co-owners shall, to the extent of such payment, discharge the liability to all unless the account agreement contains a prohibition."

Section 30

Section 30. Section 58-11-44 NMSA 1978 (being Laws 1987, Chapter 311, Section 44, as amended) is amended to read:

"58-11-44. TRUST ACCOUNTS.--

A. Share accounts and deposit accounts may be owned by a member in trust for a beneficiary or owned by a non-member in trust for a beneficiary who is a member.

B. Beneficiaries may be minors, but no beneficiary, unless a credit union member, shall be permitted to vote, obtain loans, hold office or be required to pay a membership fee.

C. Payment of part or all of a trust account to the party in whose name the account is held shall, to the extent of that payment, discharge the liability of the credit union to that party and to the beneficiary, and the credit union shall be under no obligation to see to the application of that payment.

D. In the event of the death of the party who owns a trust account, if the credit union has been given no other written notice of the existence or terms of any trust and has not received a court order as to disposition of the account, account funds and any dividends or interest thereon shall be paid to the beneficiary."

Section 31

Section 31. Section 58-11-46 NMSA 1978 (being Laws 1987, Chapter 311, Section 46) is amended to read:

"58-11-46. LIENS.--A credit union shall have a lien on the membership shares, share accounts and deposit accounts and accumulated dividends and interest of a member's individual, joint or trust account for any sum owed the credit union from that member or for any extension of credit endorsed or guaranteed by him. A credit union may refuse to allow withdrawals and shall have a right of immediate set-off with respect to every such account. The board of directors or any person or committee to which it has delegated the authority to extend credit may waive the credit union's rights to a lien, to immediate set-off, to restrict withdrawals or to any combination of those rights with respect to any share or deposit account or groups of those accounts."

Section 32

Section 32. Section 58-11-48 NMSA 1978 (being Laws 1987, Chapter 311, Section 48) is amended to read:

"58-11-48. SHARE AND DEPOSIT INSURANCE.--

A. Before the organizers of a credit union submit the organizational documents to the director under Section 58-11-10 NMSA 1978, they shall apply for insurance of share accounts and deposit accounts by the national credit union administration's share insurance fund or, alternatively, for insurance from an insuring organization approved by the director. Any membership share issued by a credit union shall be excluded from the requirement for insurance.

B. A credit union that has been denied or has lost its commitment for that insurance or that has been notified of cancellation of that insurance shall within thirty days commence steps to either liquidate or merge with an insured credit union.

C. No credit union shall commence business unless such credit union has obtained insurance of its share accounts and deposit accounts.

D. The director shall make available reports of condition and examination findings to the national credit union administration or to the appropriate insuring organization and may accept any report of examination made on behalf of such organization."

Section 33

Section 33. Section 58-11-49 NMSA 1978 (being Laws 1987, Chapter 311, Section 49, as amended) is amended to read:

"58-11-49. LOAN POLICIES.--

A. A credit union may extend credit to members for such purposes and upon such conditions as the bylaws may provide.

B. The interest rates on extensions of credit shall be authorized and determined by the board of directors or any person or committee to which it has delegated that authority.

C. A credit union may assess charges to members, in accordance with the bylaws, for failure to meet their obligations to the credit union in a timely manner.

D. Except as provided in Subsection H of this section, every application for an extension of credit and every approved extension of credit shall be made in writing in a standard format consistent with the extension of credit policies approved by the board of directors.

E. No loan shall be made to any member in an aggregate amount in excess of ten percent of the credit union's total assets as determined by the director.

F. Security, within the meaning of the Credit Union Act, may include, without limitation because of enumeration, the endorsement of a note by a surety or guarantor, assignment of an interest in real or personal property or any other collateral deemed acceptable by the board of directors. The types of security acceptable shall be determined by the written policies established by the board of directors pursuant to Section 58-11-36 NMSA 1978.

G. A member may receive an extension of credit in installments or in one sum and may pay the whole or any part on any day on which the office of the credit union is open for business.

H. Upon written application by a member, the board of directors or any person or committee to which it has delegated authority to extend credit may approve a self-replenishing line of credit, and advances may be granted to the member within the limit of such line of credit. Whenever a line of credit has been approved, no additional credit application is required as long as the aggregate indebtedness does not exceed the approved limit; provided, however, each line of credit shall be reviewed in accordance with the credit union's policy governing extensions of credit.

I. A credit union may participate in extensions of credit to credit union members jointly with other credit unions or other financial organizations pursuant to written policies established by the board of directors. A credit union which originates such an extension shall retain an interest of at least ten percent of the face amount of the extension of credit.

J. A credit union may:

(1) participate in any guaranteed loan program of the federal government or of this state under the terms and conditions specified by the law under which such a program is provided; and

(2) purchase the conditional sales contracts, notes and similar instruments of its members.

K. A credit union may make an extension of credit to any of its executive officers, board members and members of its supervisory and other committees, provided that:

(1) the extension of credit complies with all lawful requirements under the Credit Union Act with respect to loans to other members, is not on terms more favorable than those extended to other borrowers and is in compliance with loan policies established by the board for other borrowers;

(2) the following provisions have been met:

(a) the extension of credit is approved by the board of directors or any person or committee to which it has delegated authority to extend credit;

(b) the applicant takes no part in the consideration of his application and does not attend any committee or board meeting while his application is under consideration; and

(3) if the aggregate extension of credit to the applicant, including the extension applied for and excluding share or deposit secured loans, exceeds twenty thousand dollars ($20,000), the extension of credit must be approved by the board of directors after submission by the applicant of a completed application, including a detailed current financial statement of the

applicant.

L. A credit union may permit executive officers, board members and members of its committees to act as co-makers, guarantors or endorsers of extensions of credit to other members, subject to the requirements of Subsection K of this section."

Section 34

Section 34. Section 58-11-53 NMSA 1978 (being Laws 1987, Chapter 311, Section 53, as amended) is amended to read:

"58-11-53. MONEY-TYPE INSTRUMENTS.--A credit union may collect, receive and disburse money in connection with the providing of negotiable checks, money orders, travelers checks and other money-type instruments for its members and the providing of services through service facilities, including automated terminal machines and for such other purposes as may provide benefit or convenience to its members. A credit union may charge reasonable fees for those services."

Section 35

Section 35. Section 58-11-56 NMSA 1978 (being Laws 1987, Chapter 311, Section 56, as amended) is amended to read:

"58-11-56. INVESTMENTS.--Funds not required to satisfy member demands for extensions of credit may be invested in:

A. securities, obligations or other instruments of or issued by or fully guaranteed as to principal and interest by the United States or any agency of the United States or in any trust investing solely, directly or indirectly in the same;

B. securities, obligations or other instruments of this state or any political subdivision of this state;

C. deposits or other accounts of state or federally chartered financial institutions the accounts of which are insured by an agency of the United States;

D. loans or extensions of credit to or shares or deposits of other credit unions, central credit unions or corporate credit unions, the accounts of which are insured by the national credit union administration's share insurance fund;

E. deposits in, loans to or shares of any federal reserve bank or of any central liquidity facility established under federal law;

F. shares, stocks, loans or extensions of credit to or other obligations of any organization, corporation or association providing services which are associated with the general purposes of the credit union or which engages in activities incidental to the operations of a credit union. Those investments in the aggregate shall not exceed five percent of the credit union's capital;

G. shares of a cooperative society organized under the laws of this state or of the laws of the United States in a total amount not exceeding ten percent of the capital of the credit union, subject to prior approval by the director;

H. fixed assets, not to exceed six percent of the credit union's capital and deposits, unless with the written approval of the director. For the purpose of this subsection, "fixed assets" means structures, land, computer hardware and software and heating and cooling equipment that are affixed to the premises; and

I. investments or activities that the director determines are a part of or incidental to the operations of a credit union notwithstanding any provision to the contrary in the Credit Union Act."

Section 36

Section 36. Section 58-11-57 NMSA 1978 (being Laws 1987, Chapter 311, Section 57, as amended) is amended to read:

"58-11-57. RESERVE REQUIREMENTS.--

A. Immediately before the payment of dividends and at the end of each accounting period, the gross earnings of a credit union shall be determined. From this amount, there shall be set aside as a regular reserve in accordance with the following schedule:

(1) a credit union in operation for more than four years and having assets of five hundred thousand dollars ($500,000) or more shall set aside ten percent of gross income until the regular reserve equals four percent of the total risk assets, then five percent of gross income until the regular reserve equals six percent of the total risk assets;

(2) a credit union in operation less than four years or having assets of less than five hundred thousand dollars ($500,000) shall set aside ten percent of gross income until the regular reserve equals seven and one-half percent of the total risk assets, then five percent of gross income until the regular reserve equals ten percent of the total risk assets; and

(3) whenever the regular reserve falls below the stated percent of total risk assets, it shall be replenished by regular contributions in those amounts as determined by the director to be needed to maintain the stated reserve requirements.

B. When the regular reserve is not established as required and dividends are paid by a credit union, the director may suspend the operation of the credit union or take other appropriate lawful action until the reserve requirements are met.

C. The director may decrease or waive entirely the reserve requirements for an individual credit union in one or more accounting periods when in his judgment such action is necessary or desirable.

D. The regular reserve shall belong to the credit union and shall be used to meet losses on loans and other risk assets, including the principal, and to meet such other classes of losses as are approved by the director. The reserve shall not be distributed except on liquidation of the credit union or in accordance with a plan approved by the director.

E. Any one-time or periodic membership fees established by the board of directors shall be credited, after payment of organization expenses, to a reserve for contingencies account, undivided earnings or regular reserve."

Section 37

Section 37. Section 58-11-58 NMSA 1978 (being Laws 1987, Chapter 311, Section 58) is amended to read:

"58-11-58. DISSOLUTION.--

A. A credit union may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section.

B. If it decides to begin the procedure, the board of directors shall adopt a resolution recommending the credit union be dissolved voluntarily and directing that the question of liquidation be submitted to the members.

C. Within ten days after the board of directors decides to submit the questions of liquidation to the members, the chairman of the board or executive officer shall notify the director and the insuring organization in writing, setting forth the reasons for the proposed liquidation. Within ten days after such notice, a special meeting of the members shall be called to vote on whether to liquidate the credit union. Within ten days after the members act on the question of liquidation, the chairman of the board or executive officer shall notify the director and the insuring organization in writing as to the action of the members on the proposal.

D. When the board of directors decides to submit the question of liquidation to the members, payments on, withdrawal of and making any transfer of share and deposit accounts to loans and interest, making investments of any kind and granting loans may be restricted or suspended pending action by members on the proposal to liquidate. On approval by the members of the proposal, all business transactions shall be permanently discontinued. Necessary expenses of operations shall, however, continue to be paid on authorization of the board of directors or liquidating agent during the period of liquidation.

E. For a credit union to enter voluntary liquidation, approval by a majority of the members in writing or by a two-thirds majority of the members present at a meeting of the members is required. When authorization for liquidation is to be obtained at a meeting of the members, notice in writing shall be given to each member, by first class mail, at least ten days prior to that meeting.

F. A liquidating credit union shall continue in existence for the purpose of discharging its debts, collecting on loans and distributing its assets and doing all acts required in order to wind up its business and it may sue and be sued for the purpose of enforcing those debts and obligations until its affairs are fully concluded.

G. The board of directors or the liquidating agent shall distribute the assets of the credit union or the proceeds of any disposition of the assets in the sequence described in Section 58-11-3 NMSA 1978.

H. When the board of directors or the liquidating agent determines that all assets from which there is a reasonable expectancy of recovery have been liquidated and distributed as set forth in this section, they shall execute a certificate of dissolution on a form prescribed by the director and file the same, together with all pertinent books and records of the liquidating credit union, with the director, whereupon the credit union shall be dissolved."

Section 38

Section 38. Section 58-11-59 NMSA 1978 (being Laws 1987, Chapter 311, Section 59, as amended) is amended to read:

"58-11-59. MERGER OF CREDIT UNIONS.--

A. A credit union organized under or subject to the Credit Union Act may, with the approval of the director and regardless of common bond, merge with one or more other credit unions subject to that

act, the laws of another state or territory of the United States or the laws of the United States.

B. When two or more credit unions merge, they shall either designate one credit union as the continuing credit union or they shall structure a totally new credit union and designate it as the new credit union. If the latter procedure is followed, the new credit union shall be organized under Section 58-11-10 NMSA 1978. All participating credit unions other than the continuing credit union shall be designated as merging credit unions.

C. Any merger of credit unions shall be done according to a plan of merger. After approval by the boards of directors of all participating credit unions, the plan shall be submitted to the director for preliminary approval. If the plan includes the creation of a new credit union, all documents required by Section 58-11-10 NMSA 1978 shall be submitted as part of the plan. In addition, each participating credit union shall submit:

(1) the time and place of the meeting of the board of directors at which the plan was agreed upon;

(2) the vote of the board of directors in favor of the adoption of the plan; and

(3) a copy of the resolution or other action by which the plan was agreed upon.

The director shall grant preliminary approval if the plan has been properly approved by each board of directors and if the documentation required to form a new credit union, if any, complies with Section 58-11-10 NMSA 1978.

D. After the director grants preliminary approval, each merging credit union shall, unless waived by the director, conduct a membership vote on its participation in the plan. The vote shall be conducted either at a special membership meeting called for that purpose or by mail ballot. If a majority of the members voting approve the plan, the credit union shall submit a record of that fact to the director, indicating the vote by which the members approved the plan and either the time and place of the membership meeting or the mailing date and closing date of the mail ballot.

E. The director may waive the membership vote described in Subsection D of this section in the case of a given credit union if he determines that it is in the best interests of the membership or that the credit union is insolvent or in imminent danger of becoming insolvent.

F. The director shall grant final approval of the plan of merger after determining that the requirements of Subsection D of this section in the case of each merging credit union have been met. If the plan of merger includes the creation of a new credit union, the director shall approve the organization of the new credit union under Section 58-11-10 NMSA 1978 as part of the approval of the plan of merger. The director shall notify all participating credit unions of the approval of the plan.

G. Upon final approval of the plan by the director, all property, property rights and members' interests in each merging credit union shall vest in the continuing or new credit union, as applicable, without deed, endorsement or other instrument of transfer, and all debts, obligations and liabilities of each merging credit union shall be deemed to have been assumed by the continuing or new credit union. The rights and privileges of the members of each participating credit union shall remain intact; however, if a person is a member of more than one of the participating credit unions, that person shall be entitled to only a single set of membership rights in the continuing or new credit union.

H. If the continuing or new credit union is chartered by another state or territory of the United States, it shall be subject to the requirement of Section 58-11-16 NMSA 1978.

I. Notwithstanding any other provision of law, the director may authorize a merger or consolidation of a credit union that is insolvent or is in danger of insolvency with any other credit union or may authorize a credit union to purchase any of the assets of or assume any of the liabilities of any other credit union that is insolvent or in danger of insolvency if the director is satisfied that:

(1) an emergency requiring expeditious action exists with respect to that other credit union;

(2) other alternatives are not reasonably available; and

(3) the public interest would best be served by approval by that merger, consolidation, purchase or assumption.

J. Notwithstanding any other provision of law, the director may authorize an institution whose deposits or accounts are insured by an agency of the federal government to purchase any of the assets of or assume any of the liabilities of a credit union which is insolvent or in danger of insolvency, except that prior to exercising this authority, the director shall attempt to effect a merger or consolidation with, or purchase and assumption by, another credit union as provided in Subsection I of this section.

For purposes of the authority contained in this subsection, insured share and deposit accounts of the credit union may, upon consummation of the purchase and assumption, be converted to insured deposits or other comparable accounts in the acquiring institution."

Section 39

Section 39. Section 58-11-61 NMSA 1978 (being Laws 1987, Chapter 311, Section 61) is amended to read:

"58-11-61. TAXATION.--

A. A credit union organized under or subject to the Credit Union Act is exempt from taxation to the extent that a credit union chartered under federal law is exempt.

B. The shares of a credit union shall not be subject to stock transfer taxes, either when issued or when transferred from one member to another.

C. The participation by a credit union in any government program providing unemployment, social security, old age pension or other benefits shall not be deemed a waiver of the tax exemptions granted by this section."

Section 40

Section 40. Section 58-11-64 NMSA 1978 (being Laws 1987, Chapter 311, Section 64) is amended to read:

"58-11-64. PAYMENT FROM ACCOUNT OF DECEASED MEMBER.--Notwithstanding any other law or regulation upon receiving a certified copy of a death certificate and an affidavit from the person applying for money stating that a member is dead and the affiant is a surviving spouse or next of kin and that the entire amount that the applicant wishes to withdraw does not exceed the sum of two thousand dollars ($2,000), the credit union may pay to the affiant the amount so held by the credit union, not in excess of two thousand dollars ($2,000), and the affiant's receipt shall release the credit union from all liability thereof."

Section 41

Section 41. REPEAL.--Sections 58-11-34 and 58-11-37 NMSA 1978 (being Laws 1987, Chapter 311, Sections 34 and 37, as amended) are repealed.

Section 42

Section 42. REPEAL.--Laws 1987, Chapter 311, Section 68 is repealed.

Section 43

Section 43. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

SENATE BILL 594, AS AMENDED
Approved April 10, 1997

CHAPTER 196

RELATING TO TAXATION; EXPANDING ELIGIBILITY FOR THE LOCAL OPTION LOW-INCOME PROPERTY TAX REBATE PURSUANT TO THE INCOME TAX ACT.

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

Section 1

Section 1. Section 7-2-14.3 NMSA 1978 (being Laws 1994, Chapter 111, Section 1) is amended to read:

"7-2-14.3. TAX REBATE OF PART OF PROPERTY TAX DUE FROM LOW-INCOME TAXPAYER--LOCAL OPTION--REFUND.--

A. The tax rebate provided by this section may be claimed for the taxable year for which the return is filed by an individual who:

(1) has his principal place of residence in a county that has adopted an ordinance pursuant to Subsection G of this section;

(2) is not a dependent of another individual;

(3) files a return; and

(4) incurred a property tax liability on his principal place of residence in the taxable year.

B. The tax rebate provided by this section shall be allowed for any individual eligible to claim the refund pursuant to Subsection A of this section and who:

(1) was not an inmate of a public institution for more than six months during the taxable year;

(2) was physically present in New Mexico for at least six months during the taxable year for which the rebate is claimed; and

(3) is eligible for the rebate as a low-income property taxpayer in accordance with the provisions of Subsection D of this section.

C. A husband and wife who file separate returns for the taxable year in which they could have filed a joint return may each claim only one-half of the tax rebate that would have been allowed on the joint return.

D. As used in the table in this subsection, "property tax liability" means the amount of property tax resulting from the imposition of the county and municipal property tax operating impositions on the net taxable value of the taxpayer's principal place of residence calculated for the year for which the rebate is claimed. The tax rebate provided in this section is as specified in the following table:

LOW-INCOME TAXPAYER'S PROPERTY TAX REBATE TABLE

Taxpayer's Modified Gross Income		Property Tax Rebate
Over	But Not Over	
$0	$8,000	75% of property tax liability
8,000	10,000	70% of property tax liability
10,000	12,000	65% of property tax liability
12,000	14,000	60% of property tax liability
14,000	16,000	55% of property tax liability
16,000	18,000	50% of property tax liability
18,000	20,000	45% of property tax liability
20,000	22,000	40% of property tax liability
22,000	24,000	35% of property tax liability.

E. If a taxpayer's modified gross income is zero, the taxpayer may claim a tax rebate in the amount shown in the first row of the table. The tax rebate provided for in this section shall not exceed three hundred fifty dollars ($350) per return and, if a return is filed

separately that could have been filed jointly, the tax rebate shall not exceed one hundred seventy-five dollars ($175). No tax rebate shall be allowed any taxpayer whose modified gross income exceeds twenty-four thousand dollars ($24,000).

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

G. In January of every odd-numbered year in which a county does not have in effect an ordinance adopted pursuant to this subsection, the board of county commissioners of the county shall conduct a public hearing on the question of whether the property tax rebate provided in this section benefiting low-income property taxpayers in the county should be made available through adoption of a county ordinance. Notice of the public hearing shall be published once at least two weeks prior to the hearing date in at least one newspaper of general circulation in the county and broadcast at some time within the week before the hearing on at least one radio station with substantial broadcasting coverage in the county. At the public hearing, the board shall take action on the question and if a majority of the members elected votes to adopt an ordinance, it shall be adopted no later than thirty days after the public hearing.

H. An ordinance adopted pursuant to Subsection G of this section shall specify the first taxable year to which it is applicable. The board of county commissioners adopting an ordinance shall notify the department of the adoption of the ordinance and furnish a copy of the ordinance to the department no later than September 1 of the first taxable year to which the ordinance applies.

I. No later than July 1 of the year immediately following the first year in which the low-income taxpayer property tax rebate provided in the Income Tax Act is in effect for a county, and no later than July 1 of each year thereafter in which the tax rebate is in effect, the department shall certify to the county the amount of the loss of income tax revenue to the state for the previous taxable year attributable to the allowance of property tax rebates to taxpayers of that county. The county shall promptly pay the amount certified to the department. If a county fails to pay the amount certified within thirty days of the date of certification, the department may enforce collection of the amount by action against the county and may withhold from any revenue

distribution to the county, not dedicated or pledged, amounts up to the amount certified.

J. As used in this section, "principal place of residence" means the dwelling owned and occupied by the taxpayer and so much of the land surrounding it, not to exceed five acres, as is reasonably necessary for use of the dwelling as a home and may consist of a part of a multidwelling or a multipurpose building and a part of the land upon which it is built."

Section 2

Section 2. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 1998.

SENATE BILL 604

Approved April 10, 1997

CHAPTER 197

RELATING TO TRADEMARKS; ENACTING THE TRADEMARK 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 "Trademark Act".

Section 2

Section 2. PURPOSE AND INTENT OF ACT.--The purpose of the Trademark Act is to provide a system of state trademark registration and protection substantially consistent with the federal system of trademark registration and protection under the Trademark Act of 1946, as amended. It is the intent that the construction given the federal act should be examined as persuasive authority for interpreting and construing the Trademark Act.

Section 3

Section 3. DEFINITIONS.--As used in the Trademark Act:

A. "applicant" includes the person filing an application for registration of a mark under the Trademark Act as well as the legal representatives, successors or assigns of the person;

B. "dilution" means the lessening of the capacity of the registrants mark to identify and distinguish goods or services regardless of the presence or absence of:

(1) competition between the parties; or

(2) the likelihood of confusion, mistake or deception;

C. "mark" includes any trademark or service mark entitled to registration under the Trademark Act whether registered or not;

D. "person" and any other word or term used to designate the applicant or other party entitled to a benefit or privilege or rendered liable under the provisions of the Trademark Act, includes a juristic person as well as a natural person; "juristic person" includes a firm, partnership, corporation, union, association or other organization capable of suing and being sued in a court of law;

E. "registrant" includes the person to whom the registration of a mark under the Trademark Act is issued as well as the legal representative, successors or assigns of the person;

F. "secretary" means the secretary of state or the secretary's designee charged with the administration of the Trademark Act;

G. "service mark" means any word, name, symbol, device or any combination of these used by a person to identify and distinguish the services of one person, including a unique service, from the services of other persons and to indicate the source of the services, even if that source is unknown; provided, titles and character names used by a person and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they or the programs may advertise the goods of the sponsor;

H. "trademark" means any word, name, symbol, device or any combination of these used by a person to identify and distinguish the goods of the person, including a unique product, from those manufactured or sold by others, and to indicate the source of the goods, even if that source is unknown;

I. "trade name" means any name used by a person to identify a business or vocation of the person; and

J. "use" means the bona fide use of a mark in the ordinary course of trade and not made merely to reserve a right in the mark. For the purposes of the Trademark Act, a mark is deemed to be in use:

(1) on goods when it is placed in any manner on the goods or on the containers or the displays associated with it or on the tags or labels affixed to them, or if the nature of the goods makes the placement impracticable, then on documents associated with the goods or their sale, and the goods are sold or transported in commerce in this state; and

(2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in this state.

Section 4

Section 4. REGISTRABILITY.--

A. A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:

(1) consists of or comprises immoral, deceptive or scandalous matter;

(2) consists of or comprises matter that may disparage or falsely suggest a connection with persons living or dead, institutions, beliefs or national symbols or that may bring them into contempt or disrepute;

(3) consists of or comprises the flag, coat of arms or other insignia of the United States or of any state, municipality, foreign nation or any simulation of these;

(4) consists of or comprises the name, signature or portrait identifying a particular living individual, except by the individual's written consent;

(5) consists of a mark that:

(a) when used on or in connection with the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them;

(b) when used on or in connection with the goods or services of the applicant, is primarily geographically descriptive or deceptively misdescriptive of them;

(c) is primarily merely a surname; provided, however, nothing in this subsection shall prevent the registration of a mark used by the applicant that has become distinctive of the applicant's goods or services. The secretary may accept as evidence that the mark has become distinctive as used on or in connection with the applicant's goods or services, proof of continuous use of it as a mark by the applicant in this state for the five years before the date on which the claim of distinctiveness is made; or

(d) consists of or comprises a mark that so resembles a mark registered in this state or a mark or trade name previously used by another and not abandoned, as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion or mistake or to deceive.

B. A mark is deemed to be abandoned when either of the following occurs:

(1) when its use has been discontinued with intent not to resume that use. Intent not to resume may be inferred from circumstances; nonuse for two consecutive years shall constitute prima facie evidence of abandonment; or

(2) when any course of conduct of the owner, including acts of omission as well as commission, causes the mark to lose its significance as a mark.

Section 5

Section 5. APPLICATION OF REGISTRATION.--

A. Subject to the limitations set forth in the Trademark Act, any person who uses a mark may file in the office of the secretary on a form prescribed by the secretary an application for registration of that mark setting forth, but not limited to, the following information:

(1) the name and business address of the person applying for the registration; and if a corporation, the state of

incorporation; if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary;

(2) the goods or services on or in connection with which the mark is used and the mode or manner in which the mark is used on or in connection with the goods or services and the class in which the goods or services fall;

(3) the date when the mark was first used anywhere and the date when it was first used in this state by the applicant or a predecessor in interest;

(4) a written description of the mark; and

(5) a statement that the applicant is the owner of the mark, that the mark is in use and that, to the knowledge of the person verifying the application, no other person has registered, either federally or in this state, or has the right to use the mark either in the identical form of it or in the near resemblance thereto as to be likely, when applied to the goods or services of the other person, to cause confusion, mistake or to deceive.

B. The secretary may also require a statement as to whether an application to register the mark or portions of it or a composite of it, has been filed by the applicant or a predecessor in interest in the United States patent and trademark office; and, if so, the applicant shall provide full particulars with respect to it including the filing date, serial number of each application, its status and, if any application was finally refused registration or has otherwise not resulted in a registration, the reason for the refusal or for not being registered.

C. The secretary may also require that a drawing of the mark or three specimens showing the mark as it is actually used accompany the application and that it complies with the requirements specified by the secretary.

D. The application shall be signed and verified by oath, affirmation or declaration subject to perjury laws by the applicant or by a member of the firm or an officer of the corporation or association applying for registration.

E. The application shall be accompanied by a fee of twenty-five dollars ($25.00) for each application.

Section 6

Section 6. FILING OF APPLICATION.--

A. Upon the filing of an application for registration and payment of the application fee, the secretary may cause the application to be examined for conformity with the Trademark Act.

B. The applicant shall provide any additional pertinent information requested by the secretary, including a description of a design mark and may make, or authorize the secretary in writing to make, any reasonable amendments to the application as may be requested by the secretary or deemed by the applicant to be advisable to respond to any objection or rejection of the application.

C. The secretary may require the applicant to disclaim an unregistrable component of a mark that would otherwise be registrable, and an applicant may voluntarily disclaim a component of a mark sought to be registered. No disclaimer shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter or the applicant's or registrant's rights of registration on another application if the disclaimed matter is or becomes distinctive of the applicant's or registrant's goods or services.

D. The secretary may amend the application upon the applicants written agreement, or the secretary may require a new application to be submitted.

E. If the applicant is found not to be entitled to registration, the secretary shall advise the applicant of the reasons for non-registration. The applicant shall have thirty days from the date of notification of non-registration from the secretary in which to reply or to amend the application for reexamination. This procedure may be repeated until the secretary makes a final refusal of registration of the mark or the applicant fails to reply or amend the application within the period specified by the secretary, in which case the application shall be deemed to have been abandoned.

F. The secretary shall grant priority to the applications in order of filing. In the case of any application rejected because of a prior-filed application of the same or confusingly similar mark for the same or related goods or services, the applicant may bring an action for cancellation of the registration on grounds of prior or superior rights to the mark as provided in Section 11 of the Trademark Act.

Section 7

Section 7. CERTIFICATE OF REGISTRATION.--

A. Upon compliance by the applicant with the requirements of the Trademark Act, the secretary shall issue and deliver a certificate of registration to the applicant. The certificate of registration shall be issued under the signature of the secretary and the seal of the state, and it shall show:

(1) the name and business address;

(2) if a corporation, limited liability company or partnership, the state of incorporation, or if a partnership, the state in which the partnership is organized;

(3) the date claimed for the first use of the mark anywhere;

(4) the date claimed for the first use of the mark in New Mexico;

(5) the class and description of goods or services on or in connection with which the mark is used; and

(6) the registration date and the term of registration.

B. A certificate of registration issued by the secretary or a copy of the certificate of registration duly certified by the secretary shall be admissible in evidence as competent and sufficient proof of the registration of the mark in any actions or judicial proceedings in this state.

Section 8

Section 8. DURATION AND RENEWAL.--

A. A registration of a mark is effective for ten years from the date of registration. An application for renewal shall be filed within six months prior to its expiration in the manner required by the secretary. The renewed registration shall be effective for ten years from the date of expiration of the original registration. The application for renewal shall be accompanied by the renewal fee. A registration of a mark may be renewed for successive periods of ten years as provided in this section.

B. All applications for renewal, whether of registrations made under the Trademark Act or of registrations made under any act prior to the effective date of that act, shall include a verified statement

that the mark has been and is still in use and include a specimen showing actual use of the mark on or in connection with the goods or services.

Section 9

Section 9. ASSIGNMENTS--CHANGES OF NAME AND OTHER INSTRUMENTS.--

A. A mark and its representation shall be assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. The assignment shall be by instruments in writing duly executed and may be recorded with the secretary upon payment of a twenty-five dollar ($25.00) recording fee. The secretary, upon recording the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or the last renewal of the registration. An assignment of a registration shall be void as against any subsequent purchaser for valuable consideration without notice unless it is recorded with the secretary within three months after its date or unless it is recorded prior to the subsequent purchase.

B. A registrant or applicant effecting a change of the name of the person to whom the mark was issued or for whom an application was filed may record a certificate of change of name of the registrant or applicant with the secretary upon payment of the recording fee specified in Subsection A of this section. The secretary may issue to the owner a certificate of amendment of registration for the remainder of the term of registration or the last renewal of that registration.

C. Other instruments that relate to a mark registered or a pending application include licenses, security interests or mortgages, and they may be recorded in the discretion of the secretary provided the instrument is in writing and has been duly executed.

D. Acknowledgment shall be prima facie evidence of the execution of an assignment or other instrument and, when recorded by the secretary, the record shall be prima facie evidence of execution. A photocopy of an instrument specified in this section shall be accepted for recording if it is certified by any of the parties thereto or their successors.

Section 10

Section 10. RECORDS.--The secretary shall keep for public examination a record of all marks registered or renewed under the Trademark Act and a record of all documents recorded pursuant to Section 9 of the Trademark Act.

Section 11

Section 11. CANCELLATION.--The secretary shall cancel from the register, in whole or in part:

A. a registration where the secretary shall receive a voluntary request for cancellation from the registrant or the assignee of record;

B. a registration granted under the Trademark Act and not renewed in accordance with its provisions;

C. a registration of which a court of competent jurisdiction finds that:

(1) the registered mark has been abandoned;

(2) the registrant is not the owner of the mark;

(3) the registration was granted improperly;

(4) the registration was obtained fraudulently;

(5) the mark is or has become the generic name for the goods or services or a portion of them, for which it has been registered; or

(6) the registered mark is so similar as to likely cause confusion or mistake or to deceive, to a mark registered by another person in the United States patent and trademark office prior to the date of the filing of the application for registration by the registrant and not abandoned; or

D. when a court of competent jurisdiction orders the cancellation of a registration on any ground.

Section 12

Section 12. CLASSIFICATION.--The secretary shall by regulation establish a classification of goods and services for convenience of administration of the Trademark Act but not to limit or extend the applicant's or registrant's rights. A single application for registration of a mark may include any or all goods upon which, or services with which,

the mark is actually being used indicating the appropriate class or classes of goods or services. When a single application includes goods or services that fall within multiple classes, the secretary shall require payment of twenty-five dollars ($25.00) for each class. As far as practical the classification of goods and services should conform to the classification adopted by the United States patent and trademark office.

Section 13

Section 13. FRAUDULENT REGISTRATION.--A person who, for himself on or behalf of any other person, procures the filing or registration of any mark in the office of the secretary by knowingly making any false or fraudulent representation or declaration, orally or in writing or by any other fraudulent means, shall be liable to pay all damages sustained as a consequence of that filing or registration recoverable by or on behalf of the injured party in any court of competent jurisdiction.

Section 14

Section 14. INFRINGEMENT.--Any person shall be liable in a civil action by the registrant for any and all of the remedies provided in Section 16 of the Trademark Act, who shall:

A. use, without the consent of the registrant, any reproduction, counterfeit, copy or colorable imitation of a mark registered under the Trademark Act in connection with the sale, distribution, offering for sale or advertising of any goods or services on or in connection with which the use is likely to cause confusion or mistake or to deceive as to the source of origin of the goods or services; or

B. reproduce, counterfeit, copy or colorably imitate any such mark and apply the reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale or other distribution in this state of these goods or services;

The registrant shall not be entitled to recover profits or damages under Subsection B of this section unless the acts have been committed with the intent to cause confusion or mistake or to deceive.

Section 15

Section 15. INJURY TO BUSINESS REPUTATION--DILUTION.

A. The owner of a mark that is famous in this state shall be entitled, subject to the principles of equity, to an injunction against another's use of a mark, commencing after the owner's mark becomes

famous, that causes dilution of the distinctive quality of the owner's mark and to obtain other relief as is provided in this section. In determining whether a mark is famous a court may consider factors such as, but not limited to:

(1) the degree of inherent or acquired distinctiveness of the mark in this state;

(2) the duration and extent of use of the mark in connection with the goods and services;

(3) the duration and extent of advertising and publicity of the mark in this state;

(4) the geographical extent of the trading area in which the mark is used;

(5) the channels of trade for the goods or services with which the

owner's mark is used;

(6) the degree of recognition of the owner's mark in its trading area and in the other's trading area, and in the channels of trade in this state; and

(7) the nature and extent of use of the same or similar mark by third parties.

B. The owner shall be entitled only to injunctive relief in this state in an action brought under this section, unless the subsequent user willfully intended to trade on the owner's reputation or to cause dilution of the owner's mark. If willful intent is proven, the owner shall also be entitled to the remedies set forth in the Trademark Act, subject to the discretion of the court and the principles of equity.

Section 16

Section 16. REMEDIES.--Any owner of a mark registered under the Trademark Act may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations of that mark and any court of competent jurisdiction may grant injunctions to restrain the manufacture, use, display or sale as may be deemed just and reasonable by the court. The court may require the defendants to pay to the owner all profits derived from or all damages suffered by reason of the wrongful manufacture, use, display or sale, or by both payment of all profits derived and damages suffered. The court may also order that any counterfeits or imitations in the possession or under

the control of any defendant in the case be delivered to an officer of the court or to the complainant and that the counterfeits or imitations be destroyed. The court, in its discretion, may enter judgment for an amount not to exceed three times the profits and damages and for reasonable attorney fees of the prevailing party in those cases where the court finds the other party committed the wrongful acts with knowledge or in bad faith or as otherwise the circumstances of the case may warrant. The enumeration of any right or remedy in this section shall not affect a registrant's right to prosecute under any criminal law of this state.

Section 17

Section 17. REPEAL.--Sections 57-3-1, 57-3-2 and 57-3-4 through 57-3-12 NMSA 1978 (being Laws 1969, Chapter 142, Section 1, Laws 1959, Chapter 345, Sections 1 and 2, Laws 1969, Chapter 142, Section 2, Laws 1959, Chapter 345, Sections 3 and 4, Laws 1969, Chapter 142, Sections 4 through 7 and Laws 1959, Chapter 345, Section 6, as amended) are repealed.

Section 18

Section 18. SEVERABILITY.--If any part or application of the Trademark Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 19

Section 19. APPLICABILITY.--Any registration of a mark in force upon the effective date of the Trademark Act shall continue in effect for the remainder of its unexpired term and may be renewed under the provisions of that act within six months prior to the expiration specified in its registration. The provisions of the Trademark Act shall not affect any application, suit, proceeding or appeal pending on the effective date of the Trademark Act.

Section 20

Section 20. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1,1997.

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE

FOR SENATE BILL 605

Approved April 10, 1997

CHAPTER 198

RELATING TO THE LEGAL PROFESSION; OBTAINING CRIMINAL HISTORY INFORMATION ON APPLICANTS FOR A LICENSE TO PRACTICE LAW.

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

Section 1

Section 1. APPLICANTS FOR LICENSE TO PRACTICE LAW--CRIMINAL HISTORY INFORMATION.--

A. The supreme court shall require a background investigation of each applicant for admission to the state bar of New Mexico by means of fingerprint checks by the department of public safety and the federal bureau of investigation.

B. The director of the administrative office of the courts shall obtain from the department of public safety and the federal bureau of investigation, at the expense of an applicant for a license to practice law in the state of New Mexico, criminal history information concerning each applicant, using the applicant's fingerprints or other identifying information. The information shall be used only by the supreme court and the board of bar examiners in determining whether to grant the application, and shall not be disseminated to any other person or agency. The information shall be destroyed after the application is granted or denied.

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR

SENATE BILL 613

Approved April 10, 1997

CHAPTER 199

RELATING TO INSTITUTIONAL FUNDS; ENACTING THE UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT; REGARDING AUTHORITY TO INVEST FUNDS; PROVIDING FOR DELEGATION OF AUTHORITY TO MANAGE FUNDS; PROVIDING A STANDARD OF CONDUCT AND PORTFOLIO STRATEGY FOR MANAGEMENT OF FUNDS; 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 Management of Institutional Funds Act:

A. "institution" means:

(1) an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable or other eleemosynary purposes;

(2) a government, a governmental subdivision or agency or other governmental organization to the extent that it holds funds exclusively for educational, religious, charitable or other eleemosynary purposes; or

(3) an organization described in Section 501(c)(3) of the Internal Revenue Code organized and operated exclusively to support one or more organizations described in Paragraphs (1) and (2) of Subsection A of this section. "Institution" does not include an institution with assets of more than ten million dollars ($10,000,000) and that is organized and operated for private educational purposes;

B. "institutional fund" means a fund held by an institution for its exclusive use, benefit or purposes, or for the exclusive use, benefit or purposes of one or more other institutions, but does not include:

(1) a fund held for an institution by a trustee that is not an institution;

(2) a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund;

(3) a fund established pursuant to the provisions of Article 8, Section 10 of the constitution of New Mexico; or

(4) a fund established pursuant to the provisions of Article 12, Section 2 of the constitution of New Mexico;

C. "endowment fund" means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument;

D. "governing board" means the body responsible for the management of an institution or of an institutional fund;

E. "historic dollar value" means the aggregate fair value in dollars of:

(1) an endowment fund at the time it became an endowment fund;

(2) each subsequent donation to the fund at the time it is made; and

(3) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The determination of historic dollar value made in good faith by the institution is conclusive; and

F. "gift instrument" means a will, deed, grant, conveyance, agreement, memorandum, writing, articles, bylaws, charter, declaration, agreement, constitutional provision, law, rule, regulation or other governing document under which property is transferred to or held by an institution as an institutional fund.

Section 2

Section 2. ACCUMULATION OF ANNUAL NET INCOME--RESERVE--APPROPRIATION OF APPRECIATION.--

A. The governing board may accumulate so much of the annual net income of an institutional fund as is prudent under the standard established by Section 6 of the Uniform Management of Institutional Funds Act. The governing board may hold any or all of the accumulated annual net income in an income reserve for subsequent expenditure for the uses and purposes for which the institutional fund is

established or may add any or all of the accumulated annual net income to the principal of the institutional fund as is prudent under the standard established by Section 6 of the Uniform Management of Institutional Funds Act.

B. Subject to the limitation set forth in Subsection C of this section, the governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by Section 6 of the Uniform Management of Institutional Funds Act.

C. The appropriation for expenditure by the governing board of the net appreciation of an endowment fund in any one year in an amount greater than seven percent of the fair market value of the endowment fund, calculated on the basis of market values determined at least quarterly and averaged over a period of three or more years, shall create a rebuttable presumption of imprudence on the part of the governing board.

D. This section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument or charter, or the articles of incorporation or other governing instrument of the institution.

Section 3

Section 3. RULES OF CONSTRUCTION.--

A. Section 2 of the Uniform Management of Institutional Funds Act does not apply if, and to the extent that, the applicable gift instrument indicates the donor's intention that annual net income shall not be accumulated or added to the principal or that net appreciation shall not be expended. A restriction upon accumulation of annual net income or addition of such income to the principal or the expenditure of net appreciation may not be implied from a designation of a gift as an endowment or from a direction or authorization in the applicable gift instrument to use only "income", "interest", "dividends" or "rents, issues or profits", or "to preserve the principal intact", or a direction that contains other words of similar import.

B. Except as otherwise provided in Subsection A of this section, the following terms or comparable language in the provisions of

a gift instrument, unless otherwise limited or modified, authorizes any investment strategy permitted under the Uniform Management of Institutional Funds Act: "investments permitted 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 4

Section 4. INVESTMENT AUTHORITY.--In addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to investments a fiduciary may make, but subject to any specific limitations set forth in the applicable gift instrument or in the applicable law other than law relating to investments by a fiduciary, the governing board may:

A. invest and reinvest an institutional fund in kind of property or type of investment consistent with the standards of the Uniform Management of Institutional Funds Act, including any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures and other securities of profit or nonprofit corporations, shares in or obligations of associations, limited liability companies, partnerships or individuals and obligations of any government or subdivision or instrumentality thereof;

B. retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable;

C. include all or any part of an institutional fund in any pooled or common fund maintained by the institution; or

D. invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.

Section 5

Section 5. DELEGATION OF INVESTMENT AND MANAGEMENT FUNCTIONS.--

A. Except as otherwise provided by applicable law relating to governmental institutions or funds, a governing board may delegate investment and management functions that a prudent governing body could delegate under the circumstances. A governing board 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 of the institutional fund; and

(3) periodically reviewing the agent's actions in order to monitor the agent's performance and the agent's compliance with the terms of the delegation.

B. In performing a delegated function, an agent owes a duty to the governing board to exercise reasonable care to comply with the terms of the delegation.

C. The members of a governing board who comply with the requirements of Subsection B of this section are not liable for the decisions or actions of the agent to whom the function was delegated.

D. By accepting the delegation of an investment or management function from a governing board of an institution that is subject to the laws of New Mexico, an agent submits to the jurisdiction of the courts of New Mexico in all actions arising from the delegation.

E. The governing board may authorize the payment of compensation for investment advisory or management services.

Section 6

Section 6. STANDARD OF CONDUCT--PORTFOLIO STRATEGY.--

A. Members of a governing board shall invest and manage an institutional fund as a prudent investor would, by considering the purposes, distribution requirements and other circumstances of the fund. In satisfying this standard, the governing board shall exercise reasonable care, skill and caution.

B. Among the circumstances that a governing board shall consider are:

(1) long- and short-term needs of the institution in carrying out its educational, religious, charitable or other eleemosynary purposes;

(2) its present and anticipated financial requirements;

(3) the expected total return from income and the appreciation of its investments;

(4) general economic conditions;

(5) the possible effect of inflation or deflation;

(6) the expected tax consequence, if any, of investment decisions or strategies;

(7) the role that each investment or course of action plays within the overall investment portfolio of the institutional fund;

(8) other resources of the institution;

(9) the needs of the institution and the institutional fund for liquidity, regularity of income and preservation or appreciation of capital; and

(10) an asset's special relationship or special value, if any, to the purposes of the applicable gift instrument or to the institution.

C. A governing board's investment and management decisions about individual assets shall be made not in isolation but in the context of the institutional fund's portfolio of investments as a whole

and as a part of an overall investment strategy having risk and return objectives reasonably suited to the institution.

D. A governing board shall make a reasonable effort to verify the facts relevant to the investment and management of institutional fund assets.

E. A governing board shall diversify the investments of an institutional fund unless the board reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversifying.

F. Subject to the provisions of Subsection B of Section 4 of the Uniform Management of Institutional Funds Act, within a reasonable time after receiving donated assets, a governing board shall review the donated assets and make and implement decisions concerning the retention and disposition of assets in order to bring the portfolio of the institutional fund into compliance with the purposes, terms, distribution requirements and other circumstances of the institutional fund and with the requirements of the Uniform Management of Institutional Funds Act.

G. A governing board shall invest and manage the assets of an institutional fund solely in the interest of the institution.

H. In investing and managing assets of an institutional fund, a governing board may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the fund and the terms of the gift instrument.

Section 7

Section 7. RELEASE OF RESTRICTIONS ON USE OR INVESTMENT.--

A. With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

B. If written consent of the donor cannot be obtained by reason of his death, disability, unavailability or impossibility of

identification, the governing board may apply in the name of the institution to the district court for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The attorney general shall be notified of the application and shall be given an opportunity to be heard. If the district court finds that the restriction is obsolete, inappropriate or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund.

C. A release under this section may not allow a fund to be used for purposes other than the educational, religious, charitable or other eleemosynary purposes of the institution affected.

D. This section does not limit the application of the doctrine of cy-pres.

Section 8

Section 8. REVIEWING COMPLIANCE.--Compliance with the Uniform Management of Institutional Funds Act is determined in light of the facts and circumstances existing at the time of a governing board's decision and not by hindsight.

Section 9

Section 9. SEVERABILITY.--If any provision of the Uniform Management of Institutional Funds Act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of the Uniform Management of Institutional Funds Act are declared severable.

Section 10

Section 10. APPLICATION.--

The Uniform Management of Institutional Funds Act applies to gift instruments executed or in effect on or after its effective date and to institutional funds existing on and created after its effective date. The Uniform Management of Institutional Funds Act governs any decisions and actions taken after its effective date.

Section 11

Section 11. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--The Uniform Management of Institutional Funds Act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of that act among those states that enact it.

Section 12

Section 12. SHORT TITLE.--Sections 1 through 12 of this act may be cited as the "Uniform Management of Institutional Funds Act".

Section 13

Section 13. Section 21-1-38 NMSA 1978 (being Laws 1991, Chapter 69, Section 1) is amended to read:

"21-1-38. DEFINITION--REQUIREMENTS FOR ADOPTION OF INVESTMENT POLICY FOR INVESTING ENDOWMENT FUNDS.--

A. As used in this section:

(1) "endowment funds" means funds:

(a) acquired by gift by an educational institution with respect to which the donors or other outside agencies have stipulated as a condition of the gift, and the stipulation is expressed specifically in the gift instrument, that the principal is to be maintained and invested for the purpose of producing current and future income that may either be added to the principal or expended, and the maintenance of the principal may be either: 1) held inviolate and in perpetuity; or 2) expended after the passage of a stated period of time or upon the happening of a specified event; and

(b) notwithstanding the source of acquisition, that the governing board of the educational institution has determined and has designated by a written instrument, either revocable or irrevocable, to be retained for long-term investment; and

(2) "educational institution" means an educational institution designated in Article 12, Section 11 of the constitution of New Mexico and any post-secondary educational institution, which term includes, but is not limited to, an academic, vocational, technical, business, professional or other school, college or university or other organization or person offering or purporting to offer courses, instruction, training or education through correspondence or in person, to any individual within this state over the compulsory school attendance age, if that post-secondary educational institution is directly supported in whole or in part by state or local taxation.

B. The board of finance, as that term is defined in Section 6-10-9 NMSA 1978, for each of the educational institutions:

(1) shall adopt regulations governing the investment of endowment funds by the institution's board of finance, which regulations shall provide at least for:

(a) the application of the investment standard of conduct described in Section 6-8-10 NMSA 1978 and the Uniform Management of Institutional Funds Act as the standard for evaluating an investment;

(b) the appointment of an investment advisory committee made up of individuals having demonstrated experience and skill in the field of the investment of endowment funds; and

(c) the development of a comprehensive investment policy for the investment of endowment funds by the institution, with the advice and upon the recommendation of the investment committee; and

(2) may employ an institutional endowment funds investment manager and delegate to him the power to make purchases, sales exchanges, investments and reinvestments of endowment funds."

Section 14

Section 14. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

SENATE BILL 618, AS AMENDED

Approved April 10, 1997

CHAPTER 200

RELATING TO CAPITAL EXPENDITURES; MAKING APPROPRIATIONS TO PURCHASE EQUIPMENT AND MAKE MECHANICAL IMPROVEMENTS FOR THE MINERS' COLFAX MEDICAL CENTER LOCATED IN COLFAX COUNTY; DECLARING AN EMERGENCY.

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

Section 1

Section 1. APPROPRIATION.--

A. Three hundred forty-six thousand five hundred forty-three dollars ($346,543) is appropriated from the miners' trust fund to the miners' Colfax medical center for expenditure in fiscal years 1997 through 2001 for the following purposes:

(1) thirty-one thousand dollars ($31,000) to purchase a bone densitometer; and

(2) three hundred fifteen thousand five hundred forty-three dollars ($315,543) to make mechanical improvements to the miners' Colfax medical center.

B. Any unexpended or unencumbered balance remaining at the end of fiscal year 2001 shall revert to the miners' trust fund.

Section 2

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

SENATE BILL 628

WITH EMERGENCY CLAUSE

APRIL 10, 1997

CHAPTER 201

RELATING TO ELECTIONS; AMENDING THE ELECTION CODE PERTAINING TO THE FORM OF ABSENTEE BALLOT APPLICATIONS AND BALLOTS FOR GENERAL ELECTIONS.

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

Section 1

Section 1. Section 1-6-4 NMSA 1978 (being Laws 1969, Chapter 240, Section 130, as amended by Laws 1993, Chapter 19, Section 2 and by Laws 1993, Chapter 20, Section 1 and by Laws 1993, Chapter 21, Section 2 and by Laws 1993, Chapter 314, Section 42 and also by Laws 1993, Chapter 316, Section 42) is amended to read:

"1-6-4. ABSENTEE BALLOT APPLICATION.--

A. Application by a federal qualified elector for an absentee ballot shall be made on the official postcard form prescribed or authorized by the federal government to the county clerk of the county of his residence.

B. Application by a voter for an absentee ballot shall be made only on a form prescribed, printed 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 information to establish his qualification for issuance of an absentee ballot under the Absent Voter Act; provided that, on the application form for a general election ballot there shall be no box, space or place provided for designation of the voter's political party affiliation.

C. Each application for an absentee ballot shall be subscribed by the applicant."

Section 2

Section 2. Section 1-6-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 134, as amended) is amended to read:

"1-6-8. ABSENTEE BALLOT ENVELOPES.--

A. The secretary of state shall prescribe the form of, procure and distribute to each county clerk a supply 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 county clerk; provided, the official mailing envelope for absentee ballots in a general election shall contain no designation of party affiliation;

(3) absentee ballot instructions, describing proper methods for completion of the ballot and returning it; and

(4) official transmittal envelopes for use by the county clerk in mailing absentee ballot materials.

B. Official transmittal envelopes and official mailing envelopes for transmission of absentee ballot materials to and from the county clerk and federal qualified electors shall be printed in red in the form prescribed by the federal Uniformed and Overseas Citizens Absentee Voting Act. Official transmittal envelopes and official mailing envelopes for transmission of absentee ballot materials to and from the county clerk and voters shall be printed in black in substantially similar form. All official inner envelopes shall be printed in black.

C. The reverse of each official mailing envelope shall contain a form to be executed 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."."

SENATE 643

Approved April 10, 1997

CHAPTER 202

RELATING TO LONG-TERM CARE; REQUIRING CRIMINAL BACKGROUND CHECKS FOR CAREGIVERS EMPLOYED BY CARE PROVIDERS; DECLARING AN EMERGENCY.

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

Section 1

Section 1. CRIMINAL RECORDS SCREENING FOR CAREGIVERS EMPLOYED BY CARE PROVIDERS.--

A. As used in this section:

(1) "applicant" means any person who seeks employment, contractual service or volunteer service as a caregiver with a care provider;

(2) "caregiver" means any person whose employment, contractual service or volunteer service with a care provider includes direct care or routine and unsupervised physical or financial access to any care recipient served by that provider;

(3) "care provider" or "provider" means a skilled nursing facility; intermediate care facility; care facility for the mentally retarded; psychiatric facility; rehabilitation facility; kidney disease treatment facility; home health agency; homemaker agency; ambulatory surgical or outpatient facility; home for the aged or disabled; group home; adult foster care home; private residence that provides personal care, sheltered care or nursing care for one or more persons not related by blood or marriage to the facility's operator or owner; adult daycare center; boarding home; adult residential shelter care home; any entity that provides respite, companion or personal care services; and any other health or resident care related facility not a care facility located at or performing services for any correctional facility;

(4) "care recipient" means any person under the care of a provider who has a physical or mental illness, injury or disability or who suffers from any cognitive impairment that restricts or limits the person's activities;

(5) "conviction" means any conviction of a felony or a misdemeanor, including a conviction on a plea of nolo contendere, of any crime specified in Subsection D of this section;

(6) "nationwide criminal records check" means:

(a) fingerprinting on federal bureau of investigation approved fingerprint cards, submitting the fingerprint cards to the bureau and obtaining the nationwide conviction record of an applicant or caregiver; or

(b) submitting an applicant's or caregiver's authorization for release form to the federal bureau of investigation for the purpose of obtaining the nationwide conviction record of an applicant or caregiver;

(7) "statewide criminal records check" means fingerprinting on federal bureau of investigation approved fingerprint cards, submitting the cards to the department of public safety and

obtaining the statewide conviction and felony arrest history of an applicant or caregiver; and

(8) "volunteer service" means the performance of work for a care provider by a person who is not financially compensated for that work and does not receive a stipend, and who assists the care provider by filling a position that would otherwise be held by an employee or independent contractor.

B. A care provider that seeks to employ any caregiver shall initiate statewide and nationwide criminal records checks of the applicant before an offer of permanent employment is made. A care provider may make a temporary offer of employment to an applicant pending the results of the criminal records checks, and shall initiate these checks within five days of making the temporary offer of employment. A care provider may employ a person prior to receiving and reviewing the results of the criminal records checks for that person for a period not to exceed one hundred days. A care provider may accept the results of an applicant's criminal records checks less than one year old, provided the results are obtained from the applicant's previous employer pursuant to the applicant's written consent. An applicant whose profession requires statewide and nationwide criminal records checks as a prerequisite for professional licensure may disclose the results of any such records checks to the care provider in lieu of undergoing the records checks required by this section. The costs of the criminal records checks shall be paid by either the provider or the applicant.

C. A care provider that employs any caregiver as of the effective date of this act shall initiate statewide and nationwide criminal records checks of each such caregiver within one hundred eighty days of the effective date of this act. A care provider may continue to employ a caregiver pending the results of the criminal records checks for a period not to exceed one hundred days. A care provider may accept the results of a caregiver's criminal records checks less than one year old, provided the results are obtained from the caregiver's previous employer pursuant to the caregiver's written consent. A caregiver whose profession requires statewide and nationwide criminal records checks as prerequisite for professional licensure may disclose the results of any such records checks to the care provider in lieu of undergoing the records checks required by this section. A care provider that has conducted criminal records checks within the last two years as required in this section may use the results of such checks to meet the requirements of this section. The costs of the criminal records checks shall be paid by either the provider or the caregiver.

D. Except as otherwise provided for in Subsection E of this section, any of the following convictions disqualify an applicant or caregiver from employment as a caregiver:

(1) homicide;

(2) assault or battery;

(3) aggravated assault or aggravated battery;

(4) kidnapping or false imprisonment;

(5) rape, criminal sexual penetration, criminal sexual contact, incest or other non-consensual or forcible sexual acts;

(6) domestic violence;

(7) any crime involving adult abuse, neglect or financial exploitation;

(8) any crime involving child abuse or neglect;

(9) indecent exposure;

(10) felony larceny, robbery, burglary or aggravated burglary;

(11) felony trafficking controlled substances;

(12) arson; or

(13) any criminal offense involving fraud.

E. A care provider shall not employ an applicant, or continue to employ a caregiver, whose criminal records reflect conviction of a crime specified in Subsection D of this section, unless the applicant or caregiver requests reconsideration and demonstrates to the provider that his employment poses no risk of harm to a care recipient or does not directly bear upon his fitness to have responsibility for the safety and well-being of the care recipient. To determine whether to employ an applicant or caregiver despite an otherwise disqualifying conviction, the care provider must consider all of the following factors:

(1) level and seriousness of the crime;

(2) date of the crime;

(3) age of the applicant or caregiver at the time of the conviction;

(4) circumstances surrounding the commission of the crime, if known;

(5) nexus between the applicant's or caregiver's criminal conduct and the job duties of the position to be filled;

(6) applicant's or caregiver's prison, jail, probation, parole, rehabilitation and employment records since the date the crime was committed; and

(7) subsequent commission by the applicant or caregiver of a relevant offense.

F. This section does not preclude a care facility or administrator or supervisory personnel from using other convictions or information revealed by criminal records checks as a basis for employment or personnel placement or other personnel decisions or actions, including termination of employment.

G. If a care provider refuses to employ an applicant, or to continue to employ a caregiver, pursuant to Subsection E or F of this section, the provider shall so notify the applicant or caregiver, stating with specificity the convictions and arrests on which refusal to employ is based and identifying the agency which provided the records.

H. A care provider shall afford an applicant or caregiver refused employment or continued employment a reasonable opportunity to demonstrate that the criminal records are inaccurate, including an opportunity to contact the agency that provided the records.

I. A care provider shall maintain records evidencing compliance with the requirements of this section with respect to all applicants and caregivers employed on or after the effective date of this act. These records shall be subject to inspection by any governmental agency with regulatory jurisdiction over the provider, including the department of health, the state agency on aging, the attorney general's medicaid fraud control unit and the children, youth and families department. Criminal records maintained by the provider shall be destroyed one year after an applicant is rejected or a caregiver's employment is terminated, as applicable.

J. All criminal records obtained pursuant to this section and the information contained therein are confidential. No criminal records

obtained pursuant to this section shall be used for any purpose other than determining whether an applicant or caregiver has criminal records that disqualify him from employment as a caregiver. Except on court order or with the written consent of the applicant or caregiver, criminal records obtained pursuant to this section and the information contained therein shall not be released or otherwise disclosed to any other person or agency. Any person who discloses confidential records or information in violation of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Subsection A of 31-19-1 NMSA 1978.

K. A care provider, including its administrators and/or employees, is not civilly liable for a good faith decision to:

(1) employ, not employ or terminate employment pursuant to this section; or

(2) rely on the results of criminal records checks required by this section in making decisions or taking action regarding placement or other personnel decisions.

L. Failure to comply with the requirements of this section are grounds for the state agency having jurisdiction of the care provider to impose administrative sanctions and penalties, including suspension or revocation of the provider's license and imposition of fines. Until January 1, 1998 a care provider shall not be subject to administrative sanctions or penalties for health facilities survey deficiencies for continuing to employ a caregiver for whom the provider has not received the results of criminal records checks during the one hundred day period of temporary employment provided for in Subsections B and C of this section. This subsection neither limits any existing and independent sanctioning authority nor grants any additional sanctioning authority.

Section 2

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

SENATE PUBLIC AFFAIRS COMMITTEE

SUBSTITUTE FOR SENATE BILL 651, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 10, 1997

CHAPTER 203

RELATING TO MOTOR VEHICLES; INCREASING THE LABORATORY FEE ASSESSED UPON CONVICTION OF DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.

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

Section 1. Section 31-12-7 NMSA 1978 (being Laws 1981, Chapter 367, Section 1, as amended) is amended to read:

"31-12-7. MOTOR VEHICLES--INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--FEE UPON CONVICTION.--Notwithstanding the provisions of Section 66-8-102 NMSA 1978 or any municipal ordinance that prohibits driving while under the influence of intoxicating liquor or drugs, a person convicted of a violation of Section 66-8-102 NMSA 1978 or a violation of a municipal ordinance that prohibits driving while under the influence of intoxicating liquor or drugs shall be assessed by the court, in addition to any other fee or fine:

A. a fee of sixty-five dollars ($65.00) to defray the costs of chemical and other tests used to determine the influence of liquor or drugs; and

B. a fee of seventy-five dollars ($75.00) to fund comprehensive community programs for the prevention of driving while under the influence of intoxicating liquor or drugs and for other traffic safety purposes."

SENATE BILL 673
Approved April 10, 1997

CHAPTER 204

RELATING TO MOTORBOATS; ALLOWING MUNICIPALITIES, COUNTIES AND FEE AGENTS OPERATING MOTOR VEHICLE FIELD OFFICES TO RECEIVE PAYMENTS FOR MOTORBOAT REGISTRATIONS AND TITLE TRANSACTIONS; 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 66-6-23 NMSA 1978 (being Laws 1978, Chapter 35, Section 358, as amended) 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 or motor vehicle or motorboat 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, from all 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 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

SENATE BILL 674
Approved April 10, 1997

CHAPTER 205

RELATING TO ALCOHOL; PROVIDING FOR PARTICIPATION IN A SCREENING PROGRAM; PROVIDING MANDATORY CRIMINAL PENALTIES; AUTHORIZING THE USE OF CONVICTIONS FROM OTHER JURISDICTIONS FOR DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS AS PRIOR CONVICTIONS.

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

Section 1

Section 1. Section 66-8-102 NMSA 1978 (being Laws 1953, Chapter 139, Section 54, as amended) is amended to read:

"66-8-102. PERSONS UNDER INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

A. It is unlawful for any person who is under the influence of intoxicating liquor to drive any vehicle within this state.

B. It is unlawful for any person who is under the influence of any drug to a degree that renders him incapable of safely driving a vehicle to drive any vehicle within this state.

C. It is unlawful for any person who has an alcohol concentration of eight one-hundredths or more in his blood or breath to drive any vehicle within this state.

D. Aggravated driving while under the influence of intoxicating liquor or drugs consists of a person who:

(1) has an alcohol concentration of sixteen one-hundredths or more in his blood or breath while driving any vehicle within this state;

(2) has caused bodily injury to a human being as a result of the unlawful operation of a motor vehicle while driving under the influence of intoxicating liquor or drugs; or

(3) refused to submit to chemical testing, as provided for in the Implied Consent Act, and in the judgment of the court, based upon evidence of intoxication presented to the court, was under the influence of intoxicating liquor or drugs.

E. Every person under first conviction under this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than ninety days or by a fine of not more than five hundred dollars ($500), or both; provided that if the sentence is suspended in whole or in part or deferred, the period of probation may extend beyond ninety days but shall not exceed one year. Upon a first conviction under this section, an offender may be

sentenced to not less than forty-eight hours of community service or a fine of three hundred dollars ($300). The offender shall be ordered by the court to participate in and complete a screening program described in Subsection H of this section and to attend a driver rehabilitation program for alcohol or drugs, also known as a "DWI school", approved by the traffic safety bureau of the state highway and transportation department and also may be required to participate in other rehabilitative services as the court shall determine to be necessary. In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to not less than forty-eight consecutive hours in jail. If an offender fails to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court, the offender shall be sentenced to not less than an additional forty-eight consecutive hours in jail. Any jail sentence imposed under this subsection for failure to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court or for aggravated driving while under the influence of intoxicating liquor or drugs shall not be suspended, deferred or taken under advisement. On a first conviction under this section, any time spent in jail for the offense prior to the conviction for that offense shall be credited to any term of imprisonment fixed by the court. A deferred sentence under this subsection shall be considered a first conviction for the purpose of determining subsequent convictions.

F. A second or third conviction under this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than three hundred sixty-four days or by a fine of not more than one thousand dollars ($1,000), or both; provided that if the sentence is suspended in whole or in part, the period of probation may extend beyond one year but shall not exceed five years. Notwithstanding any provision of law to the contrary for suspension or deferment of execution of a sentence:

(1) upon a second conviction, each offender shall be sentenced to a jail term of not less than seventy-two consecutive hours, forty-eight hours of community service and a fine of five hundred dollars ($500). In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than ninety-six consecutive hours. If an offender fails to complete, within a time specified by the court, any community service, screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional seven consecutive days in jail.

A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement; and

(2) upon a third conviction, an offender shall be sentenced to a jail term of not less than thirty consecutive days and a fine of seven hundred fifty dollars ($750). In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than sixty consecutive days. If an offender fails to complete, within a time specified by the court, any screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional sixty consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement.

G. Upon a fourth or subsequent conviction under this section, an offender is guilty of a fourth degree felony, as provided in Section 31-18-15 NMSA 1978, and shall be sentenced to a jail term of not less than six months, which shall not be suspended or deferred or taken under advisement.

H. Upon any conviction under this section, an offender shall be required to participate in and complete, within a time specified by the court, an alcohol or drug abuse screening program and, if necessary, a treatment program approved by the court. The penalty imposed pursuant to this subsection shall not be suspended, deferred or taken under advisement.

I. In the case of a first, second or third offense under this section, the magistrate court has concurrent jurisdiction with district courts to try the offender.

J. A conviction under a municipal or county ordinance in New Mexico or a law of any other jurisdiction, territory or possession of the United States that is equivalent to New Mexico law for driving while under the influence of intoxicating liquor or drugs, prescribing penalties for driving while under the influence of intoxicating liquor or drugs shall be deemed to be a conviction under this section for purposes of determining whether a conviction is a second or subsequent conviction.

K. In addition to any other fine or fee which may be imposed pursuant to the conviction or other disposition of the offense under this section, the court may order the offender to pay the costs of any court-ordered screening and treatment programs.

L. As used in this section:

(1) "bodily injury" means an injury to a person that is not likely to cause death or great bodily harm to the person, but does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the person's body; and

(2) "conviction" means an adjudication of guilt and does not include imposition of a sentence."

SENATE BILL 675, AS AMENDED
Approved April 10, 1997

CHAPTER 206

TO DETERMINE THE FEASIBILITY OF CREATING A PREPAID COLLEGE TUITION PROGRAM.

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

Section 1

Section 1. PREPAID HIGHER EDUCATION TUITION PROGRAM--FEASIBILITY STUDY--GUIDELINES.--

A. The commission on higher education shall conduct a thorough study to determine the feasibility of creating a prepaid higher education tuition program, which shall include requirements that:

(1) prepaid tuition contracts, once paid, will cover all tuition and required fees of the institution of higher education;

(2) payments for prepaid tuition contracts may be made either in a lump sum or in installments;

(3) the prepaid tuition contracts shall:

(a) allow purchasers to choose from payment plans that pay the tuition and required fees for either a community college, four-year or in-state, private post-secondary educational institution;

(b) allow for rollover of prepaid higher education tuition benefits from one plan to another, and that provide that benefits may be used at any community college, four-year or in-state, private post-secondary educational institution;

(c) include penalties for termination of the contract or default on any of the contract's terms or conditions; and

(d) include provisions that allow purchasers to change or switch beneficiaries;

(4) beneficiaries meet certain minimum eligibility requirements;

(5) when setting contract prices, the commission consider:

(a) the amount and estimated rate of increase of tuition and fees at institutions of higher education;

(b) expected investment returns;

(c) estimated administrative costs; and

(d) the period between the date the contract is entered into and the date the beneficiary is projected to graduate from high school;

(6) allow for gifts or bequests either on behalf of a beneficiary or to the fund generally;

(7) institutions of higher education are either required to participate or that the commission may specify how and when institutions of higher education become eligible to participate in the program;

(8) benefits under a prepaid tuition contract are excluded from any calculation of a beneficiary's state student-aid eligibility; and

(9) a program established pursuant to the requirements set forth in this section shall not obligate or encumber any money deposited in the state permanent fund, the severance tax bond fund or any money that is a part of a state-funded financial aid program.

B. The commission shall report its findings to the appropriate interim legislative committee no later than October 15, 1997. The report shall include a recommendation from the commission regarding the feasibility of implementing a prepaid higher education tuition program based on the requirements set forth in Subsection A of this section.

SENATE BILL 677, AS AMENDED
Approved April 10, 1997

CHAPTER 207

RELATING TO PUBLIC ACCOUNTANCY; AMENDING SECTIONS OF THE PUBLIC ACCOUNTANCY ACT.

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

Section 1

Section 1. Section 61-28A-3 NMSA 1978 (being Laws 1992, Chapter 10, Section 3) is amended to read:

"61-28A-3. DEFINITIONS.--As used in the Public Accountancy Act:

A. "board" means the New Mexico state board of public accountancy;

B. "certified public accountant" means an individual who has successfully met the certification requirements for certified public accountant set forth in the Public Accountancy Act and who has been granted a certificate by the board;

C. "continuing professional education" means courses in accounting, auditing, tax or other functions of public accountancy identified and approved by the board and provided to individuals seeking to maintain a valid permit to practice;

D. "firm" means a sole proprietorship, a professional corporation, a partnership, a limited liability company or other form of business entity permitted by state law;

E. "fund" means the public accountancy fund;

F. "person" means an individual or firm;

G. "practice" means the performance of public accountancy or the offering to perform public accountancy for a client or potential client by a person holding himself out to the public as a permit holder or registered firm;

H. "practitioner" means a registered firm or an individual engaged in the practice of public accountancy holding a valid certificate and permit;

I. "public accountancy" means the performance of one or more kinds of services involving accounting or auditing skills, including the issuance of reports on financial statements, the performance of one or more kinds of management, financial advisory or consulting services, the preparation of tax returns or the furnishing of advice on tax matters;

J. "quality review" or "peer review" means a study, appraisal or review of one or more aspects of the accounting and auditing work of a practitioner by a practitioner who is not affiliated with the person or firm being reviewed;

K. "reciprocal jurisdiction" means a state or foreign country identified by the board by rule as having standards for authorizing a person to practice public accountancy equivalent to those prescribed in New Mexico law and by board rule;

L. "registered firm" means a firm that has been granted a registration by the board pursuant to the Public Accountancy Act;

M. "registered public accountant" means an individual who, prior to December 31, 1990, successfully met the certification requirements for registered public accountant set forth in the Public Accountancy Act or in prior law and who has been granted a certificate by the board;

N. "report" means an opinion or other writing that:

(1) states or implies assurance as to the reliability of any financial statements;

(2) includes or is accompanied by any statement or implication that the person issuing it has special knowledge or competency in accounting or auditing indicated by the use of names, titles or abbreviations likely to be understood to identify the author of the report as a practitioner; and

(3) includes the following types of reports as they are defined by board rule:

(a) a compilation report;

(b) a review report; or

(c) an audit report;

O. "rule" means any written directive of general application duly adopted by the board; and

P. "state" means any state or insular possession of the United States, including the District of Columbia, Puerto Rico, the United States Virgin Islands and Guam."

Section 2

Section 2. Section 61-28A-15 NMSA 1978 (being Laws 1992, Chapter 10, Section 15, as amended) is amended to read:

"61-28A-15. REGISTRATION--FIRMS.--

A. All firms that are engaged in the practice of public accountancy in New Mexico shall register annually with the board.

B. Registration of firms shall require that:

(1) a sole practitioner shall be a holder of a current permit;

(2) any partnership desiring registration as a firm shall be composed solely of partners who hold current permits;

(3) any corporation shall be organized under the Professional Corporation Act or similar provisions of the laws of another state, and all shareholders shall hold current permits;

(4) any limited liability company shall be organized under the Limited Liability Company Act or similar provisions of the laws of another state and all members shall hold current permits;

(5) if any partner, shareholder or member is a partnership, corporation, limited liability company or other form of business entity permitted by state law, that partnership, corporation, limited liability company or other form of business entity permitted by state law shall be a registered firm;

(6) any partnership, corporation, limited liability company or other form of business entity permitted by state law seeking registration as a firm to allow it to engage in the practice of public accountancy in New Mexico shall provide documentation to the board that all partners, shareholders or members practicing in New Mexico

hold current permits and that all partners, shareholders or members in the firm not practicing in New Mexico are duly authorized to practice public accountancy in a reciprocal jurisdiction; and

(7) prior to December 31, 1998, the board shall establish by rule a peer review program under which a registered firm shall undergo a peer review at least once every three years. The rule shall require firms that contract to perform audits of state agencies, as defined in the Audit Act, to comply with federal or state peer review standards applicable to those audits. The rule shall require a firm registering pursuant to the provisions of this section to provide documentation to the board that it meets the requirements of the peer review program. The rule shall establish standards for granting continuing professional education credits to practitioners during the years in which their firms undergo peer reviews.

C. Application for registration pursuant to provisions of this section shall be made upon affidavit of individuals and in a form specified by the board.

D. Registration shall be denied to any firm that has failed to comply with any provision of the Public Accountancy Act.

E. Failure of a firm practicing public accountancy in this state to file an annual application for registration renewal is cause for suspension or revocation of the right of the firm to practice in New Mexico.

F. The board may collect a registration fee prescribed by board rule not to exceed fifty dollars ($50.00) from firms required to register pursuant to provisions of this section.

G. Any registered firm whose registration has been canceled for failure to pay the annual renewal fee may secure reinstatement of its registration at any time within three months following June 30 of the year of the delinquent payment upon payment of the annual renewal fee and of a delinquency fee prescribed by board rule not to exceed fifty dollars ($50.00). After the three-month period, no registration shall be reinstated except upon application satisfactory to the board."

SENATE BILL 692
Approved April 10, 1997

CHAPTER 208

RELATING TO CRIMINAL SENTENCING; INCREASING PENALTIES FOR BRIBERY OR INTIMIDATION OF A WITNESS OR RETALIATION AGAINST A WITNESS; INCREASING PENALTIES FOR JURY TAMPERING; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 30-24-3 NMSA 1978 (being Laws 1963, Chapter 303, Section 24-3, as amended) is amended to read:

"30-24-3. BRIBERY OR INTIMIDATION OF A WITNESS--

RETALIATION AGAINST A WITNESS.--

A. Bribery or intimidation of a witness consists of any person knowingly:

(1) giving or offering to give anything of value to any witness or to any person likely to become a witness in any judicial, administrative, legislative or other official cause or proceeding to testify falsely or to abstain from testifying to any fact in such cause or proceeding;

(2) intimidating or threatening any witness or person likely to become a witness in any judicial, administrative, legislative or other official cause or proceeding for the purpose of preventing such individual from testifying to any fact, to abstain from testifying or to testify falsely; or

(3) intimidating or threatening any person or giving or offering to give anything of value to any person with the intent to keep the person from truthfully reporting to a law enforcement officer or any agency of government that is responsible for enforcing criminal laws information relating to the commission or possible commission of a felony offense or a violation of conditions of probation, parole or release pending judicial proceedings.

B. Retaliation against a witness consists of any person knowingly engaging in conduct that causes bodily injury to another person or damage to the tangible property of another person, or threatening to do so, with the intent to retaliate against any person for any information relating to the commission or possible commission of a felony offense or a violation of conditions of probation, parole or release

pending judicial proceedings given by a person to a law enforcement officer.

C. Whoever commits bribery or intimidation of a witness is guilty of a third degree felony.

D. Whoever commits retaliation against a witness is guilty of a second degree felony."

Section 2

Section 2. Section 38-5-5 NMSA 1978 (being Laws 1969, Chapter 222, Section 5, as amended) is amended to read:

"38-5-5. JURY TAMPERING--PENALTIES.--Jury tampering consists of:

A. the willful placing of names in a jury wheel or removal of the names other than in accordance with law;

B. the selection or drawing of jurors other than in accordance with law;

C. the attempt to threaten, coerce or induce a trial juror to vote for a false verdict or a grand juror to vote for no indictment or for a false indictment; or

D. the threatening, coercing or inducing of a trial juror to vote for a false verdict or a grand juror to vote for no indictment or for a false indictment.

Whoever violates the provisions of Subsection A or B of this section is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978. Whoever violates the provisions of Subsection C 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. Whoever violates the provisions of Subsection D of this section is guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978."

Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

SENATE JUDICIARY COMMITTEE SUBSTITUTE

FOR SENATE BILL 774
Approved April 10, 1997

CHAPTER 209

RELATING TO ELECTIONS; PROVIDING AN EXCEPTION FOR CERTAIN VOTER REGISTRATION INFORMATION FOR A VOTER WHO HAS FILED FOR AN ORDER OF PROTECTION; AMENDING A SECTION OF THE ELECTION CODE.

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

Section 1

Section 1. Section 1-4-5.1 NMSA 1978 (being Laws 1993, Chapter 314, Section 7 and Laws 1993, Chapter 316, Section 7) is amended to read:

"1-4-5.1. METHOD OF REGISTRATION--FORM.--

A. A qualified elector may apply for registration by mail or in the office of the county clerk.

B. Certificate of registration forms may be requested from the secretary of state or any county clerk in person, by telephone or by mail for oneself or for others.

C. Except as provided in Subsection D of this section, a qualified elector who wishes to register to vote shall fill out completely and sign the certificate of registration. The qualified elector may seek the assistance of any person in completing the certificate of registration.

D. A qualified elector who has filed for an order of protection pursuant to the provisions of the Family Violence Protection Act, and who presents a copy of that order from a state or tribal court to the registration officer, shall not be required to provide address information on the certificate of registration.

E. Completed certificates of registration may be mailed or presented in person by the registrant or any other person to the secretary of state or presented in person by the registrant or any other person to the county clerk of the county in which the registrant resides.

F. If the registrant wishes to vote in the next election, the completed and signed certificate of registration shall be delivered or mailed and postmarked at least twenty-eight days before the election.

G. Upon receipt of a certificate of registration, the secretary of state shall send the certificate to the county clerk in the county where the qualified elector resides.

H. Only when the certificate of registration is properly filled out, signed by the qualified elector and accepted for filing by the county clerk as evidenced by his signature or stamp and the date of acceptance thereon and when notice has been received by the registrant shall it constitute an official public record of the registration of the qualified elector.

I. The secretary of state shall prescribe the form of the certificate of registration, which shall be a postpaid mail-in format and shall be printed in Spanish and English. The certificate of registration form shall be clear and understandable to the average person and shall include brief but sufficient instructions to enable the qualified elector to complete the form without assistance."

SENATE BILL 784, AS AMENDED

Approved April 10, 1997

CHAPTER 210

RELATING TO TAXATION; PERMITTING DISTRICT AND MUNICIPAL COURTS TO COLLECT DEBTS OF OUTSTANDING COURT FINES, FEES AND COSTS PRIOR TO ISSUANCE OF A STATE INCOME TAX REFUND; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 7-2C-2 NMSA 1978 (being Laws 1985, Chapter 106, Section 2, as amended) is amended to read:

"7-2C-2. PURPOSE.--

A. The purpose of the Tax Refund Intercept Program Act is to comply with federal law:

(1) by enhancing the enforcement of child support and medical support obligations;

(2) to aid collection of outstanding debts owed for overpayment of public assistance and overissuance of food stamps and overpayment of unemployment compensation benefits and nonpayment of contributions or payments in lieu of contributions or other amounts due under the Unemployment Compensation Law;

(3) to promote repayment of educational loans;

(4) to aid collection of fines, fees and costs owed to the district, magistrate and municipal courts; and

(5) to aid collection of fines, fees and costs owed to the Bernalillo county metropolitan court.

B. Efforts to accomplish the purpose of the Tax Refund Intercept Program Act may be enhanced by establishing a system to collect debts, in particular, outstanding child support obligations, educational loans, amounts due under the Unemployment Compensation Law, fines, fees and costs owed to the district, magistrate and municipal courts and fines, fees and costs owed to the Bernalillo county metropolitan court, by setting off the amount of such debts against the state income tax refunds due the debtors."

Section 2

Section 2. Section 7-2C-3 NMSA 1978 (being Laws 1985, Chapter 106, Section 3, as amended by Laws 1994, Chapter 56, Section 1 and also by Laws 1994, Chapter 76, Section 2) is amended to read:

"7-2C-3. DEFINITIONS.--As used in the Tax Refund Intercept Program Act:

A. "claimant agency" means the taxation and revenue department or any of its divisions, the human services department, the employment security division of the labor department, any corporation authorized to be formed under the Educational Assistance Act, a district, magistrate or municipal court or the Bernalillo county metropolitan court;

B. "debt" means a legally enforceable obligation of an employer subject to the Unemployment Compensation Law or an individual to pay a liquidated amount of money:

(1) that is equal to or more than one hundred dollars ($100);

(2) that is due and owing a claimant agency, which a claimant agency is obligated by law to collect or which, in the case of an educational loan, a claimant agency has lawfully contracted to collect;

(3) that has accrued through contract, tort, subrogation or operation of law; and

(4) that, in the case of an amount due under the Unemployment Compensation Law, has been secured by a warrant of levy and lien or, in all other cases, has been reduced to judgment;

C. "debtor" means any employer subject to the Unemployment Compensation Law or any individual owing a debt;

D. "department" or "division" means, unless the context indicates otherwise, 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;

E. "educational loan" means any loan for educational purposes owned by a public post-secondary educational institution or owned or guaranteed by any corporation authorized to be formed under the Educational Assistance Act;

F. "medical support" means amounts owed to the human services department pursuant to the provisions of Subsection B of Section 40-4C-12 NMSA 1978;

G. "public post-secondary educational institution" means a publicly owned or operated institution of higher education or other publicly owned or operated post-secondary educational facility located within New Mexico;

H. "spouse" means an individual who is or was a spouse of the debtor and who has joined with the debtor in filing a joint return of income tax pursuant to the provisions of the Income Tax Act, which joint return has given rise to a refund that may be subject to the provisions of the Tax Refund Intercept Program Act; and

I. "refund" means a refund, including any amount of tax rebates or credits, under the Income Tax Act that the department has determined to be due to an individual."

Section 3

Section 3. Section 7-2C-11 NMSA 1978 (being Laws 1985, Chapter 106, Section 11, as amended) is amended to read:

"7-2C-11. PRIORITY OF CLAIMS.--

A. Claims of the department take precedence over the claim of any competing claimant agency, whether the department asserts a claim or sets off an asserted debt under the provisions of the Tax Refund Intercept Program Act or under the provisions of any other law that authorizes the department to apply amounts of tax owed against any refund due an individual pursuant to the Income Tax Act.

B. After claims of the department, claims shall take priority in the following order before claims of any competing claimant agency:

(1) claims of the human services department resulting from child support enforcement liabilities;

(2) claims of the human services department resulting from medical support liabilities;

(3) claims resulting from educational loans made under the Educational Assistance Act;

(4) claims of the human services department resulting from AFDC liabilities;

(5) claims of the human services department resulting from food stamp liabilities;

(6) claims of the employment security division of the labor department arising under the Unemployment Compensation Law;

(7) claims of a district court for fines, fees or costs owed to that court;

(8) claims of a magistrate court for fines, fees or costs owed to that court;

(9) claims of the Bernalillo county metropolitan court for fines, fees or costs owed to that court; and

(10) claims of a municipal court for fines, fees or costs owed to that court."

SENATE BILL 812, AS AMENDED

Approved April 10, 1997

CHAPTER 211

RELATING TO SKIING; REVISING THE SKI SAFETY ACT; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 24-15-2 NMSA 1978 (being Laws 1969, Chapter 218, Section 2, as amended) is amended to read:

"24-15-2. PURPOSE OF ACT.--

A. In order to safeguard life, health, property and the welfare of this state, it is the policy of New Mexico to protect its citizens and visitors from unnecessary hazards in the operation of ski lifts and passenger aerial tramways and to require liability insurance to be carried by operators of ski lifts and tramways. The primary responsibility for the safety of operation, maintenance, repair and inspection of ski lifts and tramways rests with the operators of such devices. The primary responsibility for the safety of the individual skier while engaging in the sport of skiing rests with the skier himself. The state, through the Ski Safety Act, recognizes these responsibilities and duties on the part of the ski area operator and the skier.

B. It is recognized that there are inherent risks in the sport of skiing, which should be understood by each skier and which are essentially impossible to eliminate by the ski area operator. It is the purpose of the Ski Safety Act to define those areas of responsibility and affirmative acts for which ski area operators shall be liable for loss, damage or injury and those risks which the skier or passenger expressly assumes and for which there can be no recovery."

Section 2

Section 2. Section 24-15-3 NMSA 1978 (being Laws 1979, Chapter 279, Section 3) is amended to read:

"24-15-3. DEFINITIONS.--As used in the Ski Safety Act:

A. "ski lift" means any device operated by a ski area operator used to transport passengers by single or double reversible tramway, chair lift or gondola lift, T-bar lift, J-bar lift, platter lift or similar device or a fiber rope tow;

B. "passenger" means any person, at any time in the year, who is lawfully using a ski lift or is waiting to embark or has recently disembarked from a ski lift and is in its immediate vicinity;

C. "ski area" means the property owned, permitted, leased or under the control of the ski area operator and administered as a single enterprise within the state;

D. "ski area operator" means any person, partnership, corporation or other commercial entity and its agents, officers, employees or representatives who has operational responsibility for any ski area or ski lift;

E. "skiing" means participating in the sport in which a person slides on snow, ice or a combination of snow and ice while using skis;

F. "skiing area" means all slopes, trails, terrain parks and competition areas, not including any ski lift;

G. "skier" means any person, including a person enrolled in ski school or other class for instruction, who is on skis and present at a skiing area under the control of a ski area operator for the purpose of engaging in the sport of skiing by utilizing the ski slopes and trails and does not include a passenger;

H. "ski slopes and trails" means those areas designated by the ski area operator to be used by skiers for the purpose of participating in the sport of skiing;

I. "ski retention device" means a device designed to help prevent runaway skis; and

J. "skis" means any device used for skiing, including alpine skis, telemark skis, cross-country skis, mono-skis, snowboards, bladerunners, adaptive devices used by disabled skiers, or tubes, sleds or any other device used to accomplish the same or a similar purpose to participate in the sport of skiing."

Section 3

Section 3. Section 24-15-4 NMSA 1978 (being Laws 1969, Chapter 218, Section 4) is amended to read:

"24-15-4. INSURANCE.--

A. Every operator shall file with the state corporation commission and keep on file therewith proof of financial responsibility in the form of a current insurance policy in a form approved by the commission, issued by an insurance company authorized to do business in the state, conditioned to pay, within the limits of liability herein prescribed, all final judgments for personal injury or property damage proximately caused or resulting from negligence of the operator covered thereby, as such negligence is defined and limited by the Ski Safety Act. The minimum limits of liability insurance to be provided by operators shall be as follows:

SKI SAFETY ACT

LIABILITY INSURANCE

LIMITS OF LIABILITY

REQUIRED MINIMUM COVERAGES

FOR INJURIES, DEATH OR DAMAGES

LIMITS FOR BODILY

INJURY TO OR DEATH

KIND AND NUMBER OF LIFTS OPERATED	LIMITS FOR BODILY INJURY TO OR DEATH OF ONE PERSON	OF ALL PERSONS INJURED OR KILLED IN ANY ONE ACCIDENT	PROPERTY DAMAGE
Not more than three surface lifts	$ 100,000	$ 300,000	$ 5,000
Not more than three ski lifts, including one or more chair lifts	250,000	500,000	25,000
More than three ski lifts or one or more tramways	500,000	1,000,000	50,000.

B. No ski lift or tramway shall be operated in this state after the effective date of the Ski Safety Act unless a current insurance policy as required herein is in effect and properly filed with the state corporation commission. Each policy shall contain a provision that it cannot be canceled prior to its expiration date without thirty days' written notice of intent to cancel served by registered mail on the insured and on the commission."

Section 4

Section 4. Section 24-15-5 NMSA 1978 (being Laws 1969, Chapter 218, Section 5) is amended to read:

"24-15-5. PENALTY.--Any operator convicted of operating a ski lift or aerial passenger tramway without having obtained and kept in force an insurance policy as required by the Ski Safety Act is guilty of a misdemeanor punishable by a fine of not more than five hundred dollars ($500) for each day of illegal operation. The attorney general or the district attorney of the county where the ski area is located has the power to bring proceedings in the district court of the county in which the ski area is located to enjoin the operation of any ski lift or tramway being operated without a current insurance policy, in the amounts prescribed herein, being obtained and kept in force and covering the operator concerned."

Section 5

Section 5. Section 24-15-7 NMSA 1978 (being Laws 1979, Chapter 279, Section 4) is amended to read:

"24-15-7. DUTIES OF SKI AREA OPERATORS WITH RESPECT TO SKIING AREAS.--Every ski area operator shall have the following duties with respect to the operation of a skiing area:

A. to mark all snow-maintenance vehicles and to furnish such vehicles with flashing or rotating lights, which shall be in operation whenever the vehicles are working or are in movement in the skiing area;

B. to mark with a visible sign or other warning implement the location of any hydrant or similar equipment used in snow-making operations and located on ski slopes and trails;

C. to mark in a plainly visible manner the top or entrance to each slope, trail or area with the appropriate symbol for its relative degree of difficulty, using the symbols established or approved by the national ski areas association; and those slopes, trails or areas which are closed, or portions of which present an unusual obstacle or hazard, shall be marked at the top or entrance or at the point of the obstacle or hazard with the appropriate symbols as are established or approved by the national ski areas association or by the New Mexico ski area operators association;

D. to maintain one or more trail boards at prominent locations at each ski area displaying that area's network of ski trails and slopes with each trail and slope rated in accordance with the symbols and containing a key to the symbols;

E. to designate by trail board or otherwise at the top of or entrance to the subject trail or slope which trails or slopes are open or closed;

F. to place or cause to be placed, whenever snow-maintenance vehicles or snow-making operations are being undertaken upon any trail or slope while such trail or slope is open to the public, a conspicuous notice to that effect at or near the top or entrance of such trail or slope;

G. to provide ski patrol personnel trained in first aid, which training meets at least the requirements of the national ski patrol outdoor emergency care course, and also trained in winter rescue and toboggan handling to serve the anticipated number of injured skiers and to provide personnel trained for the evacuation of passengers from stalled aerial ski lifts. A first aid room or building shall be provided with adequate first aid supplies, and properly equipped rescue toboggans shall be made available at all reasonable times at the top of ski slopes and trails to transport injured skiers from the ski slopes and trails to the first aid room;

H. to post notice of the requirements of the Ski Safety Act concerning the use of ski retention devices;

I. to warn of or correct particular hazards or dangers known to the operator where feasible to do so; and

J. to warn of snowmobiles or all-terrain vehicles (ATV's) operated on the ski slopes or trails with at least one lighted headlamp, one lighted red tail lamp, a brake system and a fluorescent flag that is at least forty square inches and is mounted at least six feet above the bottom of the tracks or tires."

Section 6

Section 6. Section 24-15-10 NMSA 1978 (being Laws 1979, Chapter 279, Section 7) is amended to read:

"24-15-10. DUTIES OF THE SKIERS.--

A. It is recognized that skiing as a recreational sport is inherently hazardous to skiers, and it is the duty of each skier to conduct himself carefully.

B. A person who takes part in the sport of skiing accepts as a matter of law the dangers inherent in that sport insofar as they are obvious and necessary. Each skier expressly assumes the risk of and legal responsibility for any injury to person or property which results from participation in the sport of skiing, in the skiing area, including any injury caused by the following: variations in terrain; surface or subsurface snow or ice conditions; bare spots; rocks, trees or other forms of forest growth or debris; lift towers and components thereof, pole

lines and snow-making equipment which are plainly visible or are plainly marked in accordance with the provisions of Section 24-15-7 NMSA 1978; except for any injuries to persons or property resulting from any breach of duty imposed upon ski area operators under the provisions of Sections 24-15-7 and 24-15-8 NMSA 1978. Therefore, each skier shall have the sole individual responsibility for knowing the range of his own ability to negotiate any slope or trail, and it shall be the duty of each skier to ski within the limits of the skier's own ability, to maintain reasonable control of speed and course at all times while skiing, to heed all posted warnings, to ski only on a skiing area designated by the ski area operator and to refrain from acting in a manner which may cause or contribute to the injury of anyone.

C. Responsibility for collisions by any skier while actually skiing, with any person or object, shall be solely that of each individual involved in the collision, except where an employee, agent or officer of the ski area operator is personally involved in a collision while in the course and scope of his employment or where a collision resulted from any breach of duty imposed upon a ski area operator under the provisions of Sections 24-15-7 or 24-15-8 NMSA 1978. Each skier has the duty to stay clear of and avoid collisions with snow-maintenance equipment, all-terrain vehicles and snowmobiles marked in compliance with the provisions of Subsections A and J of Section 24-15-7 NMSA 1978, all other vehicles, lift towers, signs and any other structures, amenities or equipment on the ski slopes and trails or in the skiing area.

D. No person shall:

(1) place any object in the skiing area or on the uphill track of any ski lift which may cause a passenger or skier to fall;

(2) cross the track of any T-bar lift, J-bar lift, platter lift or similar device or a fiber rope tow, except at a designated location;

(3) when injured while skiing or using a ski lift or, while skiing, when involved in a collision with any skier or object in which an injury results, leave the ski area before giving his name and current address to the ski area operator, or representative or employee of the ski area operator, and the location where the injury or collision occurred and the circumstances thereof; provided, however, in the event a skier fails to give the notice required by this paragraph, a court, in determining whether or not such failure constitutes a violation of the Ski Safety Act, may consider the reasonableness or feasibility of giving such notice; or

(4) use a ski lift, skiing area, slopes or trails while intoxicated or under the influence of any controlled substance.

E. No skier shall fail to wear retention straps or other ski retention devices to help prevent runaway skis.

F. Any skier upon being injured shall indicate, to the ski patrol personnel offering first aid treatment or emergency removal to a first aid room, his acceptance or rejection of such services as provided by the ski area operator. If such service is not refused or if the skier is unable to indicate his acceptance or rejection of such service, the acceptance of the service is presumed to have been accepted by the skier. Such acceptance shall not constitute a waiver of any action for negligent provision of the service by the ski patrol personnel."

SENATE BILL 815, AS AMENDED

Approved April 10, 1997

CHAPTER 212

RELATING TO PUBLIC EMPLOYEE BARGAINING; CLARIFYING THAT CERTAIN STATE EDUCATIONAL INSTITUTIONS MAY CREATE LOCAL BOARDS; AMENDING A SECTION OF THE PUBLIC EMPLOYEE BARGAINING ACT.

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

Section 1

Section 1. Section 10-7D-4 NMSA 1978 (being Laws 1992, Chapter 9, Section 4) is amended to read:

"10-7D-4. DEFINITIONS.--As used in the Public Employee Bargaining Act:

A. "appropriate bargaining unit" means a group of public employees designated by the board or local board for the purpose of collective bargaining;

B. "appropriate governing body" means the policymaking body or individual representing a public employer as defined in Section 10-7D-7 NMSA 1978;

C. "board" means the public employee labor relations board;

D. "certification" means the designation by the board or local board of a labor organization as the exclusive representative for all public employees in an appropriate bargaining unit;

E. "collective bargaining" means the act of negotiating between a public employer and an exclusive representative for the purpose of entering into a written agreement regarding wages, hours and other terms and conditions of employment;

F. "confidential employee" means a person who assists and acts in a confidential capacity with respect to a person who formulates, determines and effectuates management policies;

G. "exclusive representative" means a labor organization that, as a result of certification, has the right to represent all public employees in an appropriate bargaining unit for the purposes of collective bargaining;

H. "factfinding" means the procedure following mediation whereby the parties involved in an impasse submit their differences to a third party for an advisory recommendation;

I. "impasse" means failure of a public employer and an exclusive representative, after good-faith bargaining, to reach agreement in the course of negotiating a collective bargaining agreement;

J. "labor organization" means any employee organization, one of whose purposes is the representation of public employees in collective bargaining and in otherwise meeting, consulting and conferring with employers on matters pertaining to employment relations;

K. "local board" means a local labor relations board established by a public employer, other than the state, through ordinance, resolution or charter amendment;

L. "lockout" means an act by a public employer to prevent its employees from going to work and undertaken for the purpose of

resisting the demands of the employees' exclusive representative or for the purpose of gaining a concession from the exclusive representative;

M. "management employee" means an employee who is engaged primarily in executive and management functions and is charged with the responsibility of developing, administering or effectuating management policies. An employee shall not be deemed a management employee solely because the employee participates in cooperative decision-making programs on an occasional basis;

N. "mediation" means assistance by an impartial third party to resolve an impasse between a public employer and an exclusive representative regarding employment relations through interpretation, suggestion and advice;

O. "professional employee" means an employee whose work is predominantly intellectual and varied in character and whose work involves the consistent exercise of discretion and judgment in its performance and requires knowledge of an advanced nature in a field of learning customarily requiring specialized study at an institution of higher education or its equivalent. The work of a professional employee is of such character that the output or result accomplished cannot be standardized in relation to a given period of time;

P. "public employee" means a regular, nonprobationary employee of a public employer; provided that in the public schools, "public employee" shall also include any regular probationary employee;

Q. "public employer" means the state or any political subdivision thereof, including municipalities having adopted home rule charters, and does not include any government of a tribe or pueblo. State educational institutions, as provided in Article 12, Section 11 of the constitution of New Mexico, shall be considered public employers other than the state for collective bargaining purposes only;

R. "strike" means a public employee's refusal, in concerted action with other public employees, to report for duty or his willful absence in whole or in part from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of public employment; and

S. "supervisor" means an employee who devotes a substantial amount of work time to supervisory duties, who customarily and regularly directs the work of two or more other employees and who has the authority in the interest of the employer to hire, promote or discipline

other employees or to recommend such actions effectively, but does not include individuals who perform merely routine, incidental or clerical duties or who occasionally assume supervisory or directory roles or whose duties are substantially similar to those of their subordinates and does not include lead employees or employees who participate in peer review or occasional employee evaluation programs."

SENATE BILL 841, AS AMENDED
Approved April 10, 1997

CHAPTER 213

RELATING TO LAW ENFORCEMENT; AMENDING THE LAW ENFORCEMENT TRAINING ACT; DEFINING "POLICE OFFICER".

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

Section 1

Section 1. Section 29-7-7 NMSA 1978 (being Laws 1981, Chapter 114, Section 6, as amended) is amended to read:

"29-7-7. DEFINITIONS.--For the purpose of the Law Enforcement Training Act:

A. "academy" means the New Mexico law enforcement academy;

B. "basic law enforcement training" means a course consisting of not less than four hundred hours of instruction in basic law enforcement training as required by the Law Enforcement Training Act;

C. "board" means the New Mexico law enforcement academy board;

D. "conviction" means an adjudication of guilt or a plea of no contest and includes convictions that are suspended or deferred;

E. "director" means the director of the academy;

F. "in-service law enforcement training" means a course of instruction required of all certified peace officers designed to train and equip all police officers in the state with specific law enforcement skills and to ensure the continuing development of all police officers in the state. The training and instruction shall be kept current and may be conducted on a regional basis at the discretion of the director;

G. "police officer" means any commissioned employee of a law enforcement agency that is part of or administered by the state or any political subdivision of the state and includes any employee of a missile range civilian police department who is a graduate of a recognized certified regional law enforcement training facility, and who is currently certifiable by the New Mexico law enforcement academy which employee is responsible for the prevention and detection of crime or the enforcement of the penal or traffic or highway laws of this state. The term specifically includes deputy sheriffs. Sheriffs are eligible to attend the academy and are eligible to receive certification as provided in the Law Enforcement Training Act. As used in this subsection, "commissioned" means an employee of a law enforcement agency who is authorized by a sheriff or chief of police to apprehend, arrest and bring before the court all violators within the state; and

H. "certified regional law enforcement training facility" means a law enforcement training facility within the state certified by the director, with the approval of the academy's board of directors, that offers basic law

enforcement training and in-service law enforcement training that is comparable to or exceeds the standards of the programs of the academy."

SENATE BILL 915, AS AMENDED
Approved April 10, 1997

CHAPTER 214

RELATING TO HEALTH; CHANGING REPORTING REQUIREMENTS IN CERTAIN CIRCUMSTANCES.

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

Section 1

Section 1. Section 24-2B-6 NMSA 1978 (being Laws 1989, Chapter 227, Section 6) is amended to read:

"24-2B-6. CONFIDENTIALITY.--No person or the person's agents or employees who require or administer the test shall disclose the identity of any person upon whom a test is performed or the result of such a test in a manner which permits identification of the subject of the test, except to the following persons:

A. the subject of the test or the subject's legally authorized representative, guardian or legal custodian;

B. any person designated in a legally effective release of the test results executed prior to or after the test by the subject of the test or the subject's legally authorized representative;

C. an authorized agent, a credentialed or privileged physician or employee of a health facility or health care provider if the health care facility or health care provider itself is authorized to obtain the test results, the agent or employee provides patient care or handles or processes specimens of body fluids or tissues and the agent or employee has a need to know such information;

D. the department of health in accordance with reporting requirements established by regulation;

E. a health facility or health care provider which procures, processes, distributes or uses:

(1) a human body part from a deceased person, with respect to medical information regarding that person;

(2) semen provided prior to the effective date of the Human Immunodeficiency Virus Test Act for the purpose of artificial insemination;

(3) blood or blood products for transfusion or injection; or

(4) human body parts for transplant with respect to medical information regarding the donor or recipient;

F. health facility staff committees or accreditation or oversight review organizations which are conducting program monitoring, program evaluation or service reviews, so long as any identity remains confidential;

G. authorized medical or epidemiological researchers who may not further disclose any identifying characteristics or information; and

H. for purposes of application or reapplication for insurance coverage, an insurer or reinsurer upon whose request the test was performed."

SENATE BILL 917
Approved April 10, 1997

CHAPTER 215

RELATING TO CRIMINAL PROCEDURE; ADDING CONTRIBUTIONS TO A DRUG ABUSE RESISTANCE EDUCATION PROGRAM AS ONE OF THE CONDITIONS THAT MAY BE IMPOSED FOR DEFERRING OR SUSPENDING A CRIMINAL SENTENCE.

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

Section 1

Section 1. Section 31-20-6 NMSA 1978 (being Laws 1963, Chapter 303, Section 29-18, as amended) is amended to read:

"31-20-6. CONDITIONS OF ORDER DEFERRING OR SUSPENDING SENTENCE.--The magistrate, metropolitan or district court shall attach to its order deferring or suspending sentence such reasonable conditions as it may deem necessary to ensure that the defendant will observe the laws of the United States and the various states and the ordinances of any municipality. The defendant upon conviction shall be required to reimburse a law enforcement agency or local crime stopper program for the amount of any reward paid by the agency or program for information leading to his arrest, prosecution or conviction, but in no event shall reimbursement to the crime stopper program preempt restitution to victims pursuant to the provisions of Section 31-17-1 NMSA l978. The defendant upon conviction shall be required to pay the actual costs of his supervised probation service to the adult probation and parole division of the corrections department or appropriate responsible agency for deposit to the corrections department intensive supervision fund not exceeding one thousand twenty dollars ($1,020) annually to be paid in monthly installments of not less than fifteen dollars ($15.00) and not more than eighty-five dollars ($85.00), subject to modification, upon court approval, by the appropriate district supervisor of the adult probation and parole division or the local supervisor of the responsible agency on the basis of changed financial circumstances, and may be required:

A. to provide for the support of any persons for whose support he is legally responsible;

B. to undergo available medical or psychiatric treatment and to enter and remain in a specified institution, when required for that purpose;

C. to be placed on probation under the supervision, guidance or direction of the adult probation and parole division of the corrections department for a term not to exceed five years;

D. to serve a period of time in volunteer labor to be known as "community service". The type of labor and period of service shall be at the sole discretion of the court; provided that any person receiving community service shall be immune from any civil liability other than gross negligence arising out of the community service, and any person who performs community service pursuant to court order or any criminal diversion program shall not be entitled to any wages, shall not be considered an employee for any purpose and shall not be entitled to workers' compensation, unemployment benefits or any other benefits otherwise provided by law. As used in this subsection, "community service" means any labor that benefits the public at large or any public, charitable or educational entity or institution;

E. to make a contribution of not less than ten dollars ($10.00) and not more than one hundred dollars ($100), to be paid in monthly installments of not less than five dollars ($5.00), to a local crime stopper program or a local drug abuse resistance education program that operates in the territorial jurisdiction of the court. If there is no program in that area, the contribution shall be made to the crime stoppers commission; and

F. to satisfy any other conditions reasonably related to his rehabilitation."

SENATE BILL 920
Approved April 10, 1997

CHAPTER 216

RELATING TO COUNTIES; AMENDING AND ENACTING SECTIONS OF THE COUNTY INDUSTRIAL REVENUE BOND ACT AND THE INDUSTRIAL REVENUE BOND ACT TO REMOVE A PROVISION REQUIRING PRIOR MUNICIPAL APPROVAL FOR CERTAIN COUNTY PROJECTS AND PROVIDE NOTICE BETWEEN COUNTIES AND MUNICIPALITIES FOR CERTAIN PROJECTS; PROVIDING FOR DEVELOPMENT OF JOINT CRITERIA FOR ISSUANCE OF INDUSTRIAL REVENUE BONDS.

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

Section 1

Section 1. Section 3-32-2 NMSA 1978 (being Laws 1967, Chapter 84, Section 1) is amended to read:

"3-32-2. SHORT TITLE.--Chapter 3, Article 32 NMSA 1978 may be cited as the "Industrial Revenue Bond Act"."

Section 2

Section 2. A new section of the Industrial Revenue Bond Act is enacted to read:

"MUNICIPALITY OVER TWO HUNDRED THOUSAND--NOTICE TO COUNTY.--

A. Prior to adopting an ordinance issuing industrial revenue bonds in a municipality with a population in excess of two hundred thousand, the municipality shall give notice to the county of its intent to consider the matter. The county shall be notified at least thirty days prior to the meeting at which final action is to be taken so that comments can be transmitted by the county to the municipality.

B. The county shall be able to forward its comments and any concerns to the city council, but there is no approval required from the county, and the county does not have veto over the proposed industrial revenue bond issuance.

C. The municipality and county shall jointly develop criteria for issuance of industrial revenue bonds by either government; provided, however, that industrial revenue bonds may be authorized and issued before development of the criteria is completed."

Section 3

Section 3. Section 4-59-1 NMSA 1978 (being Laws 1975, Chapter 286, Section 1) is amended to read:

"4-59-1. SHORT TITLE.--Chapter 4, Article 59 NMSA 1978 may be cited as the "County Industrial Revenue Bond Act"."

Section 4

Section 4. A new section of the County Industrial Revenue Bond Act is enacted to read:

"CLASS A COUNTY--NOTICE TO MUNICIPALITY OVER TWO HUNDRED THOUSAND.--

A. Prior to adopting an ordinance issuing county industrial revenue bonds, a class A county shall give notice to a municipality with a population in excess of two hundred thousand located within the county of its intent to consider the matter. The municipality shall be notified at least thirty days prior to the meeting at which final action is to be taken so that comments can be transmitted by the municipality to the county.

B. The municipality shall be able to forward its comments and any concerns to the board of county commissioners, but there is no approval required from the municipality and the municipality does not have veto over the proposed county industrial revenue bond issuance.

C. The county and the municipality shall jointly develop criteria for issuance of industrial revenue bonds by either government; provided, however, that county industrial revenue bonds may be authorized and issued before development of the criteria is completed."

Section 5

Section 5. Section 4-59-4 NMSA 1978 (being Laws 1975, Chapter 286, Section 4, as amended) is amended to read:

"4-59-4. ADDITIONAL POWERS CONFERRED ON COUNTIES.--In addition to any other powers which it may now have, each county shall have the following powers:

A. to acquire, whether by construction, purchase, gift or lease, one or more projects, which shall be located within this state and shall be located within the county outside the boundaries of any incorporated municipality;

B. to sell or lease or otherwise dispose of any or all of its projects upon such terms and conditions as the commission may deem advisable and as shall not conflict with the provisions of the County Industrial Revenue Bond Act; and

C. to issue revenue bonds for the purpose of defraying the cost of acquiring, by construction and purchase, or either, any project, and to secure the payment of such bonds, all as provided in the County

Industrial Revenue Bond Act. No county shall have the power to operate any project as a business or in any manner except as lessor thereof."

SENATE BILL 926, AS AMENDED
Approved April 10, 1997

CHAPTER 217

RELATING TO HEALTH; PROVIDING FOR DEVELOPMENT AND IMPLEMENTATION OF A PLAN FOR GROWTH OF INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED.

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:

"24-1-5.3. 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. Except as provided in Subsection C of this section for transfers, 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, 1999, 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 presented to the first session of the forty-fourth legislature 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. Upon application, the department may transfer no more than eighty beds from currently licensed intermediate care facilities for the mentally retarded to other intermediate care facilities for the mentally retarded licensed for the purposes of this subsection; provided those facilities:

(1) are licensed to provide sufficient beds and care for no more than four persons with mental retardation per residence;

(2) include fiscal, geographic, service and access criteria pursuant to regulations adopted by the department of health necessary to provide for the needs of persons in need of such facilities;

(3) are in accordance with the freedom of choice provisions of Title XIX of the Social Security Act;

(4) are located no closer than one hundred fifty feet from an existing intermediate care facility for the mentally retarded, home for persons with developmental disabilities or a nursing home; and

(5) eight of the eighty beds shall be exempt from the provisions of Paragraphs (1) through (4) of this subsection and are transferred to the Las Vegas medical center by the department of health for the purposes of programs for persons with developmental disabilities.

D. 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. PLAN OF GROWTH--REQUIREMENTS-- REPORTING.--No later than January 1, 1999 the human services department and the department of health shall develop a plan with approval of the first session of the forty-fourth legislature to

control growth of intermediate care facilities for the mentally retarded and clarify the role of intermediate care facilities for the mentally retarded in the developmental disabilities care system. The plan shall include fiscal, geographical, service and access criteria necessary to provide for the needs of individuals in need of such facilities and shall be in accordance with the freedom of choice provisions of Title XIX of the Social Security Act. The departments shall present a joint report and legislative recommendations on growth of intermediate care facilities for the mentally retarded to the interim legislative health and human services committee no later than October 1, 1998.

SENATE BILL 978, AS AMENDED

WITH CERTIFICATE OF CORRECTIONS

Approved April 10, 1997

CHAPTER 218

RELATING TO BARBERS AND COSMETOLOGISTS; 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 61-17A-2 NMSA 1978 (being Laws 1993, Chapter 171, Section 2) is amended to read:

"61-17A-2. DEFINITIONS.--As used in the Barbers and Cosmetologists Act:

A. "barber" means a person, other than a student, who for compensation engages in barbering;

B. "board" means the board of barbers and cosmetologists;

C. "cosmetologist" means a person, other than a student, who for compensation engages in cosmetology;

D. "electrologist" means a person, other than a student, who for compensation removes hair from or destroys hair on the human body through the use of an electric current applied to the body with a needle-shaped electrode or probe;

E. "enterprise" means a business venture, firm or organization;

F. "establishment" means an immobile beauty shop, barber shop, electrology clinic, salon or similar place of business in which cosmetology, barbering or electrolysis is performed;

G. "esthetician" means a person, other than a student, who for compensation:

(1) uses cosmetic preparations, including makeup applications, antiseptics, powders, oils, clays or creams for the purpose of preserving the health and beauty of the skin and body;

(2) massages, cleans, stimulates or manipulates the skin for the purpose of preserving the health and beauty of the skin and body; or

(3) performs activities similar to the activities described in Paragraph (1) or (2) of this subsection on any part of the body of a person;

H. "manicurist-pedicurist" means a person, other than a student, who for compensation performs work on the nails of a person and applies nail extensions or products to the nails for the purpose of strengthening or preserving the health and beauty of the hands or feet;

I. "sanitation" means the maintenance of sanitary conditions to promote hygiene and the prevention of disease through the use of chemical agents or products;

J. "school" means a public or private instructional facility approved by the board that teaches cosmetology or barbering; and

K. "student" means a person enrolled in a school to learn or be trained in cosmetology, barbering or electrolysis."

Section 2

Section 2. Section 61-17A-5 NMSA 1978 (being Laws 1993, Chapter 171, Section 5) is amended to read:

"61-17A-5. LICENSE REQUIRED.--

A. Unless licensed pursuant to the Barbers and Cosmetologists Act or exempted from the provisions of that act, no person shall practice barbering or cosmetology for compensation either directly or indirectly.

B. Unless licensed pursuant to the Barbers and Cosmetologists Act, no person shall operate a school or establishment for compensation.

C. Unless licensed pursuant to the Barbers and Cosmetologists Act or exempted from the provisions of that act, no person shall teach barbering, cosmetology or electrology for compensation.

D. Unless licensed by the board pursuant to the Barbers and Cosmetologists Act, no person shall practice as a manicurist-pedicurist, esthetician or electrologist for compensation."

Section 3

Section 3. Section 61-17A-6 NMSA 1978 (being Laws 1993, Chapter 171, Section 6) is amended to read:

"61-17A-6. BOARD CREATED--MEMBERSHIP.--

A. The "board of barbers and cosmetologists" is created. The board shall be administratively attached to the regulation and licensing department. The board shall consist of nine members appointed by the governor. Members shall serve three-year terms; provided that at the time of initial appointment, the governor shall appoint members to abbreviated terms to allow staggering of subsequent appointments. Vacancies shall be filled in the manner of the original appointment.

B. Of the nine members of the board, five shall be licensed pursuant to the Barbers and Cosmetologists Act and shall have at least five years' practical experience in their respective occupations. Of those five, two members shall be licensed barbers, two members shall be licensed cosmetologists and one member shall represent school owners. The remaining four members shall be public members. Neither the public members nor their spouses shall have ever been licensed pursuant to the provisions of the Barbers and Cosmetologists Act or similar prior legislation or have a financial interest in a school or establishment.

C. Members of the board shall be reimbursed pursuant to the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

D. The board shall elect from among its members a chairman and such other officers as it deems necessary. The board

shall meet at the call of the chairman, not less than four times each year. A majority of members currently erving shall constitute a quorum for the conduct of business.

E. No board member shall serve more than two full consecutive terms and any member who fails to attend, after proper notice, three meetings shall automatically be recommended for removal unless excused for reasons set forth by board regulation."

Section 4

Section 4. Section 61-17A-7 NMSA 1978 (being Laws 1993, Chapter 171, Section 7) is amended to read:

"61-17A-7. BOARD POWERS AND DUTIES.--

A. The board shall:

(1) adopt and file, in accordance with the State Rules Act, rules and regulations necessary to carry out the provisions of the Barbers and Cosmetologists Act;

(2) establish fees;

(3) provide for the examination, licensure and license renewal of applicants for licensure;

(4) establish standards for and provide for the examination, licensure and license renewal of manicurists-pedicurists, estheticians and electrologists;

(5) adopt a seal;

(6) furnish copies of rules and regulations and sanitary requirements adopted by the board to each owner or manager of an establishment, enterprise or school;

(7) keep a record of its proceedings and a register of applicants for licensure;

(8) provide for the licensure of barbers, cosmetologists, manicurist-pedicurists, estheticians, electrologists, instructors, schools, enterprises and establishments;

(9) establish administrative penalties and fines;

(10) create and establish standards and fees for special licenses;

(11) hire an executive director and such other staff as is necessary to carry out the provisions of the Barbers and Cosmetologists Act; and

(12) establish guidelines for schools to calculate tuition refunds for withdrawing students.

B. The board may establish continuing education requirements as requirements for licensure.

C. Any member of the board, its employees or agents may enter and inspect any school, enterprise or establishment, at any time during regular business hours for the purpose of determining compliance with the Barbers and Cosmetologists Act."

Section 5

Section 5. Section 61-17A-8 NMSA 1978 (being Laws 1993, Chapter 171, Section 8) is amended to read:

"61-17A-8. LICENSURE REQUIREMENTS--BARBERS.--

A. A barber license shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who:

(1) has an education equivalent to the completion of the second year of high school;

(2) is at least seventeen years of age;

(3) has completed a course in barbering of at least one thousand two hundred hours in a school approved by the board; and

(4) has passed an examination approved by the board.

B. The holder of a barber license has the right and privilege to use the title "barber", the initials "R.B." following the holder's surname and to use a barber pole, the traditional striped, vertical emblem of the barbering trade."

Section 6

Section 6. Section 61-17A-9 NMSA 1978 (being Laws 1993, Chapter 171, Section 9) is amended to read:

"61-17A-9. LICENSURE REQUIREMENTS--COSMETOLOGISTS.--

A. A cosmetologist license shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who:

(1) is at least seventeen years of age;

(2) has an education equivalent to the completion of the second year of high school;

(3) has completed a course in cosmetology of at least one thousand six hundred hours at a school approved by the board; and

(4) has passed an examination approved by the board.

B. The name of a licensed cosmetologist may be immediately followed by the initials "R.C.", as a right and privilege of licensure."

Section 7

Section 7. Section 61-17A-10 NMSA 1978 (being Laws 1993, Chapter 171, Section 10) is amended to read:

"61-17A-10. LICENSURE REQUIREMENTS OF MANICURISTS-PEDICURISTS, ESTHETICIANS AND ELECTROLOGISTS.--

A. The board shall provide for the licensure of manicurists-pedicurists. The board shall issue a manicurist-pedicurist license to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence of compliance with all requirements established by the board. The name of a licensed manicurist-pedicurist may be immediately followed by the initials "R.M.", as a right and privilege of licensure.

B. The board shall provide for the licensure of estheticians. The board shall issue an esthetician license to any person who files a

completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence of compliance with all requirements established by the board. The name of a licensed esthetician may be immediately followed by the initials "R.F.", as a right and privilege of licensure.

C. The board shall provide for the licensure of electrologists. The board shall issue an electrologist license to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence of compliance with all requirements established by the board. The name of a licensed electrologist may be immediately followed by the initials "R.E.", as a right and privilege of licensure."

Section 8

Section 8. Section 61-17A-11 NMSA 1978 (being Laws 1993, Chapter 171, Section 11) is amended to read:

"61-17A-11. LICENSURE OF INSTRUCTORS.--

A. A cosmetologist instructor license shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who:

(1) is a licensed cosmetologist;

(2) has completed at least a four-year high school course of study or its equivalent as approved by the board;

(3) has met all requirements established by the board; and

(4) has passed an examination approved by the board.

B. A barber instructor license shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who:

(1) is a licensed barber;

(2) has completed at least a four-year high school course of study or its equivalent as approved by the board;

(3) has met all requirements established by the board; and

(4) has passed an examination approved by the board.

C. An electrologist instructor license shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence of compliance with all requirements established by the board.

D. The name of a licensed instructor may be immediately followed by the initials "R.I.", as a right and privilege of licensure."

Section 9

Section 9. Section 61-17A-12 NMSA 1978 (being Laws 1993, Chapter 171, Section 12) is amended to read:

"61-17A-12. LICENSURE OF SCHOOLS.--

A. The board shall provide for the licensure of barber schools. The board shall issue a barber school license to any barber school that submits a completed application, accompanied by the required fees and documentation, and that submits satisfactory evidence that it complies with all enrollment, curriculum, instructional and graduation requirements and record-keeping procedures established by the board.

B. The board shall provide for the licensure of cosmetology schools. The board shall issue a cosmetology school license to any cosmetology school that submits a completed application, accompanied by the required fees and documentation, and that submits satisfactory evidence that it complies with all enrollment, curriculum, instructional and graduation requirements and record-keeping procedures established by the board.

C. The board shall provide for the licensure of electrology schools. The board shall issue an electrology school license to any electrology school that submits a completed application, accompanied by the required fees and documentation, and that submits satisfactory evidence that it complies with all enrollment, curriculum, instructional and graduation requirements and record-keeping procedures established by the board.

D. The board shall provide for the licensure of specialty schools. The board shall issue a specialty school license to any specialty school that submits a completed application, accompanied by the required fees and documentation, and that submits satisfactory evidence that it complies with all enrollment, curriculum, instructional and graduation requirements and record-keeping procedures established by the board.

E. The board shall establish crossover credit standards for training available at either barber schools or cosmetology schools that may be used in meeting licensure requirements in either profession.

F. The board shall establish a corporate surety bond requirement for schools to indemnify students for fees and tuition paid to a school if the school ceases operation or terminates a program prior to the completion of a student's contract with the school."

Section 10

Section 10. Section 61-17A-15 NMSA 1978 (being Laws 1993, Chapter 171, Section 15) is amended to read:

"61-17A-15. LICENSURE OF ALL ESTABLISHMENTS AND ENTERPRISES.--The board shall provide for the licensure of all establishments and enterprises. The board shall issue a license to establishments, enterprises and clinics that submit a completed application, accompanied by the required fees and documentation, and that submit satisfactory evidence of compliance with all requirements established by the board."

Section 11

Section 11. Section 61-17A-16 NMSA 1978 (being Laws 1993, Chapter 171, Section 16) is amended to read:

"61-17A-16. FEES.--The board may, by regulation, establish initial license and renewal fees not to exceed the following:

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establishment license. . . . . .$200

school license . . . . . .$600

relocation of a school . . . . . .$300

cosmetologist license . . . . . .$50.00

barber license . . . . . $50.00
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specialty license $50.00

instructor license $50.00

duplicate license. $50.00

temporary license. $25.00

administrative fee. $100

limited license fee. $100

licensure through reciprocity $200

transcript $50.00

examinations . . . . . .$100."

Section 12

Section 12. Section 61-17A-17 NMSA 1978 (being Laws 1993, Chapter 171, Section 17, as amended) is amended to read:

"61-17A-17. LICENSURE UNDER PRIOR LAW--ENDORSEMENT.--

A. Any person licensed as a barber, a cosmetologist, an esthetician, an electrologist, an instructor of cosmetology or barbering or an instructor of electrology, a manicurist-pedicurist or any person holding an establishment license, clinic license or school owner's license under any prior laws of this state, which license is valid on the effective date of the Barbers and Cosmetologists Act, shall be held to be licensed under the provisions of that act and shall be entitled to the renewal of his license as provided in that act.

B. The board may grant a license pursuant to the provisions of the Barbers and Cosmetologists Act without an examination, upon payment of the required fee, provided that the applicant:

(1) holds a current license from another state, territory or possession of the United States, or the District of Columbia, that has training hours and qualifications similar to or exceeding those required for licensure in New Mexico; and

(2) meets all other requirements for reciprocity as determined by regulation of the board."

Section 13

Section 13. Section 61-17A-18 NMSA 1978 (being Laws 1993, Chapter 171, Section 18) is amended to read:

"61-17A-18. LICENSE TO BE DISPLAYED--NOTICE OF CHANGE OF PLACE OF BUSINESS.--Every holder of a license shall notify the executive director of any change in place of business. Upon receipt of the notification, the executive director shall make the necessary change in the books. A license shall be displayed conspicuously at the holder's place of business."

Section 14

Section 14. Section 61-17A-20 NMSA 1978 (being Laws 1993, Chapter 171, Section 20) is amended to read:

"61-17A-20. DURATION, RESTORATION AND RENEWAL OF LICENSES.--

A. The original issuance and renewal of licenses to practice as a barber, cosmetologist, instructor, esthetician, manicurist-pedicurist or electrologist shall be for a period of one year or less from the date of issuance. If the licensee fails to renew the license for the next year, the license is void; provided the license may be restored at any time during the year following expiration upon the payment of the appropriate fee and a late charge not to exceed one hundred dollars ($100) as set forth by board rules. If the licensee fails to restore the license within one year following its expiration, the license may not be restored. To again obtain a license, the licensee shall satisfy requirements for original licensure.

B. The original issuance and annual renewal of licenses to operate an establishment or school shall be for a period of twelve months or less following the issuance of the license. If the licensee fails to renew the license within thirty days after its expiration, the license is void, and, to again obtain a license, an application, required documentation, payment of the renewal fee and a late fee not to exceed one hundred dollars ($100) as established by board rules is required.

C. The board may establish a staggered system of license expiration."

Section 15

Section 15. Section 61-17A-21 NMSA 1978 (being Laws 1993, Chapter 171, Section 21) is amended to read:

"61-17A-21. GROUNDS FOR REFUSAL TO ISSUE, RENEW, SUSPEND OR REVOKE A LICENSE.--

A. The board shall, in accordance with the provisions of the Uniform Licensing Act, issue a fine or penalty, restrict, refuse to issue or renew or shall suspend or revoke a license for any one or more of the following causes:

(1) the commission of any offense described in the Barbers and Cosmetologists Act;

(2) the violation of any sanitary regulation promulgated by the board;

(3) malpractice or incompetency;

(4) advertising by means of knowingly false or deceptive statements;

(5) habitual drunkenness or habitual addiction to the use of habit-forming drugs;

(6) continuing to practice in or be employed by an establishment, an enterprise, a school or an electrology clinic in which the sanitary regulations of the board, of the department of health or of any other lawfully constituted board, promulgated for the regulation of establishments, enterprises, schools or electrology clinics, are known by the licensee to be violated;

(7) default of a licensee on a student loan;

(8) gross continued negligence in observing the rules and regulations;

(9) renting, loaning or allowing the use of the license to any person not licensed under the provisions of the Barbers and Cosmetologists Act;

(10) dishonesty or unfair or deceptive practices;

(11) sexual, racial or religious harassment;

(12) conduct of illegal activities in an establishment, enterprise, school or electrology clinic or by a licensee;

(13) conviction of a crime involving moral turpitude; or

(14) aiding, abetting or conspiring to evade or violate the provisions of the Barbers and Cosmetologists Act.

B. Any license suspended or revoked shall be delivered to the board or any agent of the board upon demand."

Section 16

Section 16. Section 61-17A-25 NMSA 1978 (being Laws 1993, Chapter 171, Section 27) is amended to read:

"61-17A-25. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of barbers and cosmetologists is terminated on July 1, 2001 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Barbers and Cosmetologists Act until July 1, 2002. Effective July 1, 2002, the Barbers and Cosmetologists Act is repealed."

Section 17

Section 17. TEMPORARY PROVISION.--Any money remaining in the tuition recovery fund upon the effective date of this 1997 act shall be transferred to the barbers and cosmetologists fund.

Section 18

Section 18. REPEAL.--Section 61-17A-13 NMSA 1978 (being Laws 1993, Chapter 171, Section 13) is repealed.

SENATE BILL 943

CHAPTER 219

RELATING TO TAXATION; AMENDING THE NMSA 1978 TO MODIFY THE SUPPLEMENTAL MUNICIPAL GROSS RECEIPTS TAX ACT TO EXTEND ITS OPERATION AND PERMIT REFUNDING BONDS.

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

Section 1

Section 1. Section 7-19-11 NMSA 1978 (being Laws 1979, Chapter 397, Section 2, as amended) is amended to read:

"7-19-11. DEFINITIONS.--As used in the Supplemental Municipal Gross Receipts Tax Act:

A. "department" or "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. "governing body" means the city council or city commission of a municipality;

C. "municipality" means any incorporated city, town or village having previously qualified to impose and did impose the tax pursuant to the provisions of the Supplemental Municipal Gross Receipts Tax Act in effect prior to this 1997 act;

D. "person" means an individual or any other legal entity;

E. "refunding bonds" means bonds issued pursuant to the provisions of the Supplemental Municipal Gross Receipts Tax Act to refund supplemental municipal gross receipts tax bonds issued pursuant to the provisions of that act;

F. "state gross receipts tax" means the gross receipts tax imposed under the Gross Receipts and Compensating Tax Act; and

G. "supplemental municipal gross receipts tax" means the tax authorized to be imposed under the Supplemental Municipal Gross Receipts Tax Act."

Section 2

Section 2. Section 7-19-12 NMSA 1978 (being Laws 1979, Chapter 397, Section 3, as amended by Laws 1986, Chapter 6, Section 1 and also by Laws 1986, Chapter 20, Section 80) is amended to read:

"7-19-12. AUTHORIZATION TO IMPOSE SUPPLEMENTAL MUNICIPAL GROSS RECEIPTS TAX--AUTHORIZATION FOR ISSUANCE OF SUPPLEMENTAL MUNICIPAL GROSS RECEIPTS BONDS--ELECTION REQUIRED.--

A. The majority of the members elected to the governing body of a municipality may enact an ordinance imposing an excise tax

on any person engaging in business in the municipality for the privilege of engaging in business in the municipality. This tax is to be referred to as the "supplemental municipal gross receipts tax". The rate of the tax shall not exceed one percent of the gross receipts of the person engaging in business and shall be imposed in one-fourth percent increments if less than one percent.

B. The governing body of a municipality enacting an ordinance imposing the tax authorized in Subsection A of this section shall submit the question of imposing such tax and the question of the issuance of supplemental municipal gross receipts bonds in an amount not to exceed nine million dollars ($9,000,000), for which the revenue from the supplemental municipal gross receipts tax is dedicated, to the qualified electors of the municipality at a regular or special election.

C. The questions referred to in Subsection B of this section shall be submitted to a vote of the qualified electors of the municipality as two separate ballot questions which shall be substantially in the following form:

(1) "Shall the municipality be authorized to issue supplemental municipal gross receipts bonds in an amount of not exceeding _____ dollars for the purpose of constructing and equipping and otherwise acquiring a municipal water supply system?

For _____ Against _____"; and

(2) "Shall the municipality impose an excise tax for the privilege of engaging in business in the municipality which shall be known as the "supplemental municipal gross receipts tax" and which shall be imposed at a rate of _____ percent of the gross receipts of the person engaging in business, the proceeds of which are dedicated to the payment of supplemental municipal gross receipts bonds?

For _____ Against _____".

D. Only those voters who are registered electors who reside within the municipality shall be permitted to vote on these two questions. The procedures for conducting the election shall be substantially the same as the applicable provisions in Sections 3-30-1, 3-30-6 and 3-30-7 NMSA 1978 relating to municipal debt.

E. If at an election called pursuant to this section a majority of the voters voting on each of the two questions vote in the affirmative

on each such question, then the ordinance imposing the supplemental municipal gross receipts tax shall be approved. If at such election a majority of the voters voting on such questions fail to approve any of the questions, then the ordinance imposing the tax shall be disapproved and the questions required to be submitted by Subsection B of this section shall not be submitted to the voters for a period of one year from the date of the election.

F. Any ordinance enacted under the provisions 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 five months from the date of the election. A certified copy of any ordinance imposing a supplemental municipal gross receipts tax shall be mailed to the division within five days after the ordinance is adopted by the approval by the electorate. Any ordinance repealing the imposition of a tax under the provisions of the Supplemental Municipal Gross Receipts Tax Act shall become effective on either July 1 or January 1, after the expiration of at least five months from the date the ordinance is repealed by the governing body.

G. Nothing in this section is intended to or does alter the effectiveness or validity of any actions taken in accordance with Subsection G of Section 80 of Chapter 20 of Laws 1986."

Section 3

Section 3. Section 7-19-18 NMSA 1978 (being Laws 1979, Chapter 397, Section 9, as amended) is amended to read:

"7-19-18. SUPPLEMENTAL MUNICIPAL GROSS RECEIPTS TAX--USE OF PROCEEDS--RESTRICTION.--

A. The proceeds from the supplemental municipal gross receipts tax shall be deposited in a special improvement account of the municipality and shall be used only for:

(1) the payment of the principal of, interest on, any prior redemption premiums due in connection with and other expenses related to the supplemental municipal gross receipts bonds issued pursuant to the Supplemental Municipal Gross Receipts Tax Act;

(2) the funding of any reserves and other accounts in connection with such bond;

(3) refunding bonds; and

(4) to the extent not needed for those purposes, the improvement of the municipality's water system.

B. When any issue of supplemental municipal gross receipts bonds is fully paid, the supplemental municipal gross receipts tax shall cease to be imposed for that issue, but may continue to be imposed for bonds enacted and approved pursuant to Section 7-19-12 NMSA 1978 and thereafter issued, or for refunding bonds issued pursuant to Section 4 of this 1997 act. Any money remaining in a special improvement account after the obligations for supplemental municipal gross receipts bonds and refunding bonds, are fully paid may be transferred to any other fund of the municipality."

Section 4

Section 4. A new section of Chapter 7, Article 19 NMSA 1978 is enacted to read:

"REFUNDING BONDS--AUTHORIZATION.--

A. Any municipality may issue refunding bonds for the purpose of refinancing, paying and discharging all or any part of outstanding supplemental municipal gross receipts tax 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 affecting 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 the Supplemental Municipal Gross Receipts Tax Act. Nothing in this section shall permit the pledge of the gross receipts tax

revenue to the payment of bonds that refund bonds issued under any other provision of law.

C. Refunding bonds may be issued separately or issued in combination in one series or more.

D. Refunding bonds issued pursuant to the Supplemental Municipal Gross Receipts Tax Act shall be authorized by ordinance. 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.

E. Provision shall be made for paying the bonds refunded at the time or places provided in Subsection D of this section. The principal amount of the refunding bonds shall not exceed, but may be less than or be 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.

F. 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 on the refunding bonds and the principal of the refunding bonds 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 escrow 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 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 municipality shall exercise a prior redemption option. Any purchaser of any refunding bond issued pursuant to the provisions of the Supplemental Municipal Gross Receipts Tax Act is in no manner responsible for the application of the proceeds thereof by the municipality or any of its officers, agents or employees.

G. Refunding bonds may be sold at a public or negotiated sale and may bear such additional terms and provisions as may be determined by the municipality subject to limitations in the Supplemental Municipal Gross Receipts Tax Act. The terms, provisions and authorization of the refunding bonds are not subject to the provisions of any other statute, provided that the Public Securities Limitation of Action Act shall be fully applicable to the issuance of refunding bonds.

H. The municipality shall receive from the department of finance and administration written approval of any refunding bonds issued pursuant to the provisions of this section."

SENATE BILL 947, AS AMENDED

CHAPTER 220

RELATING TO FINANCIAL INSTITUTIONS; ALLOWING DEPOSITS OF THE SEVERANCE TAX PERMANENT FUND IN BRANCH BANKS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW

MEXICO:

Section 1. Section 7-27-5.19 NMSA 1978 (being Laws 1993, Chapter 267, Section 2) is amended to read:

"7-27-5.19. DEPOSITS IN NEW MEXICO FINANCIAL INSTITUTIONS--LIMITATIONS.--

A. No more than twenty percent of the book value of the severance tax permanent fund may be invested in deposits in New Mexico financial institutions under terms and conditions set by the council in accordance with the provisions of this section.

B. To be eligible for deposits under this section, a financial institution's loans and investments shall equal in the aggregate at least one hundred thousand dollars ($100,000). If eligible, a financial institution may qualify for deposits as follows:

(1) a financial institution may qualify for deposits in an amount equal to new loans and investments made by that financial institution after July 1, 1993;

(2) the financial institution shall provide the state investment officer with the necessary documentation and information for each new loan or investment and the state investment officer shall verify that each such loan or investment meets the requirements of this section and the regulations, guidelines and investment policies adopted pursuant to this section; and

(3) in any calendar year, the state investment officer may increase the deposits in any financial institution only to the extent new loans and investments made by the financial institution have increased over the same period of the prior year.

C. Notwithstanding any other collateral, interest rate or other provisions of law to the contrary governing deposit of public money in Chapter 6, Article 10 NMSA 1978, deposits of the severance tax permanent fund made pursuant to this section shall be governed by the regulations, guidelines and investment policies established by the council and shall not be made until such regulations, guidelines and policies are adopted. Those policies shall provide:

(1) the terms and conditions for pledging of collateral security and the amount and kind of collateral security to be pledged; provided:

(a) no collateral shall be required for deposits of financial institutions rated "A" by the council pursuant to its risk assessment analysis, unless the council in its sole discretion deems it necessary to protect the severance tax permanent fund;

(b) financial institutions not rated "A" by the council shall secure each severance tax permanent fund deposit with security having an aggregate value equal to seventy-five percent of the amount of money deposited by that institution or any greater percentage determined by the council in its sole discretion to be necessary to protect the severance tax permanent fund;

(c) secured deposits shall be secured by: 1) securities of the United States or its agencies or instrumentalities, the state or its agencies or instrumentalities or political subdivisions of the state; 2) securities guaranteed by agencies or instrumentalities of the United States; or 3) New Mexico residential mortgages;

(d) to be rated "A" by the council, a bank shall at a minimum have: 1) primary capital at least equal to six percent of assets; 2) net income after taxes at least equal to sixty-one hundredths of one percent of the average assets of the bank for the current quarter and for each of the three previous quarters; and 3) an aggregate amount of nonperforming loans, defined as loans that are at least ninety days past due, that does not exceed thirty-four and nine-tenths percent of primary capital; provided the council in its sole discretion may increase any of the requirements of this paragraph to protect the severance tax permanent fund; and

(e) to be rated "A" by the council, a savings and loan association shall have a regulatory net worth equal to at least three percent of total assets and net income after taxes equal to at least thirty hundredths of one percent of average assets for the current quarter and for each of the previous three quarters; provided the council may increase these requirements or add additional criteria for nonperforming loans as a percentage of primary capital or net worth that are similar to the criteria for banks, as necessary to conform to changing applicable federal regulatory requirements or to protect the severance tax permanent fund;

(2) the rate at which severance tax permanent fund deposits shall bear interest, payable monthly, which shall be at a fixed market rate determined by the council, but in no event shall the rate of interest paid be less than the yield available on comparable maturities of obligations of the United States government, its agencies or instrumentalities or obligations guaranteed by the United States government, its agencies or instrumentalities, whichever is higher;

(3) the terms of maturity, renewal or withdrawal; provided that in no event shall the maturity exceed eight years and the council may withdraw any deposit before maturity without penalty if

more than seventy-five percent collateral is required by the rules and regulations adopted by the council; and

(4) such other terms, including the financial condition of the financial institution, as the council deems prudent to protect the severance tax permanent fund and to implement efficiently and effectively the deposit program.

D. In making deposits in New Mexico financial institutions pursuant to this section, the state investment officer shall not deposit from the severance tax permanent fund an amount that exceeds two hundred percent of the total equity capital in the case of banks or two hundred percent of the net worth in the case of savings and loan associations or ten percent of the total of that bank's or the savings and loan association's deposits, whichever is less. These limits shall be based on the most recently published statement of financial condition required by federal or state financial authorities as certified by an authorized officer of the financial institution unless the council has more current reliable information from the financial institution. In the event a financial institution exceeds the limitations set forth in this subsection, the state investment officer may withdraw without penalty the deposits that exceed that limitation. The maximum funds on deposit or the deposit limit in this subsection shall not apply to the state fiscal agent bank as to the funds held by the fiscal agent bank or demand deposits held by a state checking depository bank approved by the state board of finance in accordance with the provisions of Section 6-10-35 NMSA 1978.

E. As used in this section:

(1) "financial institution" means a New Mexico bank, a branch of a bank doing business in New Mexico or a savings and loan association that is qualified as an insured public depository;

(2) "investment" means a New Mexico municipal bond or a New Mexico industrial revenue bond; and

(3) "loan" means a loan of any term that is secured or unsecured and is made for business purposes. "Loan" does not include a loan that is a renewal or restructuring of a loan existing on or before July 1, 1993, a loan of more than three million dollars ($3,000,000) to one borrower, a student loan, a consumer loan or a loan to purchase or provide permanent financing on a personal residence, but does include a loan that is made to "persons of low or moderate income" as that term is defined in the Mortgage Finance Authority Act, is secured by real estate and is held and serviced by the original lending

financial institution in New Mexico. For purposes of this paragraph, "business" includes but is not limited to manufacturing; construction; transportation; communications; publishing; wholesale or retail business; restaurants; entertainment; architectural, engineering and other professional services; medical and health services; food processing; farming or ranching; mining and natural resource exploration and development; and research and technology development."

SENATE BILL 971

CHAPTER 221

RELATING TO MEDICINE; AMENDING THE MEDICAL PRACTICE ACT; PROVIDING GROUNDS FOR DENIAL, SUSPENSION OR REVOCATION OF LICENSES; PRESCRIBING CERTAIN LICENSE FEE CATEGORIES; INCREASING FEES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW

MEXICO:

Section 1

Section 1. Section 61-6-15 NMSA 1978 (being Laws 1969, Chapter 46, Section 6, as amended) is amended to read:

"61-6-15. LICENSE MAY BE REFUSED, REVOKED OR SUSPENDED--LICENSEE MAY BE FINED, CENSURED OR REPRIMANDED--PROCEDURE--PRACTICE AFTER SUSPENSION OR REVOCATION--PENALTY--UNPROFESSIONAL AND DISHONORABLE CONDUCT DEFINED--FEES AND EXPENSES--NOTICE OF CLAIM.--

A. The board may refuse to license and may revoke or suspend any license that has been issued by the board or any previous board and may fine, censure or reprimand any licensee upon satisfactory proof being made to the board that the applicant for or holder of the license has been guilty of unprofessional or dishonorable conduct. The board may also refuse to license an applicant who is unable to practice medicine, pursuant to Section 61-7-3 NMSA 1978. All

proceedings shall be as required by the Uniform Licensing Act or the Impaired Health Care Provider Act.

B. The board may, in its discretion and for good cause shown, place the licensee on probation on such terms and conditions as it deems proper for protection of the public or for the purpose of the rehabilitation of the probationer, or both. Upon expiration of the term of probation, if a term is set, further proceedings may be abated by the board if the holder of the license furnishes the board with evidence that the physician is competent to practice medicine, is of good moral character and has complied with the terms of probation.

C. If evidence fails to establish to the satisfaction of the board that the licensee is competent and is of good moral character or if evidence shows that he has not complied with the terms of probation, the board may revoke or suspend the license forthwith. If a license to practice medicine in this state is suspended, the holder of the license may not practice during the term of suspension; and any person whose license has been revoked or suspended by the board and who thereafter practices or attempts or offers to practice medicine in New Mexico, unless the period of suspension has expired or been modified by the board or the physician's license reinstated, is guilty of a felony and shall be punished as provided in Section 61-6-20 NMSA 1978.

D. "Unprofessional or dishonorable conduct", as used in this section, means among other things, but not limited to because of enumeration:

(1) procuring, aiding or abetting a criminal abortion;

(2) employing any person to solicit patients for the physician;

(3) representing to a patient that a manifestly incurable condition of sickness, disease or injury can be cured;

(4) obtaining any fee by fraud or misrepresentation;

(5) willfully or negligently divulging a professional confidence;

(6) conviction of any offense punishable by incarceration in a state penitentiary or federal prison. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence;

(7) habitual or excessive use of intoxicants or drugs;

(8) fraud or misrepresentation in applying for or procuring a license to practice in this state or in connection with applying for or procuring renewal, including cheating on or attempting to subvert the licensing examinations;

(9) making false or misleading statements regarding the physician's skill or the efficacy or value of the medicine, treatment or remedy prescribed or administered by the physician or at the physician's direction in the treatment of any disease or other condition of the human body or mind;

(10) impersonating another person licensed to practice medicine, permitting or allowing any person to use the physician's license or certificate of registration or practicing medicine under a false or assumed name;

(11) aiding or abetting the practice of medicine by a person not licensed by the board;

(12) gross negligence in the practice of medicine;

(13) manifest incapacity or incompetence to practice medicine;

(14) discipline imposed on a licensee to practice medicine by another state, including probation, suspension or revocation, based upon acts by the licensee similar to acts described in this section. A certified copy of the record of suspension or revocation of the state making the suspension or revocation is conclusive evidence;

(15) the use of any false, fraudulent or deceptive statement in any document connected with the practice of medicine;

(16) fee splitting;

(17) the prescribing, administering or dispensing of

narcotic, stimulant or hypnotic drugs for other than accepted therapeutic purposes;

(18) conduct likely to deceive, defraud or harm the public;

(19) repeated similar negligent acts;

(20) employing abusive billing practices;

(21) failure to report to the board any adverse action taken against the physician by:

(a) another licensing jurisdiction;

(b) any peer review body;

(c) any health care entity;

(d) any professional or medical society or association;

(e) any governmental agency;

(f) any law enforcement agency; or

(g) any court for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section;

(22) failure to report to the board surrender of a license or other authorization to practice medicine in another state or jurisdiction or surrender of membership on any medical staff or in any medical or professional association or society following, in lieu of and while under disciplinary investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section;

(23) failure to furnish the board, its investigators or representatives with information requested by the board;

(24) abandonment of patients;

(25) being found mentally incompetent or insane by a court of competent jurisdiction;

(26) injudicious prescribing, administering or dispensing of any drug or medicine;

(27) failure to adequately supervise, as provided by board regulation, a medical or surgical assistant or technician or professional licensee who renders health care;

(28) intentionally engaging in sexual contact or sexual penetration with a patient other than one's spouse after representing or inferring that such activity is a legitimate part of the patient's treatment;

(29) conduct unbecoming in a person licensed to practice medicine or detrimental to the best interests of the public;

and

(30) the surrender of a license to practice medicine or withdrawal of an application for a license to practice medicine before another state licensing board while disciplinary action is pending before that board for acts or conduct similar to acts or conduct that would constitute grounds for action as provided for in this section.

E. As used in this section, "fee splitting" includes offering, delivering, receiving or accepting any unearned rebate, refunds, commission preference, patronage dividend, discount or other unearned consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients or customers to any person, irrespective of any membership, proprietary interest or co-ownership in or with any person to whom the patients, clients or customers are referred.

F. Licensees shall bear all costs of disciplinary proceedings unless exonerated.

G. Licensees whose licenses are in a probationary status shall pay reasonable expenses for maintaining probationary status, including but not limited to laboratory costs when laboratory testing of biological fluids are included as a condition of probation.

H. For the purpose of investigating the competence of medical practitioners covered by the Medical Practice Act who practice medicine in the state of New Mexico, any entity issuing professional liability insurance to physicians or indemnifying physicians for professional liability in New Mexico shall report to the board all settlements or judgments against licensed physicians, whether they are tried in court or settled out of court."

Section 2

Section 2. Section 61-6-11 NMSA 1978 (being Laws 1923, Chapter 44, Section 3, as amended) is amended to read:

"61-6-11. LICENSURE.--

A. The board may admit to examination for license any person who is f good moral character and is a graduate of a medical college or school in good standing as defined in Subsection D of Section 61-6-6 NMSA 1978 and who has completed two years of postgraduate training.

B. One year of postgraduate medical training may be accepted by the board if the applicant was an intern in a board-approved program from July 1, 1993 through June 30, 1994 and if the applicant applies to the board for licensure before July 1, 1995. All postgraduate training shall be approved by the board.

C. An applicant who has not completed two years of postgraduate medical training, but who otherwise meets all other licensing requirements, may present evidence to the board of the applicant's other professional experience for consideration by the board in lieu of postgraduate medical training. The board shall, in its sole discretion, determine if the professional experience is substantially equivalent to the required postgraduate medical training.

D. The board may administer a board-approved licensing examination. The board shall determine a grade constituting successful completion of the exam.

E. Alternatively, the board may issue a license to any applicant of good moral character and after successfully completing an examination accepted by the board as administered in this or another state.

F. A graduate of a medical college located outside the United States may be granted a license to practice medicine in New Mexico, provided the applicant presents evidence to the board that the applicant is a person of good moral character and is in compliance with the United States immigration laws and provided that the applicant presents satisfactory evidence to the board that the applicant has successfully passed an examination as required by the board and has successfully completed two years of postgraduate medical training in a board-approved program.

G. All applicants for licensure by examination shall personally appear before the board or a designated member of the board for an interview.

H. Every applicant for licensure under this section shall pay the fees required by Section 61-6-19 NMSA 1978."

Section 3

Section 3. Section 61-6-17 NMSA 1978 (being Laws 1973, Chapter 361, Section 8, as amended) is amended to read:

"61-6-17. EXCEPTIONS TO ACT.--The Medical Practice Act shall not apply to or affect:

A. gratuitous services rendered in cases of emergency;

B. the domestic administration of family remedies;

C. the practice of midwifery as regulated in this state;

D. commissioned medical officers of the armed forces of the United States and medical officers of the United States public health

service or the veterans administration of the United States in the discharge of their official duties or within federally controlled facilities, provided that such persons who hold medical licenses in New Mexico shall be subject to the provisions of the Medical Practice Act and provided that all such persons shall be fully licensed to practice medicine in one or more jurisdictions of the United States;

E. the practice of medicine by a physician, unlicensed in New Mexico, who performs emergency medical procedures in air or ground transportation of a patient from inside of New Mexico to another state or back, provided that the physician is duly licensed in that state;

F. the practice, as defined and limited under their respective licensing laws, of:

(1) osteopathy;

(2) dentistry;

(3) podiatry;

(4) nursing;

(5) optometry;

(6) psychology;

(7) chiropractic;

(8) pharmacy;

(9) acupuncture and oriental medicine; or

(10) physical therapy;

G. any act, task or function performed by a physician assistant at the direction of and under the supervision of a licensed physician, when:

(1) the assistant is registered and has annually renewed his registration with the board as one qualified by training or experience to function as an assistant to a physician;

(2) the act, task or function is performed at the direction of and under the supervision of a licensed physician in accordance with rules and regulations promulgated by the board; and

(3) the acts of the physician assistant are within the scope of duties assigned or delegated by the supervising licensed physician and the acts are within the scope of the assistant's training;

H. any act, task or function of laboratory technicians or technologists, x-ray technicians, nurse practitioners, medical or surgical assistants or other technicians or qualified persons permitted by law or established by custom as part of the duties delegated to them by:

(1) a licensed physician or a hospital, clinic or institution licensed or approved by the public health division of the department of health or an agency of the federal government; or

(2) a health care program operated or financed by an agency of the state or federal government;

I. a properly trained medical or surgical assistant or technician or professional licensee performing under the physician's employment and direct supervision or a visiting physician or surgeon operating under the physician's direct supervision any medical act that a reasonable and prudent physician would find within the scope of sound medical judgment to delegate if, in the opinion of the delegating physician, the act can be properly and safely performed in its customary manner and if the person does not hold himself out to the public as being authorized to practice medicine in New Mexico. The delegating physician shall remain responsible for the medical acts of the person performing the delegated medical acts; and

J. the practice of the religious tenets of any church in the ministration to the sick or suffering by mental or spiritual means as provided by law; provided that the Medical Practice Act shall not be construed to exempt any person from the operation or enforcement of the sanitary and quarantine laws of the state."

Section 4

Section 4. Section 61-6-19 NMSA 1978 (being Laws 1989, Chapter 269, Section 15, as amended) is amended to read:

"61-6-19. FEES.--

A. The board shall impose the following fees:

(1) an application fee not to exceed four hundred dollars ($400) for licensure by endorsement as provided in Section 61-6-13 NMSA 1978;

(2) an application fee not to exceed four hundred dollars ($400) for licensure by examination as provided in Section 61-6-11 NMSA 1978;

(3) an examination fee equal to the cost of purchasing the examination plus an administration fee not to exceed fifty percent of that cost;

(4) a triennial renewal fee not to exceed four hundred fifty dollars ($450);

(5) a fee of twenty-five dollars ($25.00) for placing a physician's license or a physician assistant's license on inactive status;

(6) a late fee not to exceed one hundred dollars ($100) for licensees who fail to renew their license within forty-five days after the required renewal date;

(7) a late fee not to exceed two hundred dollars ($200) for licensees who fail to renew their licenses from forty-six days to ninety days after the required renewal date;

(8) a reinstatement fee not to exceed the current application fee for reinstatement of a revoked, suspended or inactive license;

(9) a reasonable administrative fee for verification and duplication of license or registration and copying of records;

(10) a reasonable publication fee for the purchase of a publication containing the names of all practitioners licensed under the Medical Practice Act;

(11) an impaired physician fee not to exceed one hundred fifty dollars ($150) for a three-year period;

(12) an interim license fee not to exceed one hundred dollars ($100);

(13) a temporary license fee not to exceed one hundred dollars ($100);

(14) a postgraduate training license fee not to exceed fifty dollars ($50.00) annually;

(15) an application fee not to exceed one hundred fifty dollars ($150) for physician assistants applying for initial licensure;

(16) a licensure fee not to exceed one hundred fifty dollars ($150) for physician assistants biennial licensing and registration of supervising physician;

(17) a late fee not to exceed fifty dollars ($50.00) for physician assistants who fail to renew their licensure within forty-five days after the required renewal date; and

(18) a late fee not to exceed seventy-five dollars ($75.00) for physician assistants who fail to renew their licensure from forty-six days to ninety days after the required renewal date

(19) a fee not to exceed three hundred dollars ($300) annually for a physician supervising a clinical pharmacist.

B. All fees are nonrefundable and shall be used by the board to carry out its duties efficiently."

SENATE BILL 653, AS AMENDED

CHAPTER 222

RELATING TO GOVERNMENT PAYMENTS; PROVIDING FOR PROMPT PAYMENTS FROM GOVERNMENT; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 13-1-158 NMSA 1978 (being Laws 1984, Chapter 65, Section 131, as amended) is amended to read:

"13-1-158. PAYMENTS FOR PURCHASES.--

A. No warrant, check or other negotiable instrument shall be issued in payment for any purchase of services, construction or items of tangible personal property unless the central purchasing office or the using agency certifies that the services, construction or items of tangible

personal property have been received and meet specifications or unless prepayment is permitted under Section 13-1-98 NMSA 1978 by exclusion of the purchase from the Procurement Code.

B. Unless otherwise agreed upon by the parties or unless otherwise specified in the invitation for bids, request for proposals or other solicitation, within fifteen days from the date the central purchasing office or using agency receives written notice from the contractor that payment is requested for services or construction completed or items of tangible personal property delivered on site and received, the central purchasing office or using agency shall issue a written certification of complete or partial acceptance or rejection of the services, construction or items of tangible personal property.

C. Except as provided in Subsection D of this section, upon certification by the central purchasing office or the using agency that the services, construction or items of tangible personal property have been received and accepted, payment shall be tendered to the contractor within thirty days of the date of certification. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the contractor at the rate of one and one-half percent per month. For purchases funded by state or federal grants to local public bodies, if the local public body has not received the funds from the federal or state funding agency, payments shall be tendered to the contractor within five working days of receipt of funds from that funding agency.

D. If the central purchasing office or the using agency finds that the services, construction or items of tangible personal property are not acceptable, it shall, within thirty days of the date of receipt of written notice from the contractor that payment is requested for services or construction completed or items of tangible personal property delivered on site, provide to the contractor a letter of exception explaining the defect or objection to the services, construction or delivered tangible personal property along with details of how the contractor may proceed to provide remedial action.

E. Late payment charges that differ from the provisions of Subsection C of this section may be assessed if specifically provided for by contract or pursuant to tariffs approved by the New Mexico public utility commission or the state corporation commission."

Section 2

Section 2. Section 13-1-170 NMSA 1978 (being Laws 1984, Chapter 65, Section 143) is amended to read:

"13-1-170. UNIFORM CONTRACT CLAUSES.--

A. A state agency, local public body or central purchasing office with the power to issue regulations may require by regulation that contracts include uniform clauses providing for termination of contracts, adjustments in prices, adjustments in time of performance or other contract provisions as appropriate, including but not limited to the following subjects:

(1) the unilateral right of a state agency or a local public body to order in writing:

(a) changes in the work within the scope of the contract; and

(b) temporary stoppage of the work or the delay of performance;

(2) variations occurring between estimated quantities of work in a contract and actual quantities;

(3) liquidated damages;

(4) permissible excuses for delay or nonperformance;

(5) termination of the contract for default;

(6) termination of the contract in whole or in part for the convenience of the state agency or a local public body;

(7) assignment clauses providing for the assignment by the contractor to the state agency or a local public body of causes of action for violation of state or federal antitrust statutes;

(8) identification of subcontractors by bidders in bids; and

(9) uniform subcontract clauses in contracts.

B. A state agency, local public body or central purchasing office with the power to issue regulations shall require by regulation that contracts include a clause imposing late payment charges against the

state agency or local public body in the amount and under the conditions stated in Section 13-1-158 NMSA 1978."

Section 3

Section 3. 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 attorney 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 thirty 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."

HOUSE BILL 120, AS AMENDED

CHAPTER 223

RELATING TO ALCOHOLIC BEVERAGES; PROVIDING FOR LOCAL WAIVER OF LIQUOR LICENSE DISTANCE REQUIREMENTS IN CERTAIN CIRCUMSTANCES.

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

Section 1

Section 1. Section 60-6B-10 NMSA 1978 (being Laws 1981, Chapter 39, Section 45, as amended) is amended to read:

"60-6B-10. LOCATIONS NEAR CHURCH OR SCHOOL--RESTRICTIONS ON LICENSING.--No license shall be issued by the director for the sale of alcoholic beverages at a licensed premises where alcoholic beverages were not sold prior to July 1, 1981 that is within three hundred feet of any church or school. A license may be granted for a proposed licensed premises if the owner or lessee has, prior to

establishment of a church or school located within three hundred feet of the proposed licensed premises, applied for, been granted and maintained a valid building permit for the construction or renovation of the proposed licensed premises and has filed on a form prescribed by the director a notice of intention to apply for transfer of a license to the proposed licensed premises. A license may be granted for a proposed licensed premises if a person has obtained a waiver from a local option district governing body for the proposed licensed premises. For the purposes of this section, all measurements taken in order to determine the location of licensed premises in relation to churches or schools shall be the straight line distance from the property line of the licensed premises to the property line of the church or school. This provision shall not apply to any church that has been designated as an historical site by the cultural properties review committee and which does not have a regular congregation."

HOUSE BILL 131

CHAPTER 224

RELATING TO GAME AND FISH; INCREASING CRIMINAL AND CIVIL PENALTIES FOR VIOLATION OF GAME AND FISH LAWS AND REGULATIONS; 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 17-2-10 NMSA 1978 (being Laws 1931, Chapter 117, Section 7, as amended) is amended to read:

"17-2-10. VIOLATION OF GAME AND FISH LAWS OR REGULATIONS--PENALTIES.--

A. Any person violating any of the provisions of Chapter 17 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 is guilty of a misdemeanor and upon conviction may be sentenced to imprisonment in the county jail for a term not to exceed six months. In addition, the person shall be sentenced to the payment of a fine in accordance with the following schedule:

(1) for illegally taking, attempting to take, killing, capturing or possessing of each deer, antelope, javelina, bear or cougar during a closed season, a fine of four hundred dollars ($400);

(2) for illegally taking, attempting to take, killing, capturing or possessing of each elk, bighorn sheep, oryx, ibex or Barbary sheep, a fine of one thousand dollars ($1,000);

(3) for hunting big game without a proper and valid license, lawfully procured, a fine of one hundred dollars ($100);

(4) for exceeding the bag limit of any big game species, a fine of four hundred dollars ($400);

(5) for attempting to exceed the bag limit of any big game species by the hunting of any big game animal after having tagged a similar big game species, a fine of two hundred dollars ($200);

(6) for signing a false statement to procure a resident hunting or fishing license when the applicant is residing in another state at the time of application for a license, a fine of four hundred dollars ($400);

(7) for using a hunting or fishing license issued to another person, a fine of one hundred dollars ($100);

(8) for a violation of Section 17-2-31 NMSA 1978, a fine of three hundred dollars ($300); and

(9) for selling, offering for sale, offering to purchase or purchasing any big game animal, unless otherwise provided by Chapter 17 NMSA 1978, a fine of one thousand dollars ($1,000).

B. A person convicted a second time for violating any of the provisions of Chapter 17 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 is guilty of a misdemeanor and upon conviction may be sentenced to imprisonment in the county jail for a term of not more than three hundred sixty-four days. In addition, the person shall be sentenced to the payment of a fine in accordance with the following schedule:

(1) for illegally taking, attempting to take, killing, capturing or possessing of each deer, antelope, javelina, bear or cougar during a closed season, a fine of six hundred dollars ($600);

(2) for illegally taking, attempting to take, killing, capturing or possessing of each elk, bighorn sheep, oryx or ibex, a fine of one thousand five hundred dollars ($1,500);

(3) for hunting big game without a proper and valid license, lawfully procured, a fine of four hundred dollars ($400);

(4) for exceeding the bag limit of any big game species, a fine of six hundred dollars ($600);

(5) for attempting to exceed the bag limit of any big game species by the hunting of any big game animal after having tagged a similar big game species, a fine of six hundred dollars ($600);

(6) for signing a false statement to procure a resident hunting or fishing license when the applicant is residing in another state at the time of application for a license, a fine of six hundred dollars ($600);

(7) for using a hunting or fishing license issued to another person, a fine of two hundred fifty dollars ($250);

(8) for a violation of Section 17-2-31 NMSA 1978, a fine of five hundred dollars ($500); and

(9) for selling, offering for sale, offering to purchase or purchasing any big game animal, unless otherwise provided by Chapter 17 NMSA 1978, a fine of one thousand five hundred dollars ($1,500).

C. Notwithstanding the provisions of Section 31-18-13 NMSA 1978, a person convicted a third or subsequent time for violating any of the provisions of Chapter 17 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 is guilty of a misdemeanor and upon conviction may be sentenced to imprisonment in the county jail for a term of not less than ninety days, which shall not be suspended or deferred, and not more than three hundred sixty-four days. In addition, the person shall be sentenced to the payment of a fine in accordance with the following schedule:

(1) for illegally taking, attempting to take, killing, capturing or possessing of each deer, antelope, javelina, bear or cougar during a closed season, a fine of one thousand two hundred dollars ($1,200);

(2) for illegally taking, attempting to take, killing, capturing or possessing of each elk, bighorn sheep, oryx, ibex or Barbary sheep, a fine of three thousand dollars ($3,000);

(3) for hunting big game without a proper and valid license, lawfully procured, a fine of one thousand dollars ($1,000);

(4) for exceeding the bag limit of any big game species, a fine of one thousand two hundred dollars ($1,200);

(5) for attempting to exceed the bag limit of any big game species by the hunting of any big game animal after having tagged a similar big game species, a fine of one thousand dollars ($1,000);

(6) for signing a false statement to procure a resident hunting or fishing license when the applicant is residing in another state at the time of application for a license, a fine of one thousand two hundred dollars ($1,200);

(7) for using a hunting or fishing license issued to another person, a fine of one thousand dollars ($1,000);

(8) for a violation of Section 17-2-31 NMSA 1978, a fine of one thousand dollars ($1,000); and

(9) for selling, offering for sale, offering to purchase or purchasing any big game animal, unless otherwise provided by Chapter 17 NMSA 1978, a fine of three thousand dollars ($3,000).

D. Any person who is convicted of a violation of 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, or of a violation of any of the provisions of Chapter 17 NMSA 1978, for which a punishment is not set forth under this section, shall be fined not less than fifty dollars ($50) or more than five hundred dollars ($500) or imprisoned not more than six months or both.

E. The provisions of this section shall not be interpreted to prevent, constrain or penalize a Native American for engaging in activities for religious purposes, as provided in Section 17-2-14 or 17-2-41 NMSA 1978.

F. The provisions of this section shall not apply to a landowner or lessee, or employee of either of them, who kills an animal

on private land, in which they have an ownership or leasehold interest, that is threatening human life or damaging or destroying property, including crops; provided, however, that the killing is reported to the department of game and fish within twenty-four hours and before the removal of the carcass of the animal killed; and provided further that all actions authorized in this subsection are carried out according to regulations of the department."

Section 2. Section 17-2-26 NMSA 1978 (being Laws 1912, Chapter 85, Section 45, as amended) is amended to read:

"17-2-26. CIVIL LIABILITY.--

A. The director of the department of game and fish, or any other officer charged with enforcement of the laws relating to game and fish if so directed by the director, may bring a civil action in the name of the state against any person unlawfully wounding or killing, or unlawfully in possession of, any game quadruped, bird or fish, or part thereof, and recover judgment for the following minimum sums as damage for the taking, killing or injuring:

for each elk---------- $ 500.00

for each deer---------- 250.00

for each antelope---------- 250.00

for each mountain sheep---------- 1,000.00

for each Barbary sheep---------- 250.00

for each black bear---------- 500.00

for each cougar---------- 500.00

for each bison---------- 600.00

for each ibex---------- 1,000.00

for each oryx---------- 1,000.00

for each javelina---------- 100.00

for each beaver---------- 65.00

for each bird---------- 20.00

for each fish---------- 5.00

for each endangered species---------- 500.00

for each raptor---------- 200.00

for each turkey---------- 150.00.

B. No verdict or judgment recovered by the state in an action shall be for less than the sum fixed in this section. The action for damages may be joined with an action for possession, and recovery may be had for the possession as well as the damages.

C. The pendency or determination of an action for damages or payment of a judgment, or the pendency or determination of a criminal prosecution for the same taking, wounding, killing or possession, is not a bar to the other, nor does either affect the right of seizure under any other provision of the laws relating to game and fish.

D. The provisions of this section shall not be interpreted to prevent, constrain or penalize a Native American for engaging in activities for religious purposes, as provided in Section 17-2-14 or 17-2-41 NMSA 1978.

E. The provisions of this section shall not apply to a landowner or lessee, or employee of either of them, who kills an animal on private land, in which they have an ownership or leasehold interest, that is threatening human life or damaging or destroying property, including crops; provided, however, that the killing is reported to the department within twenty-four hours and before the removal of the carcass of the animal killed; and provided further that all actions authorized in this subsection are carried out according to regulations of the department."

Section 3

Section 3. A new section of Chapter 17, Article 2 NMSA 1978 is enacted to read:

"LANDOWNER TAKING--CONDITIONS--DEPARTMENT RESPONSIBILITIES.--

A. A landowner or lessee, or employee of either, may take or kill an animal on private land, in which they have an ownership or leasehold interest, including game animals and other quadrupeds, game birds and fowl, that presents an immediate threat to human life or an immediate threat of damage to property, including crops; provided, however, that the taking or killing is reported to the department of game and fish within twenty-four hours and before the removal of the carcass of the animal killed, in accordance with regulations adopted by the commission.

B. A landowner or lessee, or employee of either, may take or kill animals on private land, in which they have an ownership or leasehold interest, including game animals and other quadrupeds, game

birds and fowl, that present a threat to human life or damage to property, including crops, according to regulations adopted by the commission. The regulations shall:

(1) provide a method for filing a complaint to the department by the landowner or lessee, or employee of either of them, of the existence of a depredation problem;

(2) provide for various departmental interventions, depending upon the type of animal and depredation;

(3) require the department to offer at least three different interventions, if practical;

(4) require the department to respond to the initial and any subsequent complaints within ten days with an intervention response to the complaint, and to carry out the intervention, if agreed upon between the department and the landowner, within five days of that agreement;

(5) permit the landowner or lessee to reject for good cause the interventions offered by the department;

(6) require a landowner or lessee to demonstrate that the property depredation is greater in value than the value of any wildlife-

related income or fee collected by the landowner or lessee for permission to take or kill an animal of the same species, on the private property or portion of the private property identified in the complaint as the location where the depredation occurred; and

(7) permit the landowner, lessee or employee, when interventions by the department have not been successful and after one year from the date of the filing of the initial complaint, to kill or take an animal believed responsible for property depredation.

C. For purposes of this section:

(1) "commission" means the state game commission;

(2) "department" means the department of game and fish; and

(3) "intervention" means a solution proposed by the department to eliminate the depredation."

Section 4

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 249, AS AMENDED

CHAPTER 225

RELATING TO THE NEW MEXICO MILITARY INSTITUTE; PROVIDING FOR INVESTMENT OF THE LEGISLATIVE SCHOLARSHIP FUND.

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

Section 1

Section 1. Section 21-12-14 NMSA 1978 (being Laws 1990, Chapter 109, Section 2) is amended to read:

"21-12-14. INVESTMENT OF FUND.-- The board of regents of New Mexico military institute may invest and reinvest the legislative scholarship fund in accordance with state investment council policy for market rate investments for the severance tax permanent fund, subject to the approval of the state investment council after explanation and presentation of the investment plan.

HOUSE BILL 495, AS AMENDED

CHAPTER 226

RELATING TO COUNTIES; AMENDING AND ENACTING SECTIONS OF THE COUNTY INDUSTRIAL REVENUE BOND ACT AND THE INDUSTRIAL REVENUE BOND ACT TO REMOVE A PROVISION REQUIRING PRIOR MUNICIPAL APPROVAL FOR CERTAIN COUNTY PROJECTS AND PROVIDE NOTICE BETWEEN COUNTIES AND MUNICIPALITIES FOR CERTAIN PROJECTS; PROVIDING FOR DEVELOPMENT OF JOINT CRITERIA FOR ISSUANCE OF INDUSTRIAL REVENUE BONDS.

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

Section 1

Section 1. Section 3-32-2 NMSA 1978 (being Laws 1967, Chapter 84, Section 1) is amended to read:

"3-32-2. SHORT TITLE.--Chapter 3, Article 32 NMSA 1978 may be cited as the "Industrial Revenue Bond Act"."

Section 2

Section 2. A new section of the Industrial Revenue Bond Act is enacted to read:

"MUNICIPALITY OVER TWO HUNDRED THOUSAND--NOTICE TO COUNTY.--

A. Prior to adopting an ordinance issuing industrial revenue bonds in a municipality with a population in excess of two hundred thousand, the municipality shall give notice to the county of its intent to consider the matter. The county shall be notified at least thirty days prior to the meeting at which final action is to be taken so that comments can be transmitted by the county to the municipality.

B. The county shall be able to forward its comments and any concerns to the city council, but there is no approval required from the county, and the county does not have veto over the proposed industrial revenue bond issuance.

C. The municipality and county shall jointly develop criteria for issuance of industrial revenue bonds by either government; provided, however, that industrial revenue bonds may be authorized and issued before development of the criteria is completed."

Section 3

Section 3. Section 4-59-1 NMSA 1978 (being Laws 1975, Chapter 286, Section 1) is amended to read:

"4-59-1. SHORT TITLE.--Chapter 4, Article 59 NMSA 1978 may be cited as the "County Industrial Revenue Bond Act"."

Section 4

Section 4. A new section of the County Industrial Revenue Bond Act is enacted to read:

"CLASS A COUNTY--NOTICE TO MUNICIPALITY OVER TWO HUNDRED THOUSAND.--

A. Prior to adopting an ordinance issuing county industrial revenue bonds, a class A county shall give notice to a municipality with a population in excess of two hundred thousand located within the county of its intent to consider the matter. The municipality shall be notified at least thirty days prior to the meeting at which final action is to be taken so that comments can be transmitted by the municipality to the county.

B. The municipality shall be able to forward its comments and any concerns to the board of county commissioners, but there is no approval required from the municipality and the municipality does not have veto over the proposed county industrial revenue bond issuance.

C. The county and the municipality shall jointly develop criteria for issuance of industrial revenue bonds by either government; provided, however, that county industrial revenue bonds may be authorized and issued before development of the criteria is completed."

Section 5

Section 5. Section 4-59-4 NMSA 1978 (being Laws 1975, Chapter 286, Section 4, as amended) is amended to read:

"4-59-4. ADDITIONAL POWERS CONFERRED ON COUNTIES.--In addition to any other powers which it may now have, each county shall have the following powers:

A. to acquire, whether by construction, purchase, gift or lease, one or more projects, which shall be located within this state and shall be located within the county outside the boundaries of any incorporated municipality;

B. to sell or lease or otherwise dispose of any or all of its projects upon such terms and conditions as the commission may deem advisable and as shall not conflict with the provisions of the County Industrial Revenue Bond Act; and

C. to issue revenue bonds for the purpose of defraying the cost of acquiring, by construction and purchase, or either, any project, and to secure the payment of such bonds, all as provided in the County Industrial Revenue Bond Act. No county shall have the power to operate any project as a business or in any manner except as lessor thereof."

HOUSE BILL 751, AS AMENDED

CHAPTER 227

RELATING TO MOTOR VEHICLES; AMENDING SECTION 66-7-413.3 NMSA 1978 (BEING LAWS 1991, CHAPTER 227, SECTION 1) TO ALLOW CERTAIN VEHICLES TO EXCEED AXLE WEIGHT LIMITS.

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

Section 1

Section 1. Section 66-7-413.3 NMSA 1978 (being Laws 1991, Chapter 227, Section 1) is amended to read:

"66-7-413.3. PERMITS FOR EXCESSIVE WEIGHT.--

A. In addition to the authorization granted in Section 66-7-413 NMSA 1978, special permits may be issued by the motor transportation division for a single trip or for a year. The fee for the permits shall be thirty-five dollars ($35.00) for a single-trip permit and one hundred twenty dollars ($120) for an annual permit. The permits authorized in this section shall allow for an increase in axle weight over the limit established in Section 66-7-409 NMSA 1978; provided, the increased axle weight for liquid hauling tank vehicles that would otherwise haul less than a full tank shall not exceed twenty-five percent of the statutory authorized maximum weight.

B. Effective between July 1, 1997 and June 30, 2000, the increased axle weight of three-axle solid waste collection vehicles shall not exceed ten percent of the authorized maximum weight for the vehicle.

C. The special permits authorized by this section shall not be valid for transportation of excessive weights on the interstate system as currently defined in federal law or as that system may be defined in the future. No special permit issued pursuant to this section shall be valid for gross vehicle weights in excess of eighty-six thousand four hundred pounds or for any combination vehicle.

D. If the federal highway administration of the United States department of transportation gives official notice that money will be withheld or that this section violates the grandfather provision of Title 23, U.S.C. Section 127, the secretary may withdraw all special permits and discontinue issuance of all special permits authorized in this section until such time that final determination is made. If the final determination allows the state to issue the special permits without sanction of funds or weight tables, then the secretary shall reissue the special permits

previously withdrawn and make the special permits available pursuant to this section.

E. Any fees collected pursuant to special permits authorizing over-size or over-weight transportation on state highways shall be collected for the state highway and transportation department to be transferred to the state road fund. Transfers shall be made on or before the tenth day of the month following collection.

F. Notwithstanding other provisions of law, the provisions of this section shall not apply after July 1, 1999."

HOUSE BILL 927, AS AMENDED

CHAPTER 228

RELATING TO MUNICIPALITIES; AUTHORIZING CONDEMNATION OF ELECTRIC FACILITIES; AMENDING 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 3-23-3 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 electricity facilities as authorized by Chapter 3, Article 24 NMSA 1978, 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. Section 3-24-1 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-23-1, as amended) is amended to read:

"3-24-1. ELECTRIC UTILITY--MUNICIPALITY MAY ACQUIRE AND OPERATE--CERTAIN MUNICIPALITIES MAY ACQUIRE BY CONTRACT OR CONDEMNATION.--

A. Any municipality may, by ordinance, acquire, operate and maintain an electric utility for the generation and distribution of electricity to persons residing within its service area. The service area of a municipality includes:

(1) territory within the municipality;

(2) territory within five miles of the boundary of the municipality in the case of any municipality heretofore acquiring or operating any municipal electric utility or part thereof in the territory within five miles of the boundary of the municipality;

(3) the sale of electricity to the United States government, the state of New Mexico or any department or agency of these governments; and

(4) as further provided in Section 3-24-8 NMSA 1978.

B. No municipality may sell electric power and energy on a retail basis except as provided in Subsection A of this section.

C. The acquisition of any electric utility facility beyond the municipal boundary shall be financed only by the sale of revenue bonds.

D. Any municipality that owns a generating facility or an interest in a jointly owned generating facility may sell surplus electric power and energy on a wholesale basis either within or outside its

service area. Any contract or agreement to sell surplus electric power and energy may be entered into on a public bid basis, a competitive basis or a negotiated basis, as the municipality may determine; provided, however, that subject to the sale or other interchange of power and energy with a joint participant or a co-member of a power pool necessary or convenient to the economical operation of a generating facility or a jointly owned generating facility or contractual requirements of a power pool in which the municipality is a member, such surplus electric power and energy shall be subject to a preference right to purchase by:

(1) first, municipalities that own electric facilities on July 1, 1979;

(2) second, public electric utilities, investor-owned utilities and electric cooperatives subject to general or limited regulation by the New Mexico public utility commission and the United States of America or any of its departments or agencies; and

(3) any other person or entity.

E. Municipalities located within a class A county and having a population of more than sixty thousand, but less than one hundred thousand according to the 1990 federal decennial census, may acquire, maintain, contract for and condemn for use as a municipal utility privately owned electric facilities used or to be used for the furnishing and supply of electricity to the municipality or inhabitants within its service area. The service area of a municipality authorized to acquire, maintain, contract for or condemn private facilities pursuant to this subsection includes customers located in:

(1) territory within the municipality;

(2) territory within five miles of the boundary of the municipality in the case of any municipality heretofore acquiring or operating any municipal electric utility or part thereof in the territory within five miles of the boundary of the municipality;

(3) United States government-owned installations, the state or any department or agency of these governments; and

(4) as further provided in Section 3-24-8 NMSA 1978.

F. A municipality that acquires, maintains, contracts for or condemns privately owned electric facilities for use as a municipal utility pursuant to the provisions of Subsection E of this section shall:

(1) not use revenues earned from the electric facilities for any purposes other than those directly related to the furnishing and supply of electricity to the municipality or inhabitants within the service area;

(2) not restrict use of the electric facilities or distribution system to any person authorized to use the facilities or distribution system pursuant to state law; and

(3) adopt a shared payment policy for line extensions, with public input, that is fair and equitable, requiring reasonable contributions from the persons who will directly benefit from the line extension and not imposing an unreasonable burden on the municipality or inhabitants within the service area that do not directly benefit from the line extension.

G. Condemnation authorized in this section shall be conducted in the manner of proceedings provided by the Eminent Domain Code."

Section 3

Section 3. Section 42A-3-1 NMSA 1978 (being Laws 1981, Chapter 125, Section 33) is amended to read:

"42A-3-1. STATE, COUNTY, MUNICIPALITY OR SCHOOL DISTRICT--APPROPRIATION OF PROPERTY--NATURE OF INTEREST.--

A. Property may also be condemned by the state, any county, municipality or school district for the public use of the state, county, municipality or school district for:

(1) public buildings and grounds;

(2) canals, aqueducts, reservoirs, tunnels, flumes, ditches, conduits for conducting or storing water for drainage, the raising of banks of streams and the removing of obstructions;

(3) roads, streets, alleys and thoroughfares;

(4) public parks and playgrounds;

(5) ferries, bridges, electric railroads or other thoroughfares or passways for vehicles;

(6) canals, ditches, flumes, aqueducts and conduits for irrigation;

(7) electric lines;

(8) electric utility plants, properties and facilities consistent with the authority granted in Chapter 3, Article 24 NMSA 1978;

(9) the production of sand, gravel, caliche and rock used or needed for building, surfacing or maintaining streets, alleys, highways or other public grounds or thoroughfares; and

(10) public airports or landing fields incident to the operation of aircraft.

B. No land shall be condemned for the production of sand, gravel, caliche or rock that is in the possession or ownership of a person, firm or corporation engaged at the time the proceeding is brought in the actual production of such material from such land sought to be condemned. Nor shall any land be condemned for municipal purposes that may be shown by the owner or lessee to have a content of precious metal sufficient to produce the mineral in paying quantities.

C. Unless the petition to condemn specifically provides for a transfer of less than the fee, all real property acquired pursuant to this section shall be acquired and held in fee simple absolute."

Section 4

Section 4. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 1181. AS AMENDED

CHAPTER 229

RELATING TO SMALL BREWERS; AMENDING 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 60-6A-26.1 NMSA 1978 (being Laws 1985, Chapter 217, Section 5, as amended) is amended to read:

"60-6A-26.1. SMALL BREWER'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 small brewer's license.

B. A small brewer's license authorizes the person to whom it is issued to:

(1) become a manufacturer or producer of beer;

(2) package, label and export beer, whether manufactured, bottled or produced by him or any other person;

(3) sell only beer that is packaged by or for him to a person holding a wholesaler's license or a small brewer's license;

(4) deal in warehouse receipts for beer;

(5) conduct beer tastings and sell for consumption on or off premises, but not for resale, beer produced and bottled by, or produced and packaged for, the licensee on the small brewer's premises;

(6) be deemed a manufacturer for purposes of the Gross Receipts and Compensating Tax Act; and

(7) at public celebrations off the small brewer's premises, after the small brewer has paid the applicable fee for a small brewer's public celebration permit, conduct tastings and sell by the glass or in unbroken packages, but not for resale, beer produced and bottled by or for the small brewer.

C. Sales and tastings of beer authorized in this section shall be permitted during the hours set forth in Subsection A of Section 60-7A-1 NMSA 1978 and between the hours of noon and midnight on Sunday and shall conform to the limitations regarding Christmas and voting-day sales found in Section 60-7A-1 NMSA 1978 and the expansion of Sunday sales hours to 2:00 a.m. on January 1, when December 31 falls on a Sunday."

Section 2

Section 2. Section 60-6A-27 NMSA 1978 (being Laws 1983, Chapter 280, Section 8, as amended) is amended to read:

"60-6A-27. LICENSE FEES.--Every application for the issuance or annual renewal of the following licenses and permits shall be accompanied by a license fee or permit fee in the following specified amounts:

A. brandy manufacturer's license, seven hundred fifty dollars ($750);

B. small brewer's license, seven hundred fifty dollars ($750);

C. winer's license, seven hundred fifty dollars ($750);

D. wine blender's license, seven hundred fifty dollars ($750);

E. wine exporter's license, five hundred dollars ($500);

F. winer's off-premises permit, two hundred dollars ($200) for each off-premises location;

G. winer's public celebrations permit, ten dollars ($10.00) for each public celebration; and

H. small brewer's public celebrations permit, ten dollars ($10.00) for each public celebration."

Section 3

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

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR

SENATE BILL 132 WITH EMERGENCY CLAUSE

SIGNED APRIL 11, 1997

CHAPTER 230

RELATING TO PRIMARY CARE; AMENDING SECTIONS OF THE NMSA 1978 PERTAINING TO SECURING LOANS FOR CAPITAL PROJECTS; REPEALING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 24-1C-1 NMSA 1978 (being Laws 1994, Chapter 62, Section 7) is amended to read:

"24-1C-1. SHORT TITLE.--Chapter 24, Article 1C NMSA 1978 may be cited as the "Primary Care Capital Funding Act"."

Section 2

Section 2. Section 24-1C-6 NMSA 1978 (being Laws 1994, Chapter 62, Section 12) is amended to read:

"24-1C-6. DEPARTMENT--AUTHORITY--POWERS AND DUTIES.--

A. The department and the authority shall administer the loan programs and contracts for services established pursuant to the provisions of the Primary Care Capital Funding Act. The department and authority shall:

(1) enter into joint powers agreements with each other or other appropriate public agencies to carry out the provisions of that act; and

(2) apply to any appropriate federal, state or local governmental agency or private organization for grants and gifts to carry out the provisions of that act or to fund allied community-based health care programs.

B. The department or authority may, instead of a loan, contract for services with an eligible entity to provide free or reduced fee primary care services for sick and medically indigent persons as reasonably adequate legal consideration for money from the fund to the entity so it may acquire or construct a capital project to provide the services.

C. The department and authority may:

(1) make and enter into contracts and agreements necessary to carry out their powers and duties pursuant to the provisions of the Primary Care Capital Funding Act; and

(2) do all things necessary or appropriate to carry out the provisions of the Primary Care Capital Funding Act.

D. The authority is responsible for all financial duties of the programs, including:

(1) administering the fund;

(2) accounting for all money received, controlled or disbursed for capital projects in accordance with the provisions of the Primary Care Capital Funding Act;

(3) evaluating and approving loans and contracts for services, including determining financial capacity of an eligible entity;

(4) enforcing contract provisions of loans and contracts for services, including the ability to sue to recover money or property owed the state;

(5) determining interest rates and other financial aspects of a loan and relevant terms of a contract for services; and

(6) performing other duties in accordance with the provisions of the Primary Care Capital Funding Act, regulations promulgated pursuant to that act or joint powers agreements entered into with the department.

E. The department is responsible for the following duties:

(1) defining sick and medically indigent persons for purposes of the Primary Care Capital Funding Act;

(2) establishing priorities for loans and contracts for services;

(3) determining the appropriateness of the capital project;

(4) evaluating the capability of an applicant to provide and maintain primary care or hospice services;

(5) selecting recipients of loans and persons with whom to contract for services;

(6) determining that capital projects comply with all state and federal licensing and procurement requirements; and

(7) contracting with an eligible entity to provide primary care services without charge or at a reduced fee for sick and medically indigent persons as defined by the department.

F. The authority may make a loan to an eligible entity to acquire, construct, renovate or otherwise improve a capital project, provided there is a finding:

(1) by the department that the project will provide primary care services to sick and medically indigent persons as defined by the department; and

(2) by the authority that there is adequate protection including but not limited to loan guarantees, real property liens, title insurance, security interests in or pledges of accounts and other assets, loan covenants and warranties or restrictions on other encumbrances and pledges for the state funds extended for the loan."

Section 3

Section 3. Section 24-1C-9 NMSA 1978 (being Laws 1994, Chapter 62, Section 15) is amended to read:

"24-1C-9. ELIGIBLE ENTITY--CHANGE IN STATUS.--If an eligible entity that has received a loan or contract for services for a capital project ceases to maintain its nonprofit status or ceases to deliver primary care services at the site of the capital project for twelve consecutive months, the state may pursue the remedies provided in the loan agreement or contract for services or as provided by law."

Section 4

Section 4. REPEAL.--Sections 24-1C-7 and 24-1C-8 NMSA 1978 (being Laws 1994, Chapter 62, Sections 13 and 14) are repealed.

SENATE BILL 198, AS AMENDED

CHAPTER 231

RELATING TO EMERGENCY MANAGEMENT; CHANGING THE DEFINITION OF ORPHAN HAZARDOUS MATERIALS TO INCLUDE

SUBSTANCES USED IN THE MANUFACTURE OF ILLEGAL CONTROLLED SUBSTANCES.

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

Section 1

Section 1. Section 74-4B-3 NMSA 1978 (being Laws 1983, Chapter 80, Section 3, as amended)is amended to read:

"74-4B-3. DEFINITIONS.--As used in the Emergency Management Act:

A. "accident" means an event involving hazardous materials that may cause injury to persons or damage to property or release hazardous materials to the environment;

B. "administrator" means the hazardous materials emergency response administrator;

C. "board" means the hazardous materials safety board;

D. "chief" means the chief of the New Mexico state police;

E. "commission" means the state emergency response commission;

F. "department" means the department of public safety;

G. "emergency management" means the ability to prepare for, respond to, mitigate, recover and restore the scene of an institutional, industrial, transportation or other accident;

H. "first responder" means the first law enforcement officer or other public service provider with a radio-equipped vehicle to arrive at the scene of an accident;

I. "hazardous materials" means hazardous substances, radioactive materials or a combination of hazardous substances and radioactive materials;

J. "hazardous substances" means flammable solids, semisolids, liquids or gases; poisons; corrosives; explosives; compressed gases; reactive or toxic chemicals; irritants; or biological agents, but does not include radioactive materials;

K. "orphan hazardous materials" means hazardous substances, radioactive materials, a combination of hazardous substances and radioactive materials or substances used in the manufacture of controlled substances in violation of the Controlled Substances Act where an owner of the substances or materials cannot be identified;

L. "plan" means the statewide hazardous materials emergency response plan;

M. "radioactive materials" means any material or combination of materials that spontaneously emits ionizing radiation. Materials in which the estimated specific activity is not greater than 0.002 microcuries per gram of material are not considered to be radioactive materials unless determined to be so by the hazardous and radioactive materials bureau of the water and waste management division of the department of environment for purposes of emergency response pursuant to the Emergency Management Act;

N. "responsible state agency" means an agency designated in Subsection D of Section 74-4B-5 NMSA 1978 with responsibility for managing a certain type of accident or performing certain functions at the scene of such accident;

O. "secretary" means the secretary of public safety; and

P. "task force" means the emergency management task force."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1,

1997.

SENATE BILL 467

CHAPTER 232

RELATING TO THE NEW MEXICO SCHOOL FOR THE VISUALLY HANDICAPPED; PROVIDING FOR QUALIFICATIONS OF REGENTS.

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

Section 1

Section 1. Section 21-5-2 NMSA 1978 (being Laws 1903, Chapter 2, Section 6, as amended) is amended to read:

"21-5-2. MANAGEMENT OF NEW MEXICO SCHOOL FOR THE VISUALLY HANDICAPPED--CORPORATE POWERS.--

A. The management and control of the New Mexico school for the visually handicapped, the care and preservation of all property of which it shall become possessed, the erection and construction of all buildings necessary for its use and the disbursement and expenditure of all money appropriated by the state of New Mexico or that shall otherwise come into the school's possession shall be vested in a board of five regents, at least one of whom shall be visually handicapped and at least one other of whom shall be the parent of a visually handicapped child.

B. The regents and their successors in office shall constitute a body corporate under the name and style of "the board of regents of the New Mexico school for the visually handicapped". The board has the right as such of suing and being sued, of contracting and being contracted with, of making and using a common seal and altering the same at pleasure and of causing all things to be done necessary to carry out the provisions of Chapter 21, Article 5 NMSA 1978. A majority of the board shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time. The officers of the board shall be elected in the same manner and possess the same qualifications as the officers of the board of regents of the university of New Mexico."

SENATE BILL 501, AS AMENDED

WITH CERTIFICATE OF CORRECTION

CHAPTER 233

RELATING TO PUBLIC SCHOOLS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978 TO AUTHORIZE SCHOOL DISTRICTS TO LEASE ADVERTISING SPACE ON SCHOOL BUSES TO COMMERCIAL VENDORS; CREATING A FUND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW

MEXICO:

Section 1

Section 1. Section 22-1-2 NMSA 1978 (being Laws 1967, Chapter 16, Section 2, as amended) is amended to read:

"22-1-2. DEFINITIONS.--As used in the Public School Code:

A. "state board" means the state board of education;

B. "state superintendent" means the superintendent of public instruction;

C. "department of education" means the state department of public education;

D. "certified school instructor" means any person holding a valid certificate authorizing the person to teach, supervise an instructional program, counsel or provide special instructional services in the public schools of the state;

E. "certified school administrator" means any person holding a valid certificate authorizing the person to administer in the public schools of the state;

F. "certified school employee" or "certified school personnel" means any employee who is either a certified school instructor or a certified school administrator or both;

G. "non-certified school employee" means any employee who is not a certified school employee;

H. "certificate" means a certificate issued by the state board authorizing a person to teach, supervise an instructional program, counsel, provide special instructional services or administer in the public schools of the state;

I. "chief" or "director" means the state superintendent or his designee unless the context clearly indicates otherwise;

J. "private school" means a school offering on-site programs of instruction not under the control, supervision or management of a local school board, exclusive of home instruction offered by the parent, guardian or one having custody of the student;

K. "school district" means an area of land established as a political subdivision of the state for the administration of public schools and segregated geographically for taxation and bonding purposes;

L. "local school board" means the governing body of a school district;

M. "public school" means that part of a school district that is a single attendance center where instruction is offered by a certified school instructor or a group of certified school instructors and is discernible as a building or group of buildings generally recognized as either an elementary, secondary, junior high or high school or any combination thereof;

N. "school year" means the total number of teaching days offered by public schools in a school district during a period of twelve consecutive months;

O. "consolidation" means the combination of part or all of the geographical area of an existing school district with part or all of the geographical area of one or more contiguous existing school districts;

P. "consolidated school district" means a school district created by order of the state board by combining part or all of the geographical area of an existing school district with part or all of the geographical area of one or more contiguous existing school districts;

Q. "state institution" means the New Mexico military institute, the New Mexico school for the visually handicapped, the New Mexico school for the deaf, the New Mexico boys' school, the New Mexico youth diagnostic and development center, the Los Lunas medical center, the Fort Stanton hospital, the Las Vegas medical center or the Carrie Tingley crippled children's hospital;

R. "state educational institution" means an institution enumerated in Article 12, Section 11 of the constitution of New Mexico;

S. "forty-day report" means the report of qualified student membership of each school district and of those eligible to be qualified students but enrolled in a private school or a home school for the first forty days of school;

T. "school" means any supervised program of instruction designed to educate a person in a particular place, manner and subject area;

U. "school-age person" means any person who is at least five years of age prior to 12:01 a.m. on September 1 of the school year and who has not received a high school diploma or its equivalent. A maximum age of twenty-one shall be used for persons who are

classified as special education membership as defined in Section 22-8-2 NMSA 1978 or as residents of state institutions;

V. "home school" means the operation by a parent, guardian or other person having custody of a school-age person who instructs a home study program that provides a basic academic educational program, including but not limited to reading, language arts, mathematics, social studies and science;

W. "school building" means a public school, an administration building and related school structure or facilities, including teacher housing, as may be owned, acquired or constructed by the local school board and as necessary to carry out the powers and duties of the local school board;

X. "commercial advertiser" means a person who advertises a product or service for profit or not for profit and has a permitted advertisement; and

Y. "school bus private owner" means a person who owns a school bus other than a local school district, the department of education, the state or any other political subdivision of the state."

Section 2

Section 2. 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;

F. establish standards and certify for safety, vehicles that are defined as school buses by the Motor Vehicle Code;

and

G. establish regulations for the purpose of permitting commercial advertisements on school buses."

Section 3

Section 3. A new section of the Public School Code is enacted to read:

"BUS ADVERTISEMENTS AUTHORIZED--LIMITATIONS AND RESTRICTIONS.--

A. The state transportation division of the department of education shall authorize local school boards to sell advertising space on the interior and exterior of school buses. The local school board shall develop guidelines for the type of advertisements that will be permitted. There shall be no advertisements that involve:

(1) obscenity, sexual material, gambling, tobacco, alcohol, political campaigns or causes, religion or promoting the use of drugs; or

(2) general content that is harmful or inappropriate for school buses as determined by the state board.

B. All school bus advertisements shall be painted or affixed by decal on the bus in a manner that does not interfere with national and state requirements for school bus markings, lights and signs. The commercial advertiser that contracts with the school district for the use of the space for advertisements shall be required to pay the cost of placing the advertisements on the bus and shall pay for its removal after the term of the contract has expired.

C. The right to sell advertising space on school buses shall be within the sole discretion of the local school board, except as required by Section 3 of this act.

D. An officer or employee of a school district or of the department of education who fails to comply with the obligations or restrictions created by this act shall be subject to discipline, including the possibility of being terminated from employment. A school bus private owner that fails to comply with the obligations or restrictions created by this act is in breach of contract and the contract is subject to cancellation after notice and hearing before the director of the state transportation division."

Section 4

Section 4. A new section of the Public School Code is enacted to read:

"SCHOOL BUS TITLE--LEASING SPACE.--

A. All school bus private owners that have legal title to school buses used and operated pursuant to an existing bus service contract with a school district may lease space on their buses to the school district for the purpose of selling commercial advertisements. In exchange for leasing the space, the school bus private owners shall receive ten percent of the total value of the amount of the contract between the school district and the commercial advertiser.

B. The amount of space that will be available for commercial advertisements on school buses shall be established by regulations of the department of education consistent with national and state requirements for school bus markings, lights and signs.

C. Space for advertising on school buses owned by the department of education shall be provided to school districts without cost for the purpose of selling advertising space to commercial advertisers."

Section 5

Section 5. A new section of the Public School Code is enacted to read:

"SOLICITATION--LEASE--RENT PAYMENT.--

A. A school district shall be permitted to solicit offers from commercial advertisers for the use of space on the school buses that

service their school district. The school district may enter into a lease agreement with a commercial advertiser for the use of any designated advertising space on a school bus that services the school district.

B. In a lease agreement with a commercial advertiser, the school district shall establish the rental amount, schedule and term. The term of any lease agreement shall not be for a period longer than the time remaining on the school district's bus service contract with a school bus private owner who owns the bus that is the subject of the lease agreement.

C. A school district shall not enter into a lease agreement with a commercial advertiser that seeks to display an advertisement that is prohibited by local school board guidelines."

Section 6

Section 6. A new section of the Public School Code is enacted to read:

"SCHOOL BUS ADVERTISING FUND.--The "school bus advertising fund" is created in the state treasury and shall be administered by the department of education. The fund shall consist of money raised pursuant to this act. Balances in the fund at the end of any fiscal year shall not revert to the general fund. Income from investment of the fund shall be credited to the fund."

Section 7

Section 7. A new section of the Public School Code is enacted to read:

"DISTRIBUTION.--

A. Funds raised from commercial advertisement shall be distributed from the school bus advertising fund after the required payment is made to school bus private owners.

B. Sixty percent of the proceeds raised shall be distributed to each school district to use in accordance with the school district's technology plan in amounts proportionate to the amount that each school district contributed to the school bus advertising fund.

C. Forty percent of the proceeds raised shall be distributed on a per membership basis of middle and junior high schools by the state superintendent to school districts for extracurricular activities. If a

school district does not expend money from the school bus advertising fund for extracurricular activities, it shall revert back to the fund.

D. School districts shall report to the department of education on how the funds were used in the technology plans and for extracurricular activities."

Section 8

Section 8. A new section of the Public School Code is enacted to read:

"ACCOUNTABILITY.--Funds raised by a school district from lease agreements relating to the use of advertising space on school buses by commercial advertisers shall be fully accounted for and subject to review and examination by the department of education."

Section 9

Section 9. TEMPORARY PROVISION.--The state department of public education may request budget increases in fiscal year 1998 for the school bus advertising fund.

SENATE BILL 632, AS AMENDED

CHAPTER 234

RELATING TO PUBLIC EDUCATION; AMENDING SECTION 22-2-8.3 NMSA 1978 (BEING LAWS 1986, CHAPTER 33, SECTION 4, AS AMENDED) TO REQUIRE PUBLIC SCHOOLS TO OFFER SIGN LANGUAGE AS AN ELECTIVE.

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

Section 1

Section 1. Section 22-2-8.3 NMSA 1978 (being Laws 1986, Chapter 33, Section 4, as amended) is amended to read:

"22-2-8.3. SUBJECT AREAS--MINIMUM INSTRUCTIONAL AREAS REQUIRED--ACCREDITATION.--

A. The state board shall require instruction in specific subject areas as provided in Subsections B through F of this section. Any public school or school district failing to meet these minimum requirements shall not be accredited by the state board.

B. All first and second grade classes shall provide daily instruction in language arts skills, including phonics, and mathematics.

C. All third grade classes shall provide daily instruction in language arts skills and mathematics.

D. All fourth, fifth and sixth grade classes shall provide instruction in language arts skills, with an emphasis on writing and editing; mathematics; science; and social studies, including geography. The following subject areas shall be offered in the remaining instructional time: art; music; physical education; health; and computer literacy, including a general familiarization with computers and support in the areas of mathematics and writing through word processing.

E. All seventh grade classes shall provide instruction in English, with an emphasis on grammar and writing; communication skills or science; New Mexico history and geography; mathematics; and physical fitness. Remaining instructional time may be used for electives listed in Subsection G of this section.

F. All eighth grade classes shall provide instruction in English, mathematics, United States history and science. Remaining instructional time may be used for electives listed in Subsection G of this section.

G. The electives authorized in Subsections E and F of this section are art, industrial arts, chorus, band, home economics, typing, creative writing, speech, drama, Spanish, computer literacy, American sign language and other electives approved by the state board."

Section 2

Section 2. Section 22-2-8.4 NMSA 1978 (being Laws 1986, Chapter 33, Section 5, as amended by Laws 1995, Chapter 174, Section 1 and also by Laws 1995, Chapter 180, 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; American sign language; 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. Beginning with the 1996-97 school year, the state competency examinations on social science shall include a section on the constitution of the United States 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 688, AS AMENDED

CHAPTER 235

RELATING TO CONSTRUCTION INDUSTRIES LICENSING; PROVIDING FOR AN EXEMPTION FROM THE REQUIREMENTS OF PERMITS FOR CERTAIN WEATHERIZATION PROJECTS.

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

Section 1

Section 1. Section 60-13-3 NMSA 1978 (being Laws 1978, Chapter 66, Section 1, as amended) is amended to read:

"60-13-3. DEFINITION--CONTRACTOR.--As used in the Construction Industries Licensing Act, "contractor":

A. means any person who undertakes, offers to undertake by bid or other means or purports to have the capacity to undertake, by himself or through others, contracting. Contracting includes but is not limited to constructing, altering, repairing, installing or demolishing any:

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

(2) building, stadium or other structure;

(3) airport, subway or similar facility;

(4) park, trail, bridle path, athletic field, golf course or similar facility;

(5) dam, reservoir, canal, ditch or similar facility;

(6) sewerage or water treatment facility, power generating plant, pump station, natural gas compressing station or similar facility;

(7) sewerage, water, gas or other pipeline;

(8) transmission line;

(9) radio, television or other tower;

(10) water, oil or other storage tank;

(11) shaft, tunnel or mining appurtenance;

(12) leveling or clearing land;

(13) excavating earth;

(14) air conditioning, conduit, heating or other similar mechanical works;

(15) electrical wiring, plumbing or plumbing fixture, consumers' gas piping, gas appliances or water conditioners;

or

(16) similar work, structures or installations which are covered by applicable codes adopted under the provisions of the Construction Industries Licensing Act;

B. includes subcontractor and specialty contractor;

C. includes a construction manager who coordinates and manages the building process; who is a member of the construction team with the owner, architect, engineer and other consultants required for the building project; and who utilizes his skill and knowledge of general contracting to develop schedules, prepare project construction estimates, study labor conditions and advise concerning construction; and

D. does not include:

(1) any person who merely furnishes materials or supplies at the site without fabricating them into, or consuming them in the performance of, the work of a contractor;

(2) any person who drills, completes, tests, abandons or operates any petroleum, gas or water well; or services equipment and structures used in the production and handling of any product incident to the production of any petroleum, gas or water wells, excluding any person performing duties normally performed by electrical, mechanical or general contractors; or who performs geophysical or similar exploration for oil, gas or water;

(3) a public utility or rural electric cooperative which constructs, reconstructs, operates or maintains its plant or renders authorized service by the installation, alteration or repair of facilities, up to and including the meters, which facilities are an integral part of the operational system of the public utility or rural electric cooperative; provided that the construction of a building by a public utility or rural electric cooperative or the installation or repair of any consumer gas or electrical appliance not an integral part of the operational system makes a public utility or rural electric cooperative a contractor for that purpose;

(4) a utility department of any municipality or local public body rendering authorized service by the installation, alteration or repair of facilities, up to and including the meters, which facilities are an integral part of the operational system of the utility department of the municipality;

(5) any railroad company;

(6) a telephone or telegraph company or rural electric cooperative which installs, alters or repairs electrical equipment and devices for the operation of signals or the transmission of intelligence where that work is an integral part of the operation of a communication system owned and operated by a telephone or telegraph company or rural electric cooperative in rendering authorized service;

(7) a pipeline company which installs, alters or repairs electrical equipment and devices for the operation of signals or the transmission of intelligence where that service is an integral part of the operation of the communication system of that pipeline company and is not for hire or for the use of the general public, or any pipeline company which installs, alters or repairs plumbing fixtures or gas piping

where the work is an integral part of installing and operating the system owned or operated by the pipeline company in rendering its authorized service;

(8) any mining company, gas company or oil company which installs, alters or repairs its facilities, including but not limited to plumbing fixtures or gas piping, where the work is an integral part of the installing or operating of a system owned or operated by the mining company, gas company or oil company; provided the construction of a building by a mining company, a gas company or an oil company is required to be done in conformity with all other provisions of the Construction Industries Licensing Act and with orders, rules, regulations, standards and codes adopted pursuant to that act;

(9) a radio or television broadcaster who installs, alters or repairs electrical equipment used for radio or television broadcasting;

(10) an individual who, by himself or with the aid of others who are paid wages and who receive no other form of compensation, builds or makes installations, alterations or repairs in or to a single-family dwelling owned and occupied or to be occupied by him; provided that the installation, building, alteration or repair is required to be done in conformity with all other provisions of the Construction Industries Licensing Act and with the orders, rules, regulations, standards and codes adopted pursuant to that act;

(11) a person who acts on his own account to build or improve a single-family residence for his personal use, including the building or improvement of a free standing storage building located on that residential property, provided that the construction or improvement is required to be done in conformity with all other provisions of the Construction Industries Licensing Act and with the orders, rules, regulations, standards and codes adopted pursuant to that act, and provided further that he does not engage in commercial construction;

(12) a person who, by himself or with the aid of others who are paid wages and receive no other form of compensation, builds or makes installations, repairs or alterations in or to a building or other improvement on a farm or ranch owned, occupied or operated by him, or makes installations of electrical wiring which are not to be connected to electrical energy supplied from a power source outside the premises of the farm or ranch owned, occupied or operated by him; provided that the state codes and any local codes adopted pursuant to Subsection F of Section 60-13-44 NMSA 1978 shall not require any permits or inspections for such construction on a farm or ranch except

for electrical wiring to be connected to a power source outside the premises;

(13) an individual who works only for wages;

(14) an individual who works on one undertaking or project at a time which, in the aggregate or singly, does not exceed seven thousand two hundred dollars ($7,200) compensation a year, the work being casual, minor or inconsequential such as, but not limited to, handyman repairs; provided that this exemption shall not apply to any undertaking or project pertaining to the installation, connection or repair of electrical wiring, plumbing or gas fitting as defined in Section 60-13-32 NMSA 1978 and provided:

(a) the work is not part of a larger or major operation undertaken by the same individual or different contractor;

(b) the individual does not advertise or maintain a sign, card or other device which would indicate to the public that he is qualified to engage in the business of contracting; and

(c) the individual files annually with the division, on a form prescribed by the division, a declaration substantially to the effect that he is not a contractor within the meaning of the Construction Industries Licensing Act, that the work he performs is casual, minor or inconsequential and will not include more than one undertaking or project at one time and that the total amount of such contracts, in the aggregate or singly, will not exceed seven thousand two hundred dollars ($7,200) compensation a year;

(15) any person, firm or corporation which installs fuel containers, appliances, furnaces and other appurtenant apparatus as an incident to its primary business of distributing liquefied petroleum fuel;

(16) a cable television or community antenna television company which constructs, installs, alters or repairs facilities, equipment, cables or lines for the provision of television service or the carriage and transmission of television or radio broadcast signals; or

(17) any weatherization project not exceeding two thousand dollars ($2,000) that has been approved and is administered by a federal or state agency."

CHAPTER 236

RELATING TO PUBLIC SCHOOLS; AMENDING THE INCENTIVES FOR SCHOOL IMPROVEMENT ACT TO PROVIDE REWARDS TO SCHOOLS THAT PERFORM HIGHER THAN EXPECTED.

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

Section 1

Section 1. Section 22-13A-1 NMSA 1978 (being Laws 1989, Chapter 137, Section 1) is amended to read:

"22-13A-1. SHORT TITLE.--Chapter 22, Article 13A NMSA 1978 may be cited as the "Incentives for School Improvement Act"."

Section 2

Section 2. Section 22-13A-2 NMSA 1978 (being Laws 1989, Chapter 137, Section 2) is amended to read:

"22-13A-2. PURPOSE.--The purpose of the Incentives for School Improvement Act is to provide financial incentives to individual schools that exceed expected academic performance."

Section 3

Section 3. Section 22-13A-4 NMSA 1978 (being Laws 1989, Chapter 137, Section 4) is amended to read:

"22-13A-4. PROGRAM CREATED--ADMINISTRATION--PROGRAM APPROVAL.--The "incentives for school improvement program" is created. The program shall be administered by the department. The department shall develop a standardized method to measure the progress of students enrolled in public schools in school districts throughout the state. The standardized method developed shall be reviewed and approved by the state board."

Section 4

Section 4. Section 22-13A-5 NMSA 1978 (being Laws 1989, Chapter 137, Section 5) is amended to read:

"22-13A-5. PROGRAM IMPLEMENTATION--MEASUREMENT CRITERIA.--

A. The department shall develop a formula by which to measure school achievement in the areas of academic performance with consideration of socioeconomic variables. The product of this formula shall take the form of a composite rating assigned to each school in every school district.

B. Academic performance shall be measured by:

(1) nationally standardized test scores;

(2) graduation competency scores; and

(3) other factors deemed relevant by the department.

C. The socioeconomic variables shall be measured by:

(1) the percentage of student mobility rates;

(2) the percentage of limited English-proficient students using criteria established by the federal office of civil rights;

(3) the percentage of students eligible for free and reduced-fee lunches; and

(4) other factors deemed relevant by the department.

D. Annually, the department shall assign a new composite rating to each school. The department shall compare the new rating to the previous annual rating. Schools increasing their composite rating shall be ranked in order. The schools evidencing the greatest increase in rating shall receive monetary disbursements from the fund."

Section 5

Section 5. Section 22-13A-6 NMSA 1978 (being Laws 1989, Chapter 137, Section 6) is amended to read:

"22-13A-6. FUND CREATED.--

A. There is created in the state treasury the "incentives for school improvement fund". The fund shall consist of any state money appropriated to the fund, any federal money allocated to the state for the purposes of the Incentives for School Improvement Act, undistributed annual balances and earnings of the fund and any gifts or bequests made to the fund. The state treasurer shall invest the fund as other state funds are invested. The balance remaining in the fund at the end of the fiscal year shall not revert to the general fund.

B. The fund is appropriated to the department for the purpose of implementing and administering the Incentives for School Improvement Act. No more than three percent of the fund may be retained by the department for administrative purposes.

C. Money in the fund other than that used for administrative purposes shall be distributed directly to schools evidencing the greatest improvement as determined by the department. Disbursements shall be made only to that number of schools constituting not more than ten percent of the student membership in the state. Distributions shall be made proportionately to schools that qualify. Money received by a school from the fund shall not be used for salaries, salary increases or bonuses. Money shall be used as determined by the school principal and teachers in cooperation with other school employees and the community."

SENATE BILL 1155, AS AMENDED

WITH CERTIFICATE OF CORRECTION

CHAPTER 237

RELATING TO CHILD SUPPORT; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Section 1

Section 1. STATE CASE REGISTRY.--

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 establish a state case registry by October 1, 1998 that contains records with respect to:

(1) each case in which services are being provided on or after October 1, 1998 by the state Title IV-D agency; and

(2) each support order established or modified in the state on or after October 1, 1998, whether or not the order was obtained by the Title IV-D agency.

B. The records maintained by the state case registry shall use standardized data elements for parents such as names, social security numbers and other uniform identification numbers like dates of birth and case identification numbers, and contain such other information such as on case status as the secretary of the United States department of health and human services may require.

C. The Title IV-D agency and the administrative office of the courts shall work cooperatively to ensure that the requirements of this act are implemented in an effective, efficient and timely manner. The human services department shall reimburse the administrative office of the courts for all costs incurred in furnishing the information. A cooperative agreement between the Title IV-D agency and the administrative office of the courts shall include costs to be charged by the administrative office of the courts for all work performed to conform to these requirements. The human services department shall promptly provide the administrative office of the courts the data elements and formats required under Subsection B of this section as soon as they become available to the department.

D. The state case registry shall extract information from its automated system to share and compare information with and to receive information from, other databases and information comparison services in order to obtain or provide information necessary to enable the Title IV-D agency or the United States health and human services department secretary or other state or federal agencies to carry out the Title IV-D program, subject to Section 6103 of the Internal Revenue Code of 1986. Such information comparison activities shall include the following:

(1) furnishing to the federal case registry of child support orders established (and update as necessary with information including notice of expiration of orders) the minimum amount of information on child support cases recorded in the state case registry that is necessary to operate the registry, as specified by the United States health and human services department secretary in regulations;

(2) exchanging information with the federal parent locator service for the purposes specified in the State Directory of New Hires Act;

(3) exchanging information with state agencies of the state and of other states administering programs of temporary assistance for needy families and medicaid, and other programs designated by the United States health and human services secretary, as necessary to perform state agency responsibilities under this part and under such programs; and

(4) exchanging information with other agencies of the state, agencies of other states and interstate information networks, as necessary and appropriate to carry out or assist other states to carry out purposes of the Title IV-D program.

Section 2

Section 2. SHORT TITLE.--Sections 2 through 5 of this act may be cited as the "State Directory of New Hires Act".

Section 3

Section 3. DEFINITIONS.--As used in the State Directory of New Hires Act:

A. "employee" means a person who is an employee within the meaning of Chapter 24 of the Internal Revenue Code of 1986. It does not include an employee of a federal or state agency performing intelligence or counterintelligence functions, if the head of such agency has determined that reporting pursuant to Section 4 of this act with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission;

B. "employer" means the same as the term in Section 3401(d) of the Internal Revenue Code of 1986 and includes any governmental entity and any labor organization; and

C. "labor organization" means the same as the term in Section 2(5) of the National Labor Relations Act and includes any entity

which is used by the organization and an employer to carry out requirements described in Section 8(f)(3) of such act of an agreement between the organization and the employer.

Section 4

Section 4. STATE DIRECTORY OF NEW HIRES.--

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, not later than October 1, 1997, establish an automated directory to be known as the state directory of new hires, which shall contain information supplied by employers on each newly hired or rehired employee.

B. The state directory of new hires shall use the information received to locate individuals for purposes of establishing paternity and establishing, modifying and enforcing child support obligations and may disclose such information to any agent of the state Title IV-D agency that is under contract with the agency to carry out such purposes.

C. All employers and labor organizations doing business in the state shall furnish to the state directory of new hires a report that contains the name, address and the social security number of each newly hired or rehired employee and the name and address of and identifying number assigned under Section 6109 of the Internal Revenue Code of 1986 to the employer.

D. An employer in the state who also employs persons in another state and who transmits reports magnetically or electronically must designate one state in which the employer has employees to which the employer will transmit the report. Any employer who transmits reports pursuant to this paragraph shall notify the state directory of new hires in writing as to which state such employer designates for the purpose of sending reports.

E. Any department, agency or instrumentality of the United States government shall comply with the provisions of this section by transmitting the report described in Subsection C of this section to the national directory of new hires.

F. Each employer and labor organization as defined above shall report to the state directory of new hires not later than twenty days after the date the employer hires the employee; or in the case of an employer transmitting reports magnetically or electronically, by two

monthly transmissions if necessary not less than twelve days nor more than sixteen days apart.

G. Each report shall be made on a W-4 form or, at the option of the employer, an equivalent form and may be transmitted by first class mail, magnetically or electronically.

H. The labor department shall furnish to the state directory of new hires wage and claim information as defined in Section 303(h)(3) of the Social Security Act.

I. The department shall reimburse the labor department for all costs incurred in furnishing the information. The state directory of new hires shall make available to state public assistance agencies responsible for administering a program specified in Section 1137(b) of the Social Security Act information reported by employers for purposes of verifying eligibility for the program or investigating fraud.

J. The state directory of new hires shall make available to the state agencies operating employment security and workers' compensation programs access to information reported by employers for the purposes of administering such programs or investigating fraud.

Section 5

Section 5. PENALTIES.--The state Title IV-D agency shall impose a civil money penalty of twenty dollars ($20.00) on employers for each instance of failure to comply with the provisions of this section, unless the failure is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report, in which case the penalty shall be five hundred dollars ($500) on the employer for each instance. The human services department shall establish an appeals process for employers penalized under this section.

Section 6

Section 6. Section 40-4A-2 NMSA 1978 (being Laws 1985, Chapter 105, Section 2, as amended) is amended to read:

"40-4A-2. DEFINITIONS.--As used in the Support Enforcement Act:

A. "authorized quasi-judicial officer" means a person appointed by the court pursuant to rule 53(a) of the Rules of Civil Procedure for the District Courts;

B. "consumer reporting agency" means any person who, for monetary fees, dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties and who uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports;

C. "delinquency" means any payment under an order for support which has become due and is unpaid;

D. "department" means the human services department;

E. "income" means any form of periodic payment to an obligor, regardless of source, including but not limited to wages, salary, commission, compensation as an independent contractor, workers' compensation benefits, disability benefits, annuity and retirement benefits or other benefits, bonuses, interest or any other payments made by any person, but does not include:

(1) any amounts required by law to be withheld, other than creditor claims, including but not limited to federal, state and local taxes, social security and other retirement and disability contributions;

(2) union dues;

(3) any amounts exempted by federal law; or

(4) public assistance payments;

F. "notice of delinquency" means the notice of delinquency as provided for in Section 40-4A-4 NMSA 1978;

G. "notice to withhold income" means a notice that requires the payor to withhold from the obligor money necessary to meet the obligor's duty under an order for support and, in the event of a delinquency, requires the payor to withhold an additional amount to be applied towards the reduction of the delinquency;

H. "obligor" means the person who owes a duty to make payments under an order for support;

I. "obligee" means any person who is entitled to receive support under an order for support or that person's legal representative;

J. "order for support" means any order which has been issued by any judicial, quasi-judicial or administrative entity of competent jurisdiction of any state and which order provides for:

(1) periodic payment of funds for the support of a child or a spouse;

(2) modification or resumption of payment of support;

(3) payment of delinquency; or

(4) reimbursement of support;

K. "payor" means any person or entity who provides income to an obligor;

L. "person" means an individual, corporation, partnership, governmental agency, public office or other entity; and

M. "public office" means the state disbursement unit of the department as defined in Section 454B of the Social Security Act."

Section 7

Section 7. Section 40-4A-4 NMSA 1978 (being Laws 1985, Chapter 105, Section 4) is amended to read:

"40-4A-4. NOTICE OF DELINQUENCY.--

A. When an obligor accrues a delinquency, the obligee or public office may prepare and serve upon the obligor a copy of a verified notice of delinquency. The income of a person with a support obligation imposed by a support order issued or modified in the state before January 1, 1994, if not otherwise subject to immediate withholding under Section 40-4A-4.1 NMSA 1978, shall become subject to immediate withholding as provided in Section 40-4A-4.1 NMSA 1978 if arrearages occur, without the need for a judicial or administrative hearing.

B. If the date upon which payment is due under an order for support is not stated in the order for support, the due date shall be deemed to be the last day of the month.

C. The notice of delinquency shall:

(1) recite those terms of the order for support which enumerate the support obligation;

(2) contain a current computation of the period and total amount of the delinquency;

(3) inform the obligor of the amount to be withheld;

(4) inform the obligor of the procedures available to contest the income withholding on the grounds that the withholding or the amount withheld is improper due to a mistake of fact;

(5) state that, unless the obligor complies with the procedures to contest the income withholding, a notice to withhold income shall be served upon the payor;

(6) state that the notice to withhold income shall be applicable to any current or subsequent payor; and

(7) state the name and address of the public office to which withheld income shall be sent.

D. The original notice of delinquency shall be filed with the clerk of the district court.

E. Service of the notice of delinquency upon the obligor shall be effected by sending the notice by prepaid certified mail addressed to the obligor at his last known address or by any method provided by law for service of a summons. Proof of service shall be filed with the clerk of the district court."

Section 8

Section 8. Section 40-4A-4.1 NMSA 1978 (being Laws 1990, Chapter 30, Section 1, as amended) is amended to read:

"40-4A-4.1. IMMEDIATE CHILD SUPPORT INCOME WITHHOLDING.--

A. In any judicial proceeding in which child support is ordered, modified or enforced and which proceeding is brought or enforced pursuant to Title IV-D of the Social Security Act as provided in Section 27-2-27 NMSA 1978, the income of the support obligor shall be subject to immediate income withholding regardless of the existence of any child support arrearage or delinquency. Effective January 1, 1994, in proceedings in which child support services are not being provided

pursuant to Title IV-D and the initial child support order is issued in the state on or after January 1, 1994, the income of the support obligor shall be subject to immediate income withholding regardless of the existence of any child support arrearage or delinquency.

B. As part of the court or administrative order establishing, modifying or enforcing the child support obligation, the court shall issue the order to withhold.

C. The order to withhold shall state:

(1) the style, docket number and court having jurisdiction of the cause;

(2) the name, address and, if available, the social security number of the obligor;

(3) the amount and duration of the child support

payments. If any of the ordered amount is toward satisfaction of an arrearage or delinquency up to the date of the order, the amount payable to current and past-due support shall be specified, together with the total amount of the delinquency or arrearage, including judgment interest, if any;

(4) the name and date of birth of the child for whom support is ordered and the name of the obligee;

(5) the name and address of the person or agency to whom the payment is to be made, together with the agency's internal case number; and

(6) any other information deemed necessary to effectuate the order.

D. All Title IV-D payments shall be made through the public office. All non-Title IV-D payments shall be made through the public office to be effective on October 1, 1998.

E. The maximum amount withheld pursuant to this section and any other garnishment shall not exceed fifty percent of the obligor's income.

F. The order of a withholding shall be mailed by the Title IV-D agency or the support obligee, obligee's attorney or court by certified

mail to the payor. The payor shall pay over income as provided by and in compliance with the procedures of Section 40-4A-8 NMSA 1978.

G. The court may provide an exception to the immediate income withholding required by this section if it finds good cause for not ordering immediate withholding. The burden shall be on the party claiming good cause to raise the issue and demonstrate the existence of good cause to the court. In the event of a finding of good cause, the court shall make a written finding in the order specifying the reasons or circumstances justifying the good-cause exception and why income withholding would not be in the best interest of the child. If the order is one modifying a support obligation and immediate income withholding is not ordered, the order shall include a finding that the obligor has timely paid support in the past. The order shall provide that the obligor shall be subject to withholding if a one-month support delinquency accrues.

H. The court shall make an exception to the immediate income withholding required by this section if the parties to the proceeding enter into a written agreement providing for alternative means of satisfying the child support obligation. Such an agreement shall be incorporated into the order of the court. For the purposes of this subsection, the support obligee shall be considered to be the department in the case of child support obligations that the state is enforcing pursuant to an assignment of support rights to it as a condition of the assignor's receipt of public assistance. The agreement shall contain the signatures of a representative of the department and the custodial parent.

I. Notwithstanding the provisions of Subsection G of this section, immediate income withholding shall take place if the child support obligor so requests. The notice to withhold shall be filed with the clerk of the district court and the requirements of Subsection C of this section, Subsections D, E and F of Section 40-4A-5 and Sections 40-4A-6, 40-4A-8, 40-4A-10 and 40-4A-11 NMSA 1978 shall apply.

J. A court shall order a wage withholding effective on the date on which a custodial parent requests such withholding to begin if the court determines, in accordance with such procedures and standards as it may establish, that the request should be approved, notwithstanding:

(1) the absence of a support delinquency of at least one month;

(2) a finding of good cause under Subsection G of this section; or

(3) an agreement under Subsection H of this section.

K. The standards and procedures established for purposes of Subsection J of this section shall provide for the protection of the due process rights of the support obligor, appropriate notices and the right to a hearing under the Support Enforcement Act.

L. Wages not subject to withholding under Subsection J of this section shall still be subject to withholding on an earlier date as provided by law.

M. Notwithstanding any other provision of this section, wages not subject to withholding because of a finding of good cause under Subsection G of this section shall not be subject to withholding at the request of a custodial parent unless the court changes its determination of good cause not to initiate immediate wage withholding.

N. In the event a child support obligor accrues a delinquency in an amount equal to at least one month's support obligation and notwithstanding any previous agreement or court finding to the contrary, income withholding shall issue against the support obligor and the procedures set out in Section 40-4A-4 NMSA 1978 shall be followed. Such withholding shall terminate only upon the termination of all obligations imposed by the order of support and payment in full of all enforceable child support delinquencies."

Section 9

Section 9. Section 40-4A-5 NMSA 1978 (being Laws 1985, Chapter 105, Section 5, as amended) is amended to read:

"40-4A-5. NOTICE TO WITHHOLD INCOME.--

A. The obligee or public office shall file an affidavit with the clerk of the district court showing that notice of delinquency has been duly served upon the obligor.

B. Upon filing of the affidavit required by Subsection A of this section, the notice to withhold income shall be filed with the clerk of the district court and served upon the payor by certified mail or personal delivery, and proof of service shall be filed with the clerk of the district court.

C. A conformed copy of the notice to withhold income shall be mailed to the obligor at his last known address.

D. The notice to withhold income shall be verified by the obligee or public office and shall:

(1) state the amount of income to be withheld from the obligor; provided, however, the amount to be applied to satisfy the monthly obligation under the order for support, the amount of the delinquency which is set forth in the notice of delinquency and the amount to be applied to reduce the delinquency set forth in the notice of delinquency shall be stated separately;

(2) state that payments due from multiple obligors may be combined into one remittance so long as each withholding is separately identified;

(3) state that the maximum amount of an obligor's income subject to withholding pursuant to the Support Enforcement Act and pursuant to any garnishment shall not exceed fifty percent;

(4) state the duties of the payor as set forth in Section 40-4A-8 NMSA 1978; and

(5) require that all payments be made through the public office to ensure accurate recordkeeping.

E. The termination of the obligations imposed by the order of support and payment in full of any delinquency shall revoke the notice to withhold income."

Section 10

Section 10. Section 40-4A-7 NMSA 1978 (being Laws 1985, Chapter 105, Section 7, as amended) is amended to read:

"40-4A-7. PROCEDURE TO AVOID INCOME WITHHOLDING.--Except as provided in Section 40-4A-4.1 NMSA 1978, the obligor may contest the notice to withhold income by filing a petition with the clerk of the district court within twenty days after service of the notice of delinquency. Grounds for the contest shall be limited to a dispute concerning the existence or amount of the delinquency or noncompliance with the Support Enforcement Act. The clerk of the district court shall notify the obligor and the obligee or public office, as appropriate, of the time and place of the hearing on the petition. The court shall hold the hearing pursuant to the provisions of Section 40-4A-9 NMSA 1978."

Section 11

Section 11. Section 40-4A-8 NMSA 1978 (being Laws 1985, Chapter 105, Section 8, as amended) is amended to read:

"40-4A-8. DUTIES OF PAYOR.--

A. Any payor who has been served with a notice to withhold income shall deduct and pay over income as provided in this section. The payor shall deduct the amount designated in the notice to withhold income no later than the next payment of income that is payable to the obligor following service of the notice to withhold income and shall forward the amount withheld to the public office or in the case of non-Title IV-D support payments, pursuant to the court order until October 1, 1998, within seven business days of the employee's normal pay date. For each withholding of income, the payor shall be entitled to and may deduct a one dollar ($1.00) fee to be taken from the income to be paid to the obligor.

B. Whenever the obligor is no longer receiving income from the payor, the payor shall notify the public office, and the payor shall inform the obligee and public office of the last known address of the obligor and any subsequent payor, if known.

C. Withholding of income under the Support Enforcement Act shall have priority over any other legal process under the laws of this state against the same income. Where there is more than one order for withholding against a single obligor pursuant to the Support Enforcement Act, the payor shall allocate support among obligees, but in no case shall the allocation result in a withholding for one of the support obligations not being implemented.

D. No payor shall discharge, discipline, refuse to hire or otherwise penalize any obligor because of the duty to withhold income.

E. The payor shall terminate or modify withholding within fourteen days of receipt of a conformed copy of a notice to terminate or modify a withholding.

F. Any order or notice for income withholding made pursuant to Section 40-4A-4.1 or 40-4A-5 NMSA 1978 shall be binding against future payors by operation of law upon actual knowledge of the contents of the order or notice or upon receipt by personal delivery or certified mail of a filed copy of the order or notice to the payor."

Section 12

Section 12. Section 40-4A-9 NMSA 1978 (being Laws 1985, Chapter 105, Section 9, as amended) is amended to read:

"40-4A-9. PETITIONS TO MODIFY, SUSPEND OR TERMINATE NOTICE OF WITHHOLDING.--

A. When an obligor files a petition pursuant to Section 40-4A-7 NMSA 1978, the court, after due notice to all parties, shall hear and resolve the matter no later than forty-five days following the service of the notice of delinquency. Where the court cannot promptly resolve the issues alleged in the petition, the court may order immediate execution of an amended notice to withhold income as to any undisputed amounts and may continue the hearing on the disputed issues for such reasonable length of time as required under the circumstances. Failure to meet the time requirements shall not constitute a defense to the notice to withhold income.

B. At any time, an obligor or obligee or the public office may petition the court to:

(1) modify, suspend or terminate the notice to withhold income because of a corresponding modification, suspension or termination of the underlying order for support;

(2) modify the amount of income to be withheld to increase the rate of payment of the delinquency; or

(3) suspend the notice to withhold income because of the inability of the public office to deliver income withheld to the obligee due to the obligee's failure to provide a mailing address or other means of delivery.

C. Except for orders to withhold issued pursuant to Section 40-4A-4.1 NMSA 1978, an obligor may petition the court at any time to terminate the withholding of income because payments pursuant to the notice to withhold income have been made for at least three years and all delinquencies have been paid. The court shall suspend the notice to withhold income, absent good cause for denying the petition. If the obligor subsequently becomes delinquent in payment of the order for support, the obligee or public office may serve another notice to withhold income by complying with all requirements for notice and service pursuant to the Support Enforcement Act."

Section 13

Section 13. Section 40-4A-11 NMSA 1978 (being Laws 1985, Chapter 105, Section 11) is amended to read:

"40-4A-11. PENALTIES.--If any person willfully fails to withhold or pay over income pursuant to the Support Enforcement Act, willfully discharges, disciplines, refuses to hire or otherwise penalizes an obligor as prohibited by Subsection D of Section 40-4A-8 NMSA 1978, or otherwise fails to comply with any duty imposed by that act, the court, upon due notice and hearing:

A. shall impose a fine against the payor for the total amount that the payor willfully failed to withhold or pay over;

B. shall order reinstatement of or award damages to the obligor, or both, where the obligor has been discharged, disciplined or otherwise penalized by the payor; or

C. may take such other action, including action for contempt of court, as may be appropriate."

Section 14

Section 14. LOCATOR INFORMATION FROM INTERSTATE NETWORKS.--The state Title IV-D agency is authorized to have access to any system used by the state to locate an individual for purposes relating to motor vehicle or law enforcement.

Section 15

Section 15. COLLECTION AND USE OF SOCIAL SECURITY NUMBERS FOR USE IN CHILD SUPPORT ENFORCEMENT.--

A. The state must have and use procedures requiring that the social security number of:

(1) any applicant for a professional license, commercial driver's license, occupational license or marriage license be recorded on the application;

(2) any person who is subject to a divorce decree, support order or paternity determination or acknowledgment be placed in the records relating to the matter; and

(3) any person who has died be placed in the records relating to the death and be recorded on the death certificate.

B. The collection and use of social security numbers shall be made available to the state Title IV-D agency for use in child support enforcement.

Section 16

Section 16. EXPEDITED PROCEDURE.--The state Title IV-D agency shall have the authority to take the following actions relating to establishment of paternity or to establishment, modification or enforcement of support orders, without the necessity of obtaining an order from any other judicial or administrative tribunal, and to recognize and enforce the authority of state Title IV-D agencies of other states to take the following actions:

A. to order genetic testing for the purpose of paternity establishments;

B. to subpoena any financial or other information needed to establish, modify or enforce a support order and to impose penalties for failure to respond to such a subpoena. A subpoena issued by the state Title IV-D agency under this section shall be served upon the person to be subpoenaed or, at the option of the secretary of human services or the secretary's authorized representative, by certified mail addressed to the person at his last known address. The service of the subpoena shall be at least ten days prior to the required production of the information. If the subpoena is served by certified mail, proof of service is the affidavit of mailing. After service of a subpoena upon a person, if the person neglects or refuses to comply with the subpoena, the state Title IV-D agency may apply to the district court of the county where the subpoena was served or the county where the subpoena was responded to for an order compelling compliance. Failure of the person to comply with the district court's order shall be punishable as contempt;

C. to require all entities in the state, including for-profit, nonprofit and governmental employers to provide promptly, in response to a request by the state Title IV-D agency of that or any other state administering a program under this part, information on the employment compensation, and benefits of any person employed by such entity as an employee or contractor and to sanction failure to respond to any such request;

D. to obtain access, subject to safeguards on privacy and information security, and subject to the nonliability of entities that afford such access, to information contained in the following records, including automated access in the case of records maintained in automated databases:

(1) records of other states and local government agencies, including:

(a) vital statistics, including records of marriage, birth and divorce;

(b) state and local tax and revenue records, including information on residence address, employer, income and assets;

(c) records concerning real and titled personal property;

(d) records of occupational and professional licenses and records concerning the ownership and control of corporations, partnerships and other business entities;

(e) employment security records;

(f) records of agencies administering public assistance programs;

(g) records of the motor vehicle division of the taxation and revenue department; and

(h) corrections records; and

(2) certain records held by private entities with respect to persons who owe or are owed support, or against or with respect to whom a support obligation is sought, consisting of:

(a) the names and addresses of such persons and the names and addresses of the employers of such persons, as appearing in customer records of public utilities and cable television companies, pursuant to an administrative subpoena; and

(b) information including information on assets and liabilities on such individuals held by financial institutions;

E. in cases in which support is subject to an assignment in order to comply with a requirement imposed pursuant to temporary assistance for needy families or medicaid, or to a requirement to pay through the state disbursement unit established pursuant to Section 454B of the Social Security Act, upon providing notice to obligor and obligee to direct the obligor or other payor to change the payee to the appropriate government entity;

F. to order income withholding;

G. in cases in which there is a support arrearage, to secure assets to satisfy the arrearage by:

(1) intercepting or seizing periodic or lump-sum payments from:

(a) a state or local agency, including unemployment compensation, workers' compensation and other benefits; and

(b) judgments, settlements and lotteries;

(2) attaching and seizing assets of the obligor held in financial institutions;

(3) attaching public and private retirement funds; and

(4) imposing liens and, in appropriate cases, to force sale of property and distribution of proceeds;

H. for the purpose of securing overdue support, to increase the amounts for arrearages, subject to such conditions or limitations as the state Title IV-D agency may provide;

I. the expedited procedures required shall include the following rules and authority, applicable with respect to all proceedings to establish paternity or to establish, modify or enforce support orders:

(1) each party to any paternity or child support proceeding is required, subject to privacy safeguards, to file with the tribunal and the state case registry upon entry of an order, and to update, as appropriate, information on location and identity of the party, including social security number, residential and mailing addresses, telephone number and driver's license number, and name, address and telephone number of employer; and

(2) in any subsequent child support enforcement action between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of such a party, the tribunal may deem state due process requirements for notice and service of process to be met with respect to the party, upon delivery of written notice to the most recent residential or employer address filed with the tribunal;

J. procedures under which:

(1) the state agency and administrative or judicial tribunal with authority to hear child support and paternity cases exerts statewide jurisdiction over the parties; and

(2) in a state in which orders are issued by courts or administrative tribunals, a case may be transferred between local jurisdictions in the state without need for any additional filing by the petitioner, or service of process upon the respondent, to retain jurisdiction over the parties; and

K. the authority of the Title IV-D agency with regard to Subsections A through J of this section shall be subject to due process safeguards, including, as appropriate, requirements for notice, opportunity to contest the action and opportunity for an appeal on the record to an independent administrative or judicial tribunal. Such due process safeguards shall be developed and implemented by the Title IV-D agency in accordance with the administrative office of the courts and other affected agencies and individuals consistent with current policies and procedures for implementation of the human services department's regulations.

Section 17

Section 17. Section 40-11-5 NMSA 1978 (being Laws 1986, Chapter 47, Section 5, as amended) is amended to read:

"40-11-5. PRESUMPTION OF PATERNITY.--

A. A man is presumed to be the natural father of a child if:

(1) he and the child's natural mother are or have been married to each other and the child is born during the marriage or within three hundred days after the marriage is terminated by death, annulment, declaration of invalidity or dissolution of marriage or after a decree of separation is entered by a court;

(2) before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(a) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted

marriage or within three hundred days after its termination by death, annulment, declaration of invalidity or divorce; or

(b) if the attempted marriage is invalid without a court order, the child is born within three hundred days after the termination of cohabitation;

(3) after the child's birth, he and the child's natural mother have married or attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(a) he has acknowledged his paternity of the child in writing filed with the vital statistics bureau of the public health division of the department of health;

(b) with his consent, he is named as the child's father on the child's birth certificate; or

(c) he is obligated to support the child under a written voluntary promise or by court order;

(4) while the child is under the age of majority, he openly holds out the child as his natural child and has established a personal, financial or custodial relationship with the child; or

(5) he acknowledges his paternity of the child pursuant to Section 24-14-13 NMSA 1978 or in writing filed with the vital statistics bureau of the public health division of the department of health, which shall promptly inform the mother of the filing of the acknowledgment, and, within a reasonable time after being informed of the filing, she does not dispute the acknowledgment. In order to enforce the rights of custody or visitation, a man presumed to be the father as a result of filing a written acknowledgment shall seek an appropriate judicial order in an action filed for that purpose. A signed voluntary acknowledgment of paternity is considered a legal finding of paternity, subject to the right of any signatory to rescind the acknowledgment within the earlier of:

(a) sixty days from the date of signing; or

(b) the date of an administrative or judicial proceeding relating to the child, including a proceeding to establish a support order, to which the signatory is a party. After sixty days from the date of signing, the acknowledgment may be challenged in court only on the grounds of fraud, duress or material mistake of fact, with the burden

of proof upon the challenger, although legal responsibilities arising from signing the acknowledgment may not be suspended during the challenge, except upon a showing of good cause. Judicial or administrative proceedings are not required to ratify an unchallenged acknowledgment.

B. If two or more men are presumed under this section to be the child's father, an acknowledgment by one of them may be effective only with the written consent of the other or pursuant to Subsection C of this section.

C. A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two or more men are presumed under this section to be the father of the same child, paternity shall be established as provided in the Uniform Parentage Act. If the presumption has been rebutted with respect to one man, paternity of the child by another man may be determined in the same action if he has been made a party.

D. A man is presumed to be the natural father of a child if, pursuant to blood or genetic tests properly performed by a qualified person and evaluated by an expert, including deoxyribonucleic acid (DNA) probe technique tests under the Uniform Parentage Act, the probability of his being the father is ninety-nine percent or higher.

E. The voluntary acknowledgment of paternity must be recognized as a basis for seeking a support order without requiring any further proceedings to establish paternity.

F. Full faith and credit must be given to determination of paternity made by other states, including acknowledgments of paternity."

Section 18

Section 18. Section 40-11-12 NMSA 1978 (being Laws 1986, Chapter 47, Section 12, as amended) is amended to read:

"40-11-12. BLOOD AND GENETIC TESTS.--

A. The court may, and upon request of a party shall, require the child, mother or alleged father to submit to blood or genetic tests, including deoxyribonucleic acid (DNA) probe technique tests.

B. The court, upon reasonable request by a party, shall order that independent tests be performed by other experts qualified as

examiners of blood types or qualified as experts in the administration of genetic tests, including deoxyribonucleic acid (DNA) probe technique tests.

C. In all cases, the court shall determine the number and qualifications of the experts. This accreditation of the testing facility must be admissible without the need for foundation testimony or other proof of authenticity or accuracy unless an objection has been made in writing not later than twenty days before a hearing on the testing results. The court shall admit into evidence, for purposes of establishing paternity, the results of any genetic test that is of a type generally acknowledged as reliable by accreditation bodies designated by the secretary of human services and performed by a laboratory approved by such an accreditation body unless an objection has been made in writing not later than twenty days before a hearing, at which the results may be introduced into evidence.

D. If a putative father refuses to comply with an order for testing pursuant to this section, the court shall enter a judgment of parentage against him.

E. If the mother refuses to comply with an order for testing pursuant to this section, the court may dismiss the case without prejudice."

Section 19

Section 19. Section 40-11-14 NMSA 1978 (being Laws 1986, Chapter 47, Section 14) is amended to read:

"40-11-14. CIVIL ACTION.--

A. An action under the Uniform Parentage Act is a civil action governed by the rules of civil procedure. Jury trial is not available in actions to establish parentage. The mother of the child and the alleged father are competent to testify and may be compelled to testify.

B. Testimony relating to sexual access to the mother by an unidentified man at any time or by an identified man at a time other than the probable time of conception is inadmissible in evidence, unless offered by the mother.

C. In an action against an alleged father, evidence offered by him with respect to a man who is not subject to the jurisdiction of the court concerning his sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if

the alleged father has undergone and made available to the court blood tests, the results of which do not exclude the possibility of his paternity of the child.

D. A default order must be entered upon a showing of service of process on the defendant or any other showing required by state law."

Section 20

Section 20. Section 40-11-15 NMSA 1978 (being Laws 1986, Chapter 47, Section 15, as amended) is amended to read:

"40-11-15. JUDGMENT OR ORDER.--

A. The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

B. If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a new birth certificate be issued.

C. The judgment or order may contain any other provision directed against or on behalf of the appropriate party to the proceeding concerning the duty of past and future support, the custody and guardianship of the child, visitation with the child, the furnishing of bond or other security for the payment of the judgment or any other matter within the jurisdiction of the court. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy, birth and confinement. The court shall order child support retroactive to the date of the child's birth pursuant to the provisions of Sections 40-4-11 through 40-4-11.3 NMSA 1978.

D. Support judgments or orders ordinarily shall be for periodic payments which may vary in amount. In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support; provided, however, a lump-sum payment shall not thereafter deprive a state agency of its right to reimbursement from an appropriate party should the child become a recipient of public assistance.

E. In determining the amount to be paid by a parent for support of the child, a court, child support hearing officer or master shall make such determination in accordance with the provisions of the child support guidelines of Section 40-4-11.1 NMSA 1978.

F. Bills for pregnancy, childbirth and genetic testing are admissible as evidence without requiring third-party foundation testimony and constitute prima facie evidence of amounts incurred."

Section 21

Section 21. Section 40-4-11.5 NMSA 1978 (being Laws 1990, Chapter 58, Section 2) is amended to read:

"40-4-11.5. MODIFICATION OF CHILD SUPPORT ORDERS IN CASES ENFORCED BY THE STATE TITLE IV-D AGENCY.--

A. For child support cases being enforced by the human services department acting as the state's Title IV-D child support enforcement agency as provided in Section 27-2-27 NMSA 1978, the department shall implement a process for the periodic review of child support orders that shall include:

(1) a review of support orders every three years upon the request of either the obligor or obligee or, if there is an assignment of support rights pursuant to the Public Assistance Act, upon the request of the department or of either the obligor or obligee;

(2) notification by the department of its review to the obligor and obligee; and

(3) authorization to require financial information from the obligor and the obligee to determine whether the support obligation should be presented to the court for modification.

B. In carrying out its duties under this section, the secretary of human services, or the secretary's authorized representative, has the power to issue subpoenas:

(1) to compel the attendance of the obligor or the obligee at a hearing on the child support order;

(2) to compel production by the obligor or the obligee of financial or wage information, including federal or state tax returns;

(3) to compel the obligor or the obligee to disclose the location of employment of the payor party; and

(4) to compel the employer of the obligor or the obligee to disclose information relating to the employee's wages.

C. A subpoena issued by the human services department under this section shall state with reasonable certainty the nature of the information required, the time and place where the information shall be produced, whether the subpoena requires the attendance of the person subpoenaed or only the production of information and records and the consequences of failure to obey the subpoena.

D. A subpoena issued by the human services department under this section shall be served upon the person to be subpoenaed or, at the option of the secretary or the secretary's authorized representative, by certified mail addressed to the person at his last known address. The service of the subpoena shall be at least ten days prior to the required production of the information or the required appearance. If the subpoena is served by certified mail, proof of service is the affidavit of mailing. After service of a subpoena upon a person, if the person neglects or refuses to comply with the subpoena, the department may apply to the district court of the county where the subpoena was served or the county where the subpoena was responded to for an order compelling compliance. Failure of the person to comply with the district court's order shall be punishable as contempt.

E. If a review by the human services department results in a finding that a child support order should be modified in accordance with the guidelines, it should be presented to the court for modification and the obligor and the obligee shall be notified of their respective rights and shall have thirty days to respond to the department's finding. The right to seek modification shall rest with the department in the case of obligations being enforced as a result of a public assistance recipient's assignment of support rights to the state as provided in the Social Security Act, 42 U.S.C. 602(a)(26).

F. At the request of the obligor or the obligee or upon the filing of a motion to modify child support, the human services department shall furnish any information it has obtained in its review process regarding wages or other information pertaining to the obligor or the obligee.

G. Nothing in this section shall be construed to restrict the right of either party to petition the court to modify a child support obligation. The human services department shall not be required to conduct a review of any party's obligation more than once every three years."

Section 22

Section 22. WORK REQUIREMENT FOR PERSONS OWING PAST-DUE CHILD SUPPORT.--The state Title IV-D agency must have and use procedures under which the state has the authority, in any case in which an individual owes past-due support with respect to a child receiving assistance under a state program funded under temporary assistance for needy families, to issue an order or to request that a court or an administrative process established pursuant to state law issue an order that requires the individual to:

A. pay such support in accordance with a plan approved by the court, or at the option of the state, a plan approved by the state Title IV-D agency; or

B. if the individual is subject to such a plan and is not incapacitated, participate in such work activities as the court, or at the option of the state, the state Title IV-D agency, deems appropriate.

Section 23

Section 23. Section 40-4A-15 NMSA 1978 (being Laws 1985, Chapter 105, Section 17) is amended to read:

"40-4A-15. CONSUMER REPORTING AGENCIES.--At the request of a consumer reporting agency, as defined in Section 603(f) of the Fair Credit Reporting Act, 15 USC 1681(a)(f), and upon thirty days' advance notice to the obligor, the department, in accordance with its regulations, may release information regarding the delinquency of an obligor. The department may charge a reasonable fee to the consumer reporting agency."

Section 24

Section 24. LIENS.--The state Title IV-D agency must have and use procedures under which:

A. liens arise by operation of law against real and personal property for amounts of overdue support owed by a noncustodial parent who resides or owns property in the state; and

B. the state courts and tribunals accord full faith and credit to liens arising in another state, when the state Title IV-D agency, party, or other entity seeking to enforce such a lien complies with the procedural rules relating to recording or serving liens that arise within the state, except that such rules may not require judicial notice or hearing prior to the enforcement of such a lien.

Section 25

Section 25. Section 40-5A-2 NMSA 1978 (being Laws 1995, Chapter 25, Section 2) is amended to read:

"40-5A-2. PURPOSE.--The purpose of the Parental Responsibility Act is:

A. to require parents to eliminate child support arrearages in order to maintain a professional, occupational or recreational license, including but not limited to a hunting, fishing or trapping license, and a driver's license; and

B. to require compliance with after receiving appropriate notice, subpoenas or warrants relating to paternity or child support, 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 26

Section 26. Section 40-5A-3 NMSA 1978 (being Laws 1995, Chapter 25, Section 3) is amended to read:

"40-5A-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 profession or occupation licensed pursuant to Chapter 61 NMSA 1978;

(4) any other state agency to which the Uniform Licensing Act is applied by law;

(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;

(6) the department of game and fish; or

(7) the motor vehicle division of the taxation and revenue department;

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:

(1) an obligor is no more than thirty days in arrears in payment of amounts required to be paid pursuant to an outstanding judgment and order for support; and

(2) an obligor has, after receiving appropriate notice, complied with subpoenas or warrants relating to paternity or child support proceedings;

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, driver's license and recreational licenses, including but not limited to hunting, fishing or trapping licenses;

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 27

Section 27. Section 40-5A-4 NMSA 1978 (being Laws 1995, Chapter 25, Section 4) is amended to read:

"40-5A-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 or subpoenas or warrants relating to paternity or child support proceedings. 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 or subpoenas or warrants relating to paternity or child support proceedings 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 applicable law governing hearings, the denial of the application on other grounds would have entitled the applicant 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 or subpoenas or warrants relating to paternity or child support proceedings."

Section 28

Section 28. Section 40-5A-5 NMSA 1978 (being Laws 1995, Chapter 25, Section 5) is amended to read:

"40-5A-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 or subpoenas or warrants relating to paternity or child support proceedings. 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 or subpoenas or warrants relating to paternity or child support proceedings 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 the applicable law governing hearings. 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 or subpoenas or warrants relating to paternity or child support proceedings."

Section 29

Section 29. Section 40-5A-6 NMSA 1978 (being Laws 1995, Chapter 25, Section 6) is amended to read:

"40-5A-6. SUSPENSION OR REVOCATION OF LICENSE.--The failure of a licensee to be in compliance with a judgment and order for

support or subpoena or warrants relating to paternity or child support proceedings is grounds for suspension or revocation of a license. The proceeding shall be conducted by a board pursuant to the law governing suspension and revocation proceedings for the license."

Section 30

Section 30. Section 40-5A-7 NMSA 1978 (being Laws 1995, Chapter 25, Section 7) is amended to read:

"40-5A-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 or subpoenas or warrants relating to paternity or child support proceedings within ten calendar days after the first day of each month. By the end of the month in which the certified list is received, each board shall report to the department the names of applicants and licensees who are on the list and the action the board has taken in connection with such applicants and licensees."

Section 31

Section 31. Section 40-5A-10 NMSA 1978 (being Laws 1995, Chapter 25, Section 10) is amended to read:

"40-5A-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 or subpoenas or warrants relating to paternity or child support proceedings and may delegate the enforcement of the rules to a board under its supervision."

Section 32

Section 32. Section 40-5A-13 NMSA 1978 (being Laws 1995, Chapter 25, Section 13) is amended to read:

"40-5A-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 or subpoenas or warrants relating to paternity or child support proceedings; and

D. the costs incurred in the implementation and enforcement of the Parental Responsibility Act."

Section 33

Section 33. FINANCIAL INSTITUTION DATA MATCHES.--

A. "Financial institution" means:

(1) a depository institution, as defined in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c));

(2) an institution-affiliated party, as defined in section 3(u) of such act (12 U.S.C. 1813(u));

(3) any federal credit union or state credit union, as defined in section 101 of the Federal Credit Union Act (12 USC 1752), including an institution-affiliated party of such a credit union, as defined section 206(r) of such act (12 U.S.C. 1786(r)); and

(4) any benefit association, insurance company, safe deposit company, money-market mutual fund or similar entity authorized to do business in the state.

B. "Account" means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account or money-market mutual fund account.

C. "Past-due support" means the amount of support determined under a court order or an order of an administrative process established under state law for support and maintenance of a child or of a child and the parent with whom the child is living, which has not been paid.

D. The human services department, acting as the state's child support enforcement agency pursuant to Title IV-D of the Social

Security Act, shall enter into agreements with financial institutions doing business in the state to develop and operate, in coordination with such financial institutions, a data match system to be operational by October 1, 2000, using automated data exchanges to the maximum extent feasible, in which each such financial institution is required to provide the information.

E. The human services department shall establish standard procedures and formats for the financial institutions. Such procedures shall include administrative due process for child support obligors before funds or assets may be seized by the department.

F. Each financial institution in New Mexico shall provide to the human services department for each calendar quarter the name, record address, social security number or other taxpayer identification number and other identifying information for each noncustodial parent who maintains an account at such institution and who owes past-due support, as identified by the human services department, by name and social security number or other taxpayer identification number.

G. Upon receipt of a notice of lien or levy from the human services department, financial institutions shall encumber and surrender assets held by the institution on behalf of any noncustodial parent who is subject to a child support lien.

H. The human services department may establish and pay a reasonable fee to a financial institution for conducting the data match provided for in this act, not to exceed the actual costs incurred by such financial institutions.

I. A financial institution shall not be liable under any state law to any person for disclosing of information to the human services department under this section; or for freezing or surrendering any assets held by such financial institution in response to a notice of lien or seizure issued by the human services department, or for any other action taken in good faith to comply with the requirements of this section.

J. A state child support enforcement agency that obtains a financial record of a person from a financial institution may disclose such financial record only for the purpose of, and to the extent necessary in, establishing, modifying or enforcing a child support obligation of such person.

Section 34

Section 34. ENFORCEMENT OF ORDERS FOR HEALTH CARE.--All Title IV-D child support orders enforced shall include a provision for the health care coverage of the child, and in the case in which a noncustodial parent provides such coverage and changes employment and the new employer provides health care coverage, the state Title IV-D agency shall transfer notice of the provision to the employer, which notice shall operate to enroll the child in the noncustodial parent's health plan, unless the noncustodial parent successfully contests the notice.

Section 35

Section 35. 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. The provisions of this act are severable.

Section 36

Section 36. EFFECTIVE DATE.--The effective date of the provisions of Section 5 of this act is July 1, 1998.

Section 37

Section 37. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR

SENATE BILL 1162, WITH EMERGENCY CLAUSE

SIGNED APRIL 11, 1997

CHAPTER 238

RELATING TO PUBLIC SCHOOLS; PROVIDING FOR BACKGROUND CHECKS OF APPLICANTS FOR AN INITIAL CERTIFICATION; REQUIRING SCHOOL DISTRICT SUPERINTENDENTS TO REPORT CONVICTIONS OF A FELONY OR A MISDEMEANOR INVOLVING MORAL TURPITUDE; ALLOWING LOCAL SCHOOL BOARDS TO RUN EMPLOYEE BACKGROUND CHECKS; AMENDING SECTIONS 22-10-22 AND 28-2-4 NMSA 1978 (BEING LAWS 1967, CHAPTER 16, SECTION 124 AND LAWS 1974, CHAPTER 78, SECTION 4, AS AMENDED); ENACTING NEW SECTIONS OF THE PUBLIC SCHOOL CODE; CREATING A FUND.

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

Section 1

Section 1. A new section of the Public School Code is enacted to read:

"BACKGROUND CHECKS.--

A. An applicant for initial certification shall be fingerprinted and shall provide two fingerprint cards to the department of education. Convictions of felonies or misdemeanors contained in the federal bureau of investigation record shall be used in accordance with Sections 28-2-1 through 28-2-6 NMSA 1978. Other information contained in the federal bureau of investigation record, if supported by independent evidence, can form the basis for the denial, suspension or revocation of a certificate for good and just cause. Such records and any related information shall be privileged and shall not be disclosed to individuals not directly involved in the certification or employment decisions affecting the specific applicants or employees. The applicant shall pay for the cost of obtaining the federal bureau of investigation record. The department of education shall implement the provisions of this section on or before July 1, 1998.

B. Local school boards shall develop policies and procedures to require employment background checks. Such policies and procedures may include requiring applicants who have been offered employment by the local school board to provide the applicant's federal bureau of investigation record. Applicants may be required to pay for the cost of obtaining a background check. Local school boards may require that contractors whose employees are in direct contact with students ensure that the employees of such contractors be fingerprinted and provide two fingerprint cards to the local school board. The department of education is authorized to release copies of federal bureau of investigation records on file with the department of education to a local school board that requires that applicants who have been offered employment provide such records. Convictions of felonies or misdemeanors contained in the federal bureau of investigation record shall be used in accordance with Sections 28-2-1 through 28-2-6 NMSA 1978; provided that other information contained in the federal bureau of investigation record, if supported by independent evidence, can form the basis for the employment decisions for good and just cause. Such records and any information related thereto shall be privileged and shall not be disclosed to individuals not directly involved in the certification or employment decisions affecting the specific applicants or employees."

Section 2

Section 2. A new section of the Public School Code is enacted to read:

"KNOWN CONVICTION--REPORTING REQUIREMENT--LIMITED IMMUNITY FROM LIABILITY--PENALTY FOR FAILURE TO REPORT.--

A. A school district superintendent shall report to the department of education any known conviction of a felony or misdemeanor involving moral turpitude of a certified school employee that results in any type of action against the school employee.

B. The state board may suspend or revoke a certificate held by a certified school administrator who fails to report a criminal conviction involving moral turpitude of a certified school employee in accordance with Subsection A of this section.

C. An individual who in good faith reports any known conviction of a felony or misdemeanor involving moral turpitude of a school employee shall not be held liable for civil damages as a result of the report; provided that the person being accused shall have the right to sue for any damages sustained as a result of negligent or intentional reporting of inaccurate information or the disclosure of any information to an unauthorized person."

Section 3

Section 3. Section 22-10-4 NMSA 1978 (being Laws 1967, Chapter 16, Section 107) is amended to read:

"22-10-4. CERTIFICATE FEES.--The state board shall charge a reasonable fee for each application for or the renewal of a certificate. This fee may be waived if the applicant meets a standard of indigency as established by the department of education."

Section 4

Section 4. Section 22-10-22 NMSA 1978 (being Laws 1967, Chapter 16, Section 124, as amended) is amended to read:

"22-10-22. SUSPENSION AND REVOCATION OF CERTIFICATES--APPEAL.--

A. The state board may suspend or revoke a certificate held by a certified school instructor or administrator for incompetency, immorality or any other good and just cause.

B. A certificate may be suspended or revoked only according to the following procedure:

(1) the state board serving written notice of the suspension or revocation on the person holding the certificate in accordance with the law for service of process in civil actions. The notice of the suspension or revocation shall state the grounds for the suspension or revocation of the certificate. The notice of the suspension or revocation shall describe the rights of the person holding the certificate and include instructions for requesting a hearing before the state board. Such hearing shall be requested within thirty days of receipt of the notice of suspension or revocation. If a hearing is requested, the hearing shall be held not more than ninety days from the date of the request for the hearing;

(2) the state board or its designated hearing officer conducting a hearing which provides the person holding the certificate, or his attorney, an opportunity to present evidence or arguments on all pertinent issues. A transcript shall be made of the entire hearing conducted by the state board or its designated hearing officer; and

(3) the state board rendering a written decision in accordance with the law and based upon evidence presented and admitted at the hearing. The written decision shall include findings of fact and conclusions of law and shall be based upon the findings of fact and the conclusions of law. A written copy of the decision of the state board shall be served upon the person holding the certificate within sixty days from the date of the hearing. Service of the written copy of the decision shall be in accordance with the law for service of process in civil actions or by certified mail to the person's address of record.

C. The secretary of the state board with the approval of the state board or its designated hearing officer may subpoena witnesses, require their attendance and giving of testimony and require the production of books, papers and records in connection with a hearing held pursuant to the provisions of Subsection B of this section. Also, the state board may apply to the district court for the issuance of subpoenas and subpoenas duces tecum in the name of and on behalf of the state board.

D. Any person aggrieved by a decision of the state board after a hearing pursuant to this section may appeal the decision to the court of appeals by filing a notice of appeal with the clerk of the court within thirty days after service of a written copy of the decision of the state board on the person. The cost of transcripts on appeal, including one copy for the use of the state board, shall be borne by the appellant. Upon appeal, the court of appeals shall affirm the decision of the state board unless the decision is found to be:

(1) arbitrary, capricious or unreasonable;

(2) not supported by substantial evidence; or

(3) otherwise not in accordance with law."

Section 5

Section 5. Section 28-2-4 NMSA 1978 (being Laws 1974, Chapter 78, Section 4, as amended) is amended to read:

"28-2-4. POWER TO REFUSE, RENEW, SUSPEND OR REVOKE PUBLIC EMPLOYMENT OR LICENSE.--

A. Any board or other agency having jurisdiction over employment by the state or any of its political subdivisions or the practice of any trade, business or profession may refuse to grant or renew or may suspend or revoke any public employment or license or other authority to engage in the public employment, trade, business or profession for any one or any combination of the following causes:

(1) where the applicant, employee or licensee has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction directly relates to the particular employment, trade, business or profession;

(2) where the applicant, employee or licensee has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction does not directly relate to the particular employment, trade, business or profession, if the board or other agency determines after investigation that the person so convicted has not been sufficiently rehabilitated to warrant the public trust; or

(3) where the applicant or employee has been convicted of homicide, kidnapping, trafficking in controlled substances, criminal sexual penetration or related sexual offenses or child abuse and the applicant or employee has applied for reinstatement, renewal or issuance of a teaching certificate, regardless of rehabilitation.

B. The board or other agency shall explicitly state in writing the reasons for a decision which prohibits the person from engaging in the employment, trade, business or profession if the decision is based in whole or in part on conviction of any crime described in Paragraphs (1) and (3) of Subsection A of this section. Completion of probation or parole supervision or expiration of a period of three years after final discharge or release from any term of imprisonment without any

subsequent conviction shall create a presumption of sufficient rehabilitation for purposes of Paragraph (2) of Subsection A of this section."

"Section 6. EDUCATOR CERTIFICATION FUND--DISTRIBUTION--APPROPRIATION.--

A. The "educator certification fund" is created in the state treasury and shall be administered by the state department of public education. The fund shall consist of money collected from application fees for certification or for renewal of certification by the state board of education.

B. Money in the fund is appropriated to the state department of public education for the purpose of funding the educator background check program. Money in the fund and any interest that may accrue to the fund shall not revert at the end of the fiscal year but shall remain to the credit of the fund."

SENATE EDUCATION COMMITTEE SUBSTITUTE FOR

SENATE BILL 106, AS AMENDED

CHAPTER 239

RELATING TO EDUCATION; AMENDING A SECTION OF THE PUBLIC SCHOOL CODE PERTAINING TO STUDENT PARTICIPATION IN INTERSCHOLASTIC EXTRACURRICULAR ACTIVITIES.

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

Section 1

Section 1. Section 22-12-2.1 NMSA 1978 (being Laws 1986, Chapter 33, Section 27, as amended) is amended to read:

"22-12-2.1. INTERSCHOLASTIC EXTRACURRICULAR ACTIVITIES--STUDENT PARTICIPATION.--

A. A student shall have a 2.0 grade point average on a 4.0 scale, or its equivalent, either cumulatively or for the grading period immediately preceding participation, in order to be eligible to participate

in any interscholastic extracurricular activity. For purposes of this section, "grading period" is a period of time not less than six weeks. The provisions of this subsection shall not apply to students receiving moderate to maximum special education services.

B. No student shall be absent from school for school-sponsored interscholastic extracurricular activities in excess of fifteen days per semester, and no class may be missed in excess of fifteen times per semester.

C. The provisions of Subsections A and B of this section apply only to interscholastic extracurricular activities.

D. The state superintendent may issue a waiver relating to the number of absences for participation in any state or national competition. The state superintendent shall develop a procedure for petitioning cumulative provision eligibility cases, similar to other eligibility situations.

E. Student standards for participation in interscholastic extracurricular activities shall be applied beginning with a student's academic record in grade nine."

SENATE BILL 111, AS AMENDED

CHAPTER 240

RELATING TO LICENSURE; CLARIFYING THE PRACTICE OF ORIENTAL MEDICINE; GIVING DOCTORS OF ORIENTAL MEDICINE PRESCRIPTIVE AUTHORITY; DESIGNATING DOCTORS OF ORIENTAL MEDICINE AS PRIMARY CARE PROVIDERS; EXPANDING THE AUTHORITY TO DENY, SUSPEND OR REVOKE A LICENSE; REQUIRING LICENSEES TO PAY COSTS OF DISCIPLINARY PROCEEDINGS UNDER CERTAIN CIRCUMSTANCES.

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

Section 1

Section 1. Section 26-1-2 NMSA 1978 (being Laws 1967, Chapter 23, Section 2, as amended) is amended to read:

"26-1-2. DEFINITIONS.--As used in the New Mexico Drug, Device and Cosmetic Act:

A. "board" means the board of pharmacy or its duly authorized agent;

B. "person" includes individual, partnership, corporation, association, institution or establishment;

C. "biological product" means any virus, therapeutic serum, toxin, antitoxin or analogous product applicable to the prevention, treatment or cure of diseases or injuries of man and domestic animals and, as used within the meaning of this definition:

(1) a "virus" is interpreted to be a product containing the minute living cause of an infectious disease and includes filterable viruses, bacteria, rickettsia, fungi and protozoa;

(2) a "therapeutic serum" is a product obtained from blood by removing the clot or clot components and the blood cells;

(3) a "toxin" is a product containing a soluble substance poisonous to laboratory animals or man in doses of one milliliter or less of the product and having the property, following the injection of nonfatal doses into an animal, or causing to be produced therein another soluble substance that specifically neutralizes the poisonous substance and that is demonstrable in the serum of the animal thus immunized; and

(4) an "antitoxin" is a product containing the soluble substance in serum or other body fluid of an immunized animal that specifically neutralizes the toxin against which the animal is immune;

D. "controlled substance" means any drug, substance or immediate precursor enumerated in Schedules I through V of the Controlled Substances Act;

E. "drug" means:

(1) articles recognized in an official compendium;

(2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals

and includes the domestic animal biological products regulated under the federal Virus-Serum-Toxin Act, 37 Stat 832-833, 21 U.S.C. 151-158 and the biological products applicable to man regulated under Federal 58 Stat 690, as amended, 42 U.S.C. 216, Section 351, and 58 Stat 702, as amended, 42 U.S.C. 262;

(3) articles other than food that affect the structure or any function of the body of man or other animals; and

(4) articles intended for use as a component of Paragraph (1), (2) or (3) of this subsection, but does not include devices or their component parts or accessories;

F. "dangerous drug" means a drug, other than a controlled substance enumerated in Schedule I of the Controlled Substances Act, that because of any potentiality for harmful effect or the method 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 hence for which adequate directions for use cannot be prepared. "Adequate directions for use" means directions under which the layman can use a drug or device safely and for the purposes for which it is intended. A drug shall be dispensed only upon the prescription of a practitioner licensed by law to administer or prescribe such drug if it:

(1) is a habit-forming drug and contains any quantity of a narcotic or hypnotic substance, or any chemical derivative of such substance, that has been found under the federal act and the board to be habit-forming;

(2) because of its toxicity or other potentiality for harmful effect or the method of its use or the collateral measures necessary to its use is not safe for use except under the supervision of a practitioner licensed by law to administer or prescribe such drug;

(3) is limited by an approved application by Section 505 of the federal act to the use under the professional supervision of a practitioner licensed by law to administer or prescribe such drug;

(4) bears the legend: "Caution: federal law prohibits dispensing without prescription."; or

(5) bears the legend: "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian.";

G. "counterfeit drug" means a drug other than a controlled substance that, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint or device, or any likeness, of a drug manufacturer, processor, packer or distributor other than the person who in fact manufactured, processed, packed or distributed such drug and that falsely purports or is represented to be the product of or to have been packed or distributed by such other drug manufacturer, processor, packer or distributor;

H. "device", except when used in Subsection P of this section and in Subsection G of Section 26-1-3, Subsection L and Paragraph (4) of Subsection A of Section 26-1-11 and Subsection C of Section 26-1-24 NMSA 1978, means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component, part or accessory, that is:

(1) recognized in an official compendium;

(2) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment or prevention of disease, in man or other animals; or

(3) intended to affect the structure or any function of the body of man or other animals and that does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for achievement of any of its principal intended purposes;

I. "prescription" means 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 bearing 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. No person other than a practitioner shall prescribe or write a prescription;

J. "practitioner" means a physician, doctor of oriental medicine, dentist, veterinarian or other person licensed to prescribe and administer drugs that are subject to the New Mexico Drug, Device and Cosmetic Act;

K. "cosmetic" means:

(1) articles intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance; and

(2) articles intended for use as a component of any articles enumerated in Paragraph (1) of this subsection, except that the term shall not include soap;

L. "official compendium" means the official United States pharmacopoeia national formulary or the official homeopathic pharmacopoeia of the United States or any supplement to either of them;

M. "label" means a display of written, printed or graphic matter upon the immediate container of any article. A requirement made by or under the authority of the New Mexico Drug, Device and Cosmetic Act that any word, statement or other information appear on the label shall not be considered to be complied with unless the word, statement or other information also appears on the outside container or wrapper, if any, of the retail package of the article or is easily legible through the outside container or wrapper;

N. "immediate container" does not include package liners;

O. "labeling" means all labels and other written, printed or graphic matter:

(1) upon any article or any of its containers or wrappers; or

(2) accompanying any article;

P. "misbranded" means a label to an article that is misleading. In determining whether the label is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device or any combination of the foregoing, but also the extent to which the label fails to reveal facts material in the light of such representations or material with respect to consequences that may result from the use of the article to which the label relates under the conditions of use prescribed in the label or under such conditions of use as are customary or usual;

Q. "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose

of inducing, or that are likely to induce, directly or indirectly, the purchase of drugs, devices or cosmetics;

R. "antiseptic", when used in the labeling or advertisement of an antiseptic, shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be or represented as an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder or such other use as involves prolonged contact with the body;

S. "new drug" means:

(1) any drug, the composition of which is such that the drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and efficacy of drugs, as safe and effective for use under the conditions prescribed, recommended or suggested in the labeling thereof; or

(2) any drug, the composition of which is such that the drug, as a result of investigation to determine its safety and efficacy for use under such conditions, has become so recognized, but that has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions;

T. "contaminated with filth" applies to any drug, device or cosmetic not securely protected from dirt, dust and, as far as may be necessary by all reasonable means, from all foreign or injurious contaminations, or any drug, device or cosmetic found to contain any dirt, dust, foreign or injurious contamination or infestation;

U. "selling of drugs, devices or cosmetics" shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession and holding of any such article for sale and the sale and the supplying or applying of any such article in the conduct of any drug or cosmetic establishment;

V. "color additive" means a material that:

(1) is a dye, pigment or other substance made by a process of synthesis or similar artifice or extracted, isolated or otherwise derived, with or without intermediate or final change of identity, from a vegetable, mineral, animal or other source; or

(2) when added or applied to a drug or cosmetic or to the human body or any part thereof, is capable, alone or through reaction with other substances, of imparting color thereto; except that

such term does not include any material that has been or hereafter is exempted under the federal act;

W. "federal act" means the Federal Food, Drug and Cosmetic Act;

X. "restricted device" means a device for which the sale, distribution or use is lawful only upon the written or oral authorization of a practitioner licensed by law to administer, prescribe or use the device and for which the federal food and drug administration requires special training or skills of the practitioner to use or prescribe. This definition does not include custom devices defined in the federal act and exempt from performance standards or premarket approval requirements under Section 520 (b) of the federal act; and

Y. "prescription device" means a device that, because of its potential for harm, the method of its use or the collateral measures necessary to its use, is not safe except under the supervision of a practitioner licensed in this state to direct the use of such device and for which "adequate directions for use" cannot be prepared, but that bears the label: "Caution: Federal law restricts this device to sale by or on the order of a ", the blank to be filled with the word "physician", "doctor of oriental medicine", "dentist", "veterinarian" or with the descriptive designation of any other practitioner licensed in this state to use or order the use of the device."

Section 2

Section 2. Section 61-14A-1 NMSA 1978 (being Laws 1993, Chapter 158, Section 9) is amended to read:

"61-14A-1. SHORT TITLE.--Chapter 61, Article 14A NMSA 1978 may be cited as the "Acupuncture and Oriental Medicine Practice Act"."

Section 3

Section 3. Section 61-14A-3 NMSA 1978 (being Laws 1993, Chapter 158, Section 11) is amended to read:

"61-14A-3. DEFINITIONS.--As used in the Acupuncture and Oriental Medicine Practice Act:

A. "acupuncture" means the use of needles inserted into and removed from the human body and the use of other devices, modalities and procedures at specific locations on the body for the prevention, cure or correction of any disease, illness, injury, pain or

other condition by controlling and regulating the flow and balance of energy and functioning of the person to restore and maintain health;

B. "board" means the board of acupuncture and oriental medicine;

C. "department" means the regulation and licensing department;

D. "doctor of oriental medicine" means a person licensed as a physician to practice acupuncture and oriental medicine with the ability to practice independently, serve as a primary care provider and as necessary collaborate with other health care providers;

E. "moxibustion" means the use of heat on or above specific locations or on acupuncture needles at specific locations on the body for the prevention, cure or correction of any disease, illness, injury, pain or other condition;

F. "oriental medicine" means the distinct system of primary health care that uses all allied techniques of oriental medicine, both traditional and modern, to diagnose, treat and prescribe for the prevention, cure or correction of any disease, illness, injury, pain or other physical or mental condition by controlling and regulating the flow and balance of energy and functioning of the person to restore and maintain health;

G. "primary care provider" means a health care professional acting within the scope of his license who provides the first level of basic or general health care for an individual's health needs, including diagnostic and treatment services; and

H. "techniques of oriental medicine" means:

(1) the diagnostic and treatment techniques used in oriental medicine that include diagnostic procedures; acupuncture; moxibustion; manual therapy, also known as tui na; other physical medicine modalities and therapeutic procedures; breathing and exercise techniques; and dietary, nutritional and lifestyle counseling;

(2) the prescription or administration of any herbal medicine, homeopathic medicine, vitamins, minerals, enzymes, glandular products, amino acids, dietary and nutritional supplements;

(3) the prescription or administration of devices, restricted devices and prescription devices, as those devices are defined in the New Mexico Drug, Device and Cosmetic Act, if the board

determines by rule that such devices are necessary in the practice of oriental medicine and if the prescribing doctor of oriental medicine has fulfilled requirements for prescriptive authority in accordance with rules promulgated by the board for the devices enumerated in this paragraph;

(4) the prescription or administration of cosmetics, therapeutic serum and over-the-counter drugs, other than those enumerated in Paragraph (2) of this subsection, as those are defined in the New Mexico Drug, Device and Cosmetic Act, if the prescribing doctor of oriental medicine has fulfilled the requirements for prescriptive authority in accordance with rules promulgated by the board for the substances enumerated in this paragraph; and

(5) the prescription or administration of the following dangerous drugs as they are defined in the New Mexico Drug, Device and Cosmetic Act, if the prescribing doctor of oriental medicine has fulfilled the requirements for prescriptive authority in accordance with rules promulgated by the board for the substances enumerated in this paragraph:

(a) sterile water;

(b) sterile saline;

(c) sarapin or its generic;

(d) vapocoolants;

(e) topical application of naturally occurring hormones; and

(f) any of the drugs or substances enumerated in Paragraphs (2) and (4) of this subsection if at any time these substances or drugs are classified as dangerous drugs."

Section 4

Section 4. Section 61-14A-5 NMSA 1978 (being Laws 1993, Chapter 158, Section 13) is amended to read:

"61-14A-5. TITLE.--Any person licensed pursuant to provisions of the Acupuncture and Oriental Medicine Practice Act, in advertising his services to the public, shall use the title "doctor of oriental medicine" or "D.O.M.". The title "doctor of oriental medicine" or "D.O.M." shall supersede the use of all other titles that include the words "medical

doctor" or the initials "M.D." unless the person is a medical doctor licensed pursuant to provisions of the Medical Practice Act."

Section 5

Section 5. Section 61-14A-6 NMSA 1978 (being Laws 1993, Chapter 158, Section 14) is amended to read:

"61-14A-6. EXEMPTIONS.--

A. Nothing in the Acupuncture and Oriental Medicine Practice Act is intended to limit, interfere with or prevent any other class of licensed health care professionals from practicing within the scope of their license as defined by each profession's New Mexico licensing statutes, but they shall not hold themselves out to the public or any private group or business by using any title or description of services that includes the terms acupuncture, acupuncturist or oriental medicine unless they are licensed under the Acupuncture and Oriental Medicine Practice Act.

B. Students enrolled in an educational program in acupuncture and oriental medicine approved by the board may practice acupuncture and oriental medicine under the direct supervision of a teacher at an institute or with a private tutor as part of the educational program in which they are enrolled.

C. The Acupuncture and Oriental Medicine Practice Act shall not apply to or affect the following practices if the individual does not hold himself out as a doctor of oriental medicine or as practicing acupuncture or oriental medicine:

(1) the administering of gratuitous services in cases of emergency;

(2) the domestic administering of family remedies;

(3) the counseling about or the teaching and demonstration of breathing and exercise techniques;

(4) the counseling or teaching about diet and nutrition;

(5) the spiritual or lifestyle counseling of any individual or spiritual group or the practice of the religious tenets of any church;

(6) the providing of information about the general usage of herbal medicines, homeopathic medicines, vitamins, minerals, enzymes or glandular or nutritional supplements; or

(7) the use of needles for diagnostic purposes and the use of needles for the administration of diagnostic or therapeutic substances by licensed health care professionals."

Section 6

Section 6. Section 61-14A-10 NMSA 1978 (being Laws 1993, Chapter 158, Section 18) is amended to read:

"61-14A-10. REQUIREMENTS FOR LICENSING.--The board shall grant a license to practice acupuncture and oriental medicine to any person who has submitted to the board:

A. the completed application for licensing on the form provided by the board;

B. the required documentation as determined by the board;

C. the required fees;

D. an affidavit stating that the applicant has not been found guilty of unprofessional conduct or incompetency;

E. proof, as determined by the board, that the applicant has completed a board-approved educational program in acupuncture and oriental medicine as provided for in the Acupuncture and Oriental Medicine Practice Act and the rules of the board; and

F. proof that he has passed the examinations approved by the board."

Section 7

Section 7. Section 61-14A-11 NMSA 1978 (being Laws 1993, Chapter 158, Section 19) is amended to read:

"61-14A-11. EXAMINATIONS.--

A. The board shall establish procedures to ensure that examinations for licensing are offered at least once a year.

B. The board shall establish by rule the deadline for receipt of the application for licensing examination and other rules relating to the taking and retaking of licensing examinations.

C. The board shall establish by rule the passing grades for its approved examinations.

D. The board may approve by rule examinations that are used for national certification or other examinations.

E. The board shall require each qualified applicant to pass a written examination that includes, as a minimum, the following subjects:

(1) anatomy and physiology;

(2) pathology;

(3) diagnosis;

(4) pharmacology;

and

(5) principles, practices and treatment techniques of acupuncture and oriental medicine.

F. The board may require each qualified applicant to pass a practical examination that demonstrates his knowledge of and skill in the application of the diagnostic and treatment techniques of acupuncture and oriental medicine.

G. The board shall require each qualified applicant to pass a written or a practical examination or both in the following subjects:

(1) hygiene, sanitation and clean-needle technique;

and

(2) needle and instrument sterilization techniques.

H. The board may require each qualified applicant to pass a written examination on the state laws and rules that pertain to the practice of acupuncture and oriental medicine."

Section 8

Section 8. Section 61-14A-13 NMSA 1978 (being Laws 1993, Chapter 158, Section 21, as amended) is amended to read:

"61-14A-13. REQUIREMENTS FOR RECIPROCAL LICENSING.--The board may grant a license to practice acupuncture and oriental medicine to a person who has been licensed, certified, registered or legally recognized as a doctor of oriental medicine in another state, district or territory of the United States or foreign country if the applicant:

A. submits the completed application for reciprocal licensing on the form provided by the board;

B. submits the required documentation as determined by the board;

C. submits the required fee for application for reciprocal licensing;

D. submits an affidavit stating that the applicant has not been found guilty of unprofessional conduct or incompetency;

E. has passed a practical examination that demonstrates his knowledge of and skill in the application of the diagnostic and treatment techniques of acupuncture and oriental medicine, if the board requires regular applicants to pass a practical examination, or within the last six years has five years of clinical experience, as defined by rule, in the practice of acupuncture and oriental medicine;

F. has passed a written examination on the state laws and rules that pertain to the practice of acupuncture and oriental medicine, if the board requires regular applicants for licensure to pass such an examination;

G. is licensed, certified, registered or legally recognized as a doctor of oriental medicine in another state, district or territory of the United States or foreign country in which the requirements for practice are similar to those of this state; and

H. is licensed, certified, registered or legally recognized as a doctor of oriental medicine in a state, district or territory of the United States or foreign country that permits a doctor of oriental medicine licensed under the provisions of the Acupuncture and Oriental Medicine Practice Act to practice acupuncture and oriental medicine in that jurisdiction by reciprocal credentials review."

Section 9

Section 9. Section 61-14A-14 NMSA 1978 (being Laws 1993, Chapter 158, Section 22) is amended to read:

"61-14A-14. APPROVAL OF EDUCATIONAL PROGRAMS.--

A. The board shall establish by rule the criteria for board approval of educational programs in acupuncture and oriental medicine. For an educational program in acupuncture and oriental medicine to meet board approval, proof shall be submitted to the board demonstrating that the educational program:

(1) was for a period of not less than four academic years;

(2) included a minimum of seven hundred fifty hours of supervised clinical practice;

(3) was taught by qualified teachers or a qualified private tutor;

(4) required as a prerequisite to graduation personal attendance in all classes and clinics and, as a minimum, the completion of the following subjects:

(a) anatomy and physiology;

(b) pathology;

(c) diagnosis;

(d) pharmacology;

(e) oriental principles of life therapy, including diet, nutrition and counseling;

(f) theory and techniques of traditional and modern acupuncture and oriental medicine;

(g) precautions and contraindications for acupuncture treatment;

(h) theory and application of meridian pulse evaluation and meridian point location;

(i) traditional and modern methods of life-energy evaluation;

(j) the prescription of herbal medicine and precautions and contraindications for its use;

(k) hygiene, sanitation and clean-needle technique;

(l) care and management of needling devices; and

(m) needle and instrument sterilization techniques; and

(5) resulted in the presentation of a certificate or diploma after completion of all the educational program requirements.

B. All institutes and private tutors in New Mexico that offer educational programs in acupuncture and oriental medicine with the intent to graduate students qualified to be applicants for licensing examination by the board shall have their educational programs annually approved by the board. For the educational program in acupuncture and oriental medicine to be approved by the board, the institute or private tutor shall submit:

(1) the completed application for approval of an educational program;

(2) the required documentation as determined by the board;

(3) proof, as determined by the board, that the educational requirements provided for in Subsection A of this section are being met; and

(4) the required fee for application for approval of an educational program.

C. Institutes and private tutors outside New Mexico that offer educational programs in acupuncture and oriental medicine with the intent to graduate students qualified to be applicants for licensing examination by the board may have their educational programs annually approved by the board. For the educational program in acupuncture and oriental medicine to be approved by the board, the institute or private tutor shall submit:

(1) the completed application for approval of an educational program;

(2) the required documentation as determined by the board;

(3) proof, as determined by the board, that the educational requirements provided for in Subsection A of this section are being met; and

(4) the required fee for application for approval of an educational program.

D. Each institute and private tutor in New Mexico that offers an approved educational program in acupuncture and oriental medicine as referred to in Subsection B of this section shall renew their approval annually by submitting:

(1) the completed application for renewal of approval of an educational program on the form provided by the board;

(2) proof, as determined by the board, that the educational requirements provided for in Subsection A of this section are being met; and

(3) the required fee for application for renewal of approval of an educational program.

E. Each institute and private tutor outside New Mexico that offers an approved educational program in acupuncture and oriental medicine as referred to in Subsection C of this section may renew their approval annually by submitting:

(1) the completed application for renewal of approval of an educational program on the form provided by the board;

(2) proof, as determined by the board, that the educational requirements provided for in Subsection A of this section are being met; and

(3) the required fee for application for renewal of approval of an educational program.

F. A sixty-day grace period shall be allowed each institute or private tutor after the end of the approval period, during which time the approval may be renewed by submitting:

(1) the completed application for renewal of approval of an educational program on the form provided by the board;

(2) proof, as determined by the board, that the educational requirements provided for in Subsection A of this section are being met;

(3) the required fee for application for renewal of approval of an educational program; and

(4) the required fee for late renewal of approval.

G. Any approval not renewed at the end of the grace period shall be considered expired. For renewal of an expired approval, the board shall establish by rule any requirements or fees that are in addition to the fee for annual renewal of approval and may require the institute or private tutor to reapply as a new applicant."

Section 10

Section 10. Section 61-14A-17 NMSA 1978 (being Laws 1993, Chapter 158, Section 25) is amended to read:

"61-14A-17. DISCIPLINARY PROCEEDINGS--JUDICIAL REVIEW--APPLICATION OF UNIFORM LICENSING ACT.--

A. In accordance with the procedures contained in the Uniform Licensing Act, the board may deny, revoke or suspend any permanent or temporary license held or applied for under the Acupuncture and Oriental Medicine Practice Act, upon findings by the board that the licensee or applicant:

(1) is guilty of fraud or deceit in procuring or attempting to procure a license;

(2) has been convicted of a felony. A certified copy of the record of conviction shall be conclusive evidence of such conviction;

(3) is guilty of incompetence as defined by board rule;

(4) is habitually intemperate, is addicted to the use of habit-forming drugs or is addicted to any vice to such a degree as to render him unfit to practice as a doctor of oriental medicine;

(5) is guilty of unprofessional conduct, as defined by board rule;

(6) is guilty of any violation of the Controlled Substances Act;

(7) has violated any provision of the Acupuncture and Oriental Medicine Practice Act or rules promulgated by the board;

(8) is guilty of failing to furnish the board, its investigators or representatives with information requested by the board;

(9) is guilty of willfully or negligently practicing beyond the scope of acupuncture and oriental medicine as defined in the Acupuncture and Oriental Medicine Practice Act;

(10) is guilty of failing to adequately supervise a sponsored temporary licensee;

(11) is guilty of aiding or abetting the practice of acupuncture and oriental medicine by a person not licensed by the board;

(12) is guilty of practicing or attempting to practice under an assumed name;

(13) advertises by means of knowingly false statements;

(14) advertises or attempts to attract patronage in any unethical manner prohibited by the Acupuncture and Oriental Medicine Practice Act or the rules of the board;

(15) has been declared mentally incompetent by regularly constituted authorities;

(16) has had a license, certificate or registration to practice as a doctor of oriental medicine revoked, suspended or denied in any jurisdiction of the United States or a foreign country for actions of the licensee similar to acts described in this subsection. A certified copy of the record of the jurisdiction taking such disciplinary action will be conclusive evidence thereof; or

(17) fails, when diagnosing or treating a patient, to possess or apply the knowledge or to use the skill and care ordinarily used by reasonably well-qualified doctors of oriental medicine practicing under similar circumstances, giving due consideration to the locality involved.

B. Disciplinary proceedings may be instituted by any person, shall be by sworn complaint and shall conform with the provisions of the Uniform Licensing Act. Any party to the hearing may obtain a copy of the hearing record upon payment of the costs of the copy.

C. Any person filing a sworn complaint shall be immune from liability arising out of civil action if the complaint is filed in good faith and without actual malice.

D. The licensee shall bear the costs of disciplinary proceedings unless

exonerated."

SENATE BILL 272, AS AMENDED

WITH CERTIFICATE OF CORRECTION

CHAPTER 241

RELATING TO WATER; AUTHORIZING THE ISSUANCE OF REVENUE BONDS FOR HYDROGRAPHIC SURVEYS USED FOR DETERMINATION OF WATER RIGHTS; AMENDING SECTIONS OF THE NMSA 1978; MAKING APPROPRIATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW

MEXICO:

Section 1

Section 1. Section 72-14-4 NMSA 1978 (being Laws 1935, Chapter 24, Section 1, as amended) is amended to read:

"72-14-4. BUDGET AND PLAN SUBMITTED TO GOVERNOR ANNUALLY.--The interstate stream commission shall annually prepare and submit a budget together with a complete and detailed plan looking toward the improvement of the Rio Grande in this state, and increasing the surface flow of water in the river, during the ensuing fiscal year. The plan and budget shall be submitted annually in accordance with the provisions of Sections 6-3-1 through 6-3-22 NMSA 1978."

Section 2

Section 2. Section 72-14-5 NMSA 1978 (being Laws 1935, Chapter 24, Section 2, as amended) is amended to read:

"72-14-5. ANNUAL EXPENDITURES MADE UNDER BUDGET AND PLAN.--The interstate stream commission shall annually expend from the money appropriated, within the money actually available and within the budget submitted and approved, in accordance with the provisions of Sections 6-3-1 through 6-3-22 NMSA 1978, such sum as may be necessary for the improvement of the Rio Grande in this state, and increasing the surface flow of water in the river, and in accordance with the plan submitted by the commission."

Section 3

Section 3. Section 72-14-6 NMSA 1978 (being Laws 1935, Chapter 24, Section 3, as amended) is amended to read:

"72-14-6. APPROPRIATION--HOW DISBURSEMENTS ARE TO BE MADE.--There is appropriated annually all money in the improvement of the Rio Grande income fund or as much thereof as may be necessary for the purpose of complying with Sections 72-14-4 through 72-14-6 and Sections 72-14-9 through 72-14-28 NMSA 1978 and to fulfill and carry out their purposes and intentions. The appropriations authorized shall be paid, from time to time as may be necessary, upon vouchers approved by the interstate stream commission."

Section 4

Section 4. Section 72-14-9 NMSA 1978 (being Laws 1955, Chapter 266, Section 1) is amended to read:

"72-14-9. DEFINITIONS.--As used in

Sections 72-14-9 through 72-14-28 NMSA 1978:

A. "engineer" or "state engineer" means the state engineer of New Mexico;

B. "commission" means the New Mexico interstate stream commission or other department or agency which may be created and charged with the duties and functions of the commission;

C. "works" includes all property, rights, easements and franchises relating thereto and deemed necessary or convenient for their operation, and all water rights acquired or exercised by the commission in connection with such works, and shall embrace all means of conserving and distributing water, including, without limiting the generality of the foregoing, reservoirs, dams, diversion canals, distributing canals, lateral ditches, pumping units, wells, mains, pipelines and waterworks systems and shall include all such works for the conservation, development, storage, distribution and utilization of water, including, without limiting the generality of the foregoing, works for the purpose of irrigation, development of power, watering of stock, supplying of water for public, domestic, industrial and other uses, for fire protection and for the purpose of obtaining hydrographic surveys used by the state engineer for determining water rights;

D. "cost of works" includes the cost of construction; the cost of all lands, property, rights, easements and franchises acquired which are deemed necessary for such construction; the cost of all water rights acquired or exercised by the commission in connection with a project; the cost of all machinery and equipment, financing charges, interest prior to and during construction and for a period not exceeding three years after the completion of construction; the cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost and other expenses necessary or incident to determining the feasibility or practicability of any project; and administrative expense and such other expenses as may be necessary or incident to the financing and the completion of a project and the placing of the project in operation;

E. "owner" includes all individuals, irrigation districts, incorporated companies, societies or associations having any title or interest in any properties, rights, easements or franchises to be acquired; and

F. "project" means any one of the works defined in this section or any combination of such works which are jointly managed and operated as a single unit."

Section 5

Section 5. Section 72-14-11 NMSA 1978 (being Laws 1955, Chapter 266, Section 3) is amended to read:

"72-14-11. PROJECTS USING REVENUE BOND PROCEEDS AUTHORIZED.--

A. The commission is authorized to conduct, whenever it deems such project expedient, any project, the cost of which is to be paid wholly by means of or with the proceeds of revenue bonds authorized, or in connection with a grant to aid in financing such project from the United States or any instrumentality or agency thereof, or with other funds provided under the authority of Sections 72-14-9 through 72-14-28 NMSA 1978. If revenues from the project are intended to pay the cost of maintaining, repairing and operating the project and to pay the principal and interest of revenue bonds that may be issued for the cost of the project, before conducting any project, the commission shall make estimates of the cost of the project, of the cost of maintaining, repairing and operating the project and of the revenues to be derived from the project, and no such project shall be conducted unless, according to the estimates, the revenues to be derived will be sufficient to pay the cost of maintaining, repairing and operating the project and, if no other revenues are to be pledged to repayment of bonds that may be issued for the cost of the project, to pay the principal and interest of revenue bonds which may be issued for the cost of such project; provided, however, that in connection with the issuance of any of the bonds, the failure of the commission to make the estimates required by this section or to make the estimates in proper form shall in no way affect the validity or enforceability of any such bonds or of the trust indenture, resolution or other security for the bonds.

B. The purpose of Sections 72-14-9 through 72-14-28 NMSA 1978 is to meet a statewide need for the conservation and use of water through projects designed or intended for such purposes. The commission is empowered to make such investigations as may be necessary to plan and carry out a comprehensive statewide program of water conservation; provided, however, that those sections shall not be construed to repeal or amend by implication or otherwise the provisions of law enacted with respect to permits for the acquisition of water rights,

permits for the change in place or method of use of water or permits for the construction of works. The projects to be finally conducted shall qualify as parts of such statewide program and, if applicable shall be approved by the commission upon the showing of their prospective ability to meet, through the sale of water or other services, the cost of operation, maintenance and repair and the amortization of the cost of the project; provided, however, that the failure of the commission to determine such prospective ability of a project shall in no way affect the validity or enforceability of any such bonds."

Section 6

Section 6. Section 72-14-13 NMSA 1978 (being Laws 1955, Chapter 266, Section 5, as amended) is amended to read:

"72-14-13. WATER CONSERVATION REVENUE BONDS AUTHORIZED--EXTENT OF STATE OBLIGATION.--

A. The commission, with the approval of the state board of finance and in accordance with the state board of finance's adopted policies and procedures on financing approvals, is authorized to provide by resolution for the issuance of water conservation revenue bonds of the state for the purpose of paying the cost, as defined in Section 72-14-9 NMSA 1978, of any one or more projects, subject to the conditions provided for in Subsection F of this section. The principal of and interest on revenue bonds shall be payable solely from the special fund to be provided for such payment. Revenue bonds shall mature at such time, not more than fifty years from their date, as may be fixed by the resolution, but may be made redeemable before maturity at the option of the state, to be exercised by the commission, at such price and under such terms and conditions as may be fixed by the commission prior to the issuance of the bonds. The commission shall determine the rate of interest not in excess of the maximum net effective interest rate permitted by the Public Securities Act or the Public Securities Short-Term Interest Rate Act on such bonds, the time of payment of such interest, the form of the bonds and the manner of executing the bonds, and shall fix the denomination of the bonds and the place of payment of principal and interest thereof.

B. All bonds issued under Sections 72-14-9 through 72-14-28 NMSA 1978 shall contain a statement on their faces that the state shall not be obligated to pay the bonds or the interest on the bonds

except from the "debt service fund" hereinafter set forth. In case any of the officers whose signatures appear on the bonds cease to be officers before the delivery of the bonds, the signatures shall nevertheless be valid and sufficient for all purposes, as if the officers had remained in office until delivery. All the bonds are declared to have all the qualities and incidents of negotiable instruments. The bonds shall not constitute or be a debt, liability or obligation of the state, and shall be secured only by the revenues of such works and the funds received from the sale or disposal of water and from the operation, lease, sale or other disposition of the works, property and facilities to be acquired out of the proceeds of such bonds and, if so pledged by the commission, from income credited to the permanent reservoirs for irrigation purposes income fund and the improvement of Rio Grande income fund.

C. Provisions may be made for the registration of any of the bonds in the resolution authorizing the bonds. The bonds authorized under the provisions of Sections 72-14-9 through 72-14-28 NMSA 1978 may be issued and sold from time to time at a public or private sale to any purchaser, including the New Mexico finance authority, and in such amounts as may be determined by the commission, and the commission may sell the bonds in such manner and for such price as it may determine to be for the best interests of the state. The state investment officer is authorized to invest the permanent funds of the state in the bonds. The proceeds of such bonds shall be used solely for the payment of the cost of a project and shall be used in such manner and under such restrictions, if any, as the commission may provide.

D. If the proceeds of the bonds, by error of calculation or otherwise, are less than the cost of the project, additional bonds may in like manner be issued to provide the amount of such deficit and, unless otherwise provided in the resolution authorizing the bonds, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same project. If the proceeds of bonds issued for any such project exceed the cost of the project, the surplus shall be paid into the debt service fund provided for the payment of principal and interest of such bonds. Prior to the preparation of definitive bonds, the commission may issue temporary bonds exchangeable for definitive bonds when such bonds have been executed and are available for delivery. Such bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions and things which are specified and required by Sections 72-14-9 through 72-14-28 NMSA 1978 or by the constitution of New Mexico.

E. Each resolution providing for the issuance of bonds shall set forth a project for which the bonds are to be issued, and the bonds

authorized by each such resolution shall constitute a separate series. The bonds of each series shall be identified by a series number or letter and may be sold and delivered at one time or from time to time.

F. Revenue bonds issued by the commission for obtaining hydrographic surveys used by the state engineer shall mature not later than ten years from their date of issuance. The commission shall issue bonds for hydrographic surveys in a total amount not exceeding four million dollars ($4,000,000) and amounts not to exceed two million dollars ($2,000,000) in any fiscal year commencing July 1, 1998."

Section 7

Section 7. Section 72-14-14 NMSA 1978 (being Laws 1955, Chapter 266, Section 6) is amended to read:

"72-14-14. REVENUES FROM BONDS TO BE APPLIED TO COST OF PROJECTS AND ASSOCIATED EXPENSES.--All money received from any bonds issued pursuant to Sections 72-14-9 through 72-14-28 NMSA 1978 shall be applied solely to the payment of the cost of the project or to the appurtenant debt service fund, and there is created and granted a lien upon such money until so applied in favor of the holders of the bonds or the trustee provided for in respect of such bonds."

Section 8

Section 8. Section 72-14-15 NMSA 1978 (being Laws 1955, Chapter 266, Section 7) is amended to read:

"72-14-15. FUNDS ESTABLISHED.--The commission shall create three separate funds in respect of the bonds of each series: one fund to be known as the "project fund, series . . . . . ."; another fund to be known as the "income fund, series . . . . . "; and another fund to be known as the "debt service fund, series . . . . . "; each fund to be identified by the same series number or letter as the bonds of such series. The money in each fund shall be deposited in such depository and secured in such manner as may be determined by the commission. It is lawful for any bank or trust company incorporated under the laws of this state or of the United States to act as such depository and to furnish

such indemnifying bonds or to pledge such securities as may be required by the commission. A separate account shall be kept in each project fund and in each income fund for each project. All expenditures not properly chargeable to the project fund account or to the income fund account of any one project shall be charged by the commission in such proportions as it determines to the project fund accounts or to the income fund accounts, as the case may be, of the projects in respect of which such expenditures were incurred."

Section 9

Section 9. Section 72-14-16 NMSA 1978 (being Laws 1955, Chapter 266, Section 8) is amended to read:

"72-14-16. BOND PROCEEDS TO BE APPROPRIATELY CREDITED.--The proceeds of the bonds of each series issued under the provisions of Sections 72-14-9 through 72-14-28 NMSA 1978 shall be placed to the credit of the appropriate project fund, which fund shall be kept segregated and set apart from all other funds. There shall be credited to the appropriate debt service fund all accrued interest received upon sale of the bonds and there shall also be credited to the appropriate project fund the interest received upon the deposits of money in the project fund and money received by way of grant from the United States or from any other source for the project. The money in each project fund shall be paid out or disbursed in such manner as may be determined by the commission, subject to the provisions of those sections, to pay the cost of the project and there is hereby appropriated annually the money in each project fund for the purposes intended by the commission."

Section 10

Section 10. Section 72-14-17 NMSA 1978 (being Laws 1955, Chapter 266, Section 9) is amended to read:

"72-14-17. COMMISSION TO SET PRICES, RATES OR CHARGES--CONTRACTS--DISPOSITION OF PROPERTY.--

A. The commission is authorized, subject to the provisions of Sections 72-14-9 through 72-14-28 NMSA 1978, to fix and establish the prices, rates and charges at which the resources and facilities made available under the provisions of those sections shall be sold and

disposed of; to enter into contracts and agreements, and to do things which in its judgment are necessary, convenient or expedient for the accomplishment of the purposes and objects of those sections, under such general regulations and upon such terms, limitations and conditions as it shall prescribe. If no other revenues are pledged to repay the bonds, it is the duty of the commission to enter into such contracts and fix and establish such prices, rates and charges so as to provide funds that will be sufficient to pay costs of operation and maintenance of the works authorized by those sections, together with necessary repairs thereto, and that will provide sufficient funds to meet and pay the principal and interest of all bonds as they severally become due and payable; provided that nothing contained in Sections 72-14-9 through 72-14-28 NMSA 1978 shall authorize any change, alteration or revision of any such rates, prices or charges as established by any contract entered into under authority of those sections except as provided by any such contract.

B. Every contract made by the commission for the sale of water, use of water, water storage or other service or for the sale of any property or facilities shall provide that in the event of failure or default in the payment of money specified in the contract to be paid to the commission, the commission may, upon such notice as shall be prescribed in the contract, terminate the contract and all obligations under it. The act of the commission in ceasing on any default to furnish or deliver water, use of water, water storage or other service under the contract shall not deprive the commission of or limit any remedy provided by such contract or by law for the recovery of money due or which may become due under the contract.

C. The commission is empowered to sell or otherwise dispose of any rights of way, easements or property when it determines that the same is no longer needed for the purposes of Sections 72-14-9 through 72-14-28 NMSA 1978, or to lease or rent the same or to otherwise take and receive the income or profit and revenue therefrom. All income or profit and revenue of the works and all money received from the sale or disposal of water, use of water, water storage or other service and from the operation, lease, sale or other disposition of the works, property and facilities acquired under the provisions of those sections shall be paid to the credit of the appropriate income fund."

Section 11

Section 11. Section 72-14-18 NMSA 1978 (being Laws 1955, Chapter 266, Section 10) is amended to read:

"72-14-18. DEBT SERVICE FUND--PAYMENTS INTO FUND--FUND PLEDGED FOR PAYMENT OF INTEREST, FISCAL CHARGES AND REPAYMENT OF PRINCIPAL.--The commission shall provide, in the proceedings authorizing the issuance of each series of bonds, for the paying into the appropriate debt service funds at stated intervals money from other revenues pledged to repay the bonds or all money then remaining in the income fund, after paying all cost of operation, maintenance and repairs of the works. All money in each debt service fund shall be pledged for the payment of and used only for the purpose of paying:

A. interest upon the bonds as such interest falls due;

B. the necessary fiscal agency charges for paying bonds and interest;

C. the principal of the bonds as they fall due; and

D. any premiums upon bonds retired by call or purchase as herein provided.

Prior to the issuance of the bonds of each series, the commission may provide by resolution for using the debt service fund or any part thereof in the purchase of any of the outstanding bonds payable therefrom at the market price thereof. The money in each debt service fund, less such reserve as may be provided for in the resolution authorizing the bonds for the payment of interest, principal, or both, if not used within a reasonable time for the purchase of bonds as provided in this section, shall be applied to the redemption of bonds then subject to redemption at the redemption price then applicable."

Section 12

Section 12. Section 72-14-19 NMSA 1978 (being Laws 1955, Chapter 266, Section 11) is amended to read:

"72-14-19. PERMANENT RESERVOIRS FOR IRRIGATION PURPOSES INCOME FUND--RIO GRANDE INCOME FUND--APPROPRIATION.--Each year's income credited to the permanent reservoirs for irrigation purposes income fund and the improvement of Rio Grande income fund may be pledged irrevocably to the payment of the principal of and interest on revenue bonds by the commission with

the approval of the state board of finance, and there re irrevocably appropriated to the commission amounts from the funds for such purposes. The commission shall provide in the proceedings authorizing the issuance of each series of bonds for the paying into the appropriate income and debt service funds all money received pursuant to this section."

Section 13

Section 13. Section 72-14-22 NMSA 1978 (being Laws 1955, Chapter 266, Section 14) is amended to read:

"72-14-22. RIGHTS OF BONDHOLDERS--ENFORCEMENT.--Any holder of any bonds issued under the provisions of Sections 72-14-9 through 72-14-28 NMSA 1978 except to the extent the rights herein given may be restricted by resolution passed before the issuance of the bonds, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any rights granted hereunder or under such resolution and may enforce and compel performance of all duties required by those sections or by such resolution to be performed by the commission. The state pledges and agrees that while any bonds issued by the commission remain outstanding, the powers, duties or existence of the commission or any official or agency of the state and the distribution of revenues pledged to payment of the bonds to the commission shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of such bonds. The commission is authorized to include this pledge and agreement of the state in any agreement with the holders of the bonds."

Section 14

Section 14. Section 72-14-26 NMSA 1978 (being Laws 1955, Chapter 266, Section 17) is amended to read:

"72-14-26. DISPOSITION OF WATER FOR PUBLIC, DOMESTIC, INDUSTRIAL AND OTHER USES--RECONVEYANCE TO GRANTORS.--In addition to the powers conferred upon the commission to sell, lease and otherwise dispose of waters for the purpose of

irrigation, development of power, watering of stock or other purposes, the commission shall have power to sell, lease and otherwise dispose of waters from its waterworks systems for public, domestic, industrial and other uses and for fire protection. The commission, after the discharge of all of the bonds issued by the commission to finance the construction or acquisition of any works, except for hydrographic surveys used by the state engineer for determining water rights, and of all interest thereon and costs and expenses incurred in connection with any action or proceeding by or on behalf of the holders of such bonds, shall reconvey the same to the grantors thereof."

Section 15

Section 15. APPROPRIATIONS.--

A. One million dollars ($1,000,000) is appropriated from the irrigation works construction fund to the interstate stream commission for expenditure in fiscal years 1998 and 1999 for the purpose of conducting hydrographic surveys. Any unexpended or unencumbered balance remaining at the end of fiscal year 1999 shall revert to the irrigation works construction fund.

B. Five hundred thousand dollars ($500,000) is appropriated from the improvement of the Rio Grande income fund to the interstate stream commission for expenditure in fiscal years 1998 and 1999 for the purpose of conducting hydrographic surveys. Any unexpended or unencumbered balance remaining at the end of fiscal year 1999 shall revert to the improvement of the Rio Grande income fund.

SENATE BILL 1121, AS AMENDED

WITH CERTIFICATE OF CORRECTION
Approved April 11, 1997

CHAPTER 242

RELATING TO LAW ENFORCEMENT; REQUIRING THAT ALL PERSONS CONVICTED FOR COMMITTING DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS BE FINGERPRINTED; REQUIRING THAT ALL PERSONS ARRESTED FOR COMMITTING DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS BE FINGERPRINTED; INCREASING A FEE; CREATING THE BRAIN INJURY SERVICES

FUND; IMPOSING A FEE; 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 29-3-1 NMSA 1978 (being Laws 1935, Chapter 149, Section 4, as amended) is amended to read:

"29-3-1. NEW MEXICO STATE POLICE--IDENTIFICATION AND INFORMATION.--

A. It is the duty of the New Mexico state police to install and maintain complete systems for the identification of criminals, including the fingerprint system and the modus operandi system. The New Mexico state police shall obtain, from whatever source procurable, and shall file and preserve for record, plates, photographs, outline pictures, fingerprints, measurements, descriptions, modus operandi statements and such other information about, concerning and relating to any and all persons who have been or who shall be convicted of a felony or who shall attempt to commit a felony within this state or who are well-known and habitual criminals or who have been convicted of any of the following felonies or misdemeanors:

(1) illegally carrying, concealing or possessing a pistol or any other dangerous weapon;

(2) buying or receiving stolen property;

(3) unlawful entry of a building;

(4) escaping or aiding an escape from prison;

(5) making or possessing a fraudulent or forged check or draft;

(6) petit larceny;

(7) unlawfully possessing or distributing habit-forming narcotic drugs; and

(8) driving while under the influence of intoxicating liquor or drugs.

B. The New Mexico state police may also obtain like information concerning persons who have been convicted of violating any of the military, naval or criminal laws of the United States or who have been convicted of a crime in any other state, country, district or province, which, if committed within this state, would be a felony.

C. The New Mexico state police shall make a complete and systematic record and index of all information obtained for the purpose of providing a convenient and expeditious method of consultation and comparison."

Section 2

Section 2. Section 29-3-8 NMSA 1978 (being Laws 1978, Chapter 87, Section 1, as amended) is amended to read:

"29-3-8. FINGERPRINTING OF PERSONS ARRESTED--DISPOSITION.--

A. Any person arrested for the commission of any criminal offense amounting to a felony under the laws of this state or any other jurisdiction shall be required by the arresting peace officer to make fingerprint impressions.

B. Any person arrested for the commission of any criminal offense not amounting to a felony but punishable by imprisonment for more than six months under the laws of this state or any political subdivision shall be required to make fingerprint impressions.

C. A person arrested for violating a provision of Section 66-8-102 NMSA 1978 or committing a violation of a municipal or county ordinance prescribing criminal penalties for driving while under the influence of intoxicating liquor or drugs shall be required by the arresting peace officer to make fingerprint impressions.

D. Fingerprint impressions shall be made pursuant to rules adopted by the New Mexico state police board, and all felony arrest fingerprints shall be made in duplicate; one copy shall be forwarded to the New Mexico state police and one copy shall be forwarded to the federal bureau of investigation in Washington, D. C.

E. One copy of the fingerprint impressions of each person arrested under the provisions of Subsection B of this section shall be forwarded to the New Mexico state police. A copy may be sent to the federal bureau of investigation in Washington, D. C. if:

(1) there is a question of identity;

(2) a check of federal bureau of investigation files is considered necessary for investigative purposes; or

(3) the individual is suspected of being a fugitive."

Section 3. Section 35-6-1 NMSA 1978 (being Laws 1968, Chapter 62, Section 92, as amended) is amended to read:

"35-6-1. MAGISTRATE COSTS--SCHEDULE--DEFINITION OF "CONVICTED".--

A. Magistrate judges, including metropolitan court judges, shall collect the following costs
:

Docket fee, criminal actions under Section 29-5-1 NMSA 1978 $ 1.00

Docket fee, to be collected prior to docketing any other criminal action, except as provided in Subsection B of Section 35-6-3 NMSA 1978 20.00

Docket fee, ten dollars ($10.00) of which shall be deposited in the court automation fund, to be collected prior to docketing any civil action, except as provided in Subsection A of Section 35-6-3 NMSA 1978 47.00

Jury fee, to be collected from the party demanding trial by jury in any civil action at the time the demand is filed or made 25.00

Copying fee, for making and certifying copies of any records in the court, for each page copied by photographic process .50

Copying fee, for computer-generated or electronically transferred copies, per page 1.00.

Proceeds from this copying fee shall be transferred to the administrative office of the courts for deposit in the court automation fund. Except as otherwise specifically provided by law, docket fees shall be paid into the general fund.

B. Except as otherwise provided by law, no other costs or fees shall be charged or collected in the magistrate or metropolitan court.

C. The magistrate or metropolitan court may grant free process to any party in any civil proceeding or special statutory proceeding upon a proper showing of indigency. The magistrate or metropolitan court may deny free process if it finds that the complaint on its face does not state a cause of action.

D. As used in this subsection, "convicted" means the defendant has been found guilty of a criminal charge by the magistrate or metropolitan judge, either after trial, a plea of guilty or a plea of nolo contendere. Magistrate judges, including metropolitan court judges, shall collect the following costs:

(1) corrections fee, to be collected upon conviction from persons convicted of violating any provision of the Motor Vehicle Code involving the operation of a motor vehicle, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance that may be enforced by the imposition of a term of imprisonment

$10.00;

(2) court automation fee, to be collected upon conviction from persons convicted of violating any provision of the Motor Vehicle Code involving the operation of a motor vehicle, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance that may be enforced by the imposition of a term of imprisonment 10.00;

(3) traffic safety fee, to be collected upon

conviction from persons convicted of violating any provision of the Motor Vehicle Code involving the operation of a motor vehicle 5.00;

(4) judicial education fee, to be collected upon conviction from persons convicted of operating a motor vehicle in violation of the Motor Vehicle Code, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance punishable by a term of imprisonment 1.00; and

(5) brain injury services fee, to be collected upon conviction from persons convicted of violating any provision of the Motor Vehicle Code involving the operation of a motor vehicle 5.00.

E. Metropolitan court judges shall collect as costs a mediation fee not to exceed five dollars ($5.00) for the docketing of small claims and criminal actions specified by metropolitan court rule. Proceeds of the mediation fee shall be deposited into the metropolitan court mediation fund."

Section 4. Section 66-7-512 NMSA 1978 (being Laws 1990, Chapter 57, Section 1) is amended to read:

"66-7-512. TRAFFIC SAFETY EDUCATION AND ENFORCE

MENT FUND CREATED.--

A. There is created in the state treasury the "traffic safety education and enforcement fund". The fund shall be invested in accordance with the provisions of Section 6-10-10 NMSA 1978 and all income earned on the fund shall be credited to the fund.

B. The traffic safety education and enforcement fund shall be used to institute and promote a statewide program of traffic safety through education and enforcement to reduce serious and fatal traffic accidents and to provide for the purchase of equipment and support services as are necessary to establish and maintain the program.

C. No less than fifty percent of the money deposited in the traffic safety education and enforcement fund shall be allocated to the law enforcement agency that issued the citation, provided the agency has submitted a traffic safety program plan that is approved by the traffic safety bureau of the state highway and transportation department. Law enforcement agencies shall use the money allocated from the fund to purchase equipment, including equipment for making fingerprint impressions of all persons arrested for or convicted of driving while under the influence of intoxicating liquor or drugs, and support services as are necessary to establish and maintain a traffic safety program.

D. No less than twenty percent of the money deposited in the traffic safety education and enforcement fund shall be allocated to institute and promote traffic safety education programs.

E. The balance of the money deposited in the traffic safety education and enforcement fund shall be allocated to existing traffic safety programs.

F. The traffic safety bureau of the state highway and transportation department shall adopt all rules, regulations and policies necessary to administer a statewide traffic program.

G. All money credited to the traffic safety education and enforcement fund shall be appropriated to the traffic safety bureau of the state highway and transportation department for the purpose of carrying out the provisions of this section and shall not revert to the general fund."

Section 5

Section 5. Section 66-8-116.3 NMSA 1978 (being Laws 1989, Chapter 320, Section 5, as amended) is amended to read:

"66-8-116.3. PENALTY ASSESSMENT MISDEMEANORS--ADDITIONAL FEES.--In addition to the penalty assessment established for each penalty assessment misdemeanor, there shall be assessed:

A. ten dollars ($10.00) to help defray the costs of local government corrections;

B. a court automation fee of ten dollars ($10.00);

C. a traffic safety fee of five dollars ($5.00), which shall be credited to the traffic safety education and enforcement fund;

D. a judicial education fee of one dollar ($1.00), which shall be credited to the judicial education fund; and

E. a brain injury services fee of five dollars ($5.00), which shall be credited to the brain injury services fund."

Section 6

Section 6. Section 66-8-119 NMSA 1978 (being Laws 1968, Chapter 62, Section 159, as amended) is amended to read:

"66-8-119. PENALTY ASSESSMENT REVENUE--DISPOSITION.--

A. The division shall remit all penalty assessment receipts, except receipts collected pursuant to Subsections A through E of Section 66-8-116.3 NMSA 1978, to the state treasurer for credit to the general fund.

B. The division shall remit all penalty assessment fee receipts collected pursuant to:

(1) Subsection A of Section 66-8-116.3 NMSA 1978 to the state treasurer for credit to the local government corrections fund;

(2) Subsection B of Section 66-8-116.3 NMSA 1978 to the state treasurer for credit to the court automation fund;

(3) Subsection C of Section 66-8-116.3 NMSA 1978 to the state treasurer for credit to the traffic safety education and enforcement fund;

(4) Subsection D of Section 66-8-116.3 NMSA 1978 to the state treasurer for credit to the judicial education fund; and

(5) Subsection E of Section 66-8-116.3 NMSA 1978 to the state treasurer for credit to the brain injury services fund."

Section 7

Section 7. BRAIN INJURY SERVICES FUND CREATED.--

A. There is created in the state treasury the "brain injury services fund". The fund shall be invested in accordance with the provisions of Section 6-10-10 NMSA 1978, and all income earned on the fund shall be credited to the fund.

B. The brain injury services fund shall be used to institute and maintain a statewide brain injury services program designed to increase the independence of persons with traumatic brain injuries.

C. The department of health shall adopt all rules, regulations and policies necessary to administer a statewide brain injury services program. The department of health shall coordinate with and seek advice from the brain injury advisory council to ensure that the statewide brain injury services program is appropriate for persons with traumatic brain injuries.

D. All money credited to the brain injury services fund shall be appropriated to the department of health for the purpose of carrying out the provisions of this section and shall not revert to the general fund."

Section 8

Section 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 88, AS AMENDED

Approved April 11, 1997

CHAPTER 243

RELATING TO INSURANCE; ENACTING THE HEALTH INSURANCE PORTABILITY ACT TO COMPLY WITH FEDERAL REQUIREMENTS; AMENDING PROVISIONS OF THE NEW MEXICO INSURANCE CODE TO BE CONSISTENT WITH FEDERAL REQUIREMENTS AND THAT ACT; PROVIDING FOR INCREASED PORTABILITY, ACCESS AND RENEWABILITY OF HEALTH INSURANCE; DECLARING AN EMERGENCY.

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

Section 1

Section 1. A new section of the New Mexico Insurance Code is enacted to read:

"SHORT TITLE.--Sections 1 through 17 of this act may be cited as the "Health Insurance Portability Act"."

Section 2

Section 2. A new section of the New Mexico Insurance Code is enacted to read:

"DEFINITIONS.--As used in the Health Insurance Portability Act:

A. "affiliation period" means a period that must expire before health insurance coverage offered by a health maintenance organization becomes effective;

B. "beneficiary" means that term as defined in Section 3(8) of the Employee Retirement Income Security Act of 1974;

C. "bona fide association" means an association that:

(1) has been actively in existence for five or more years;

(2) has been formed and maintained in good faith for purpose other than obtaining insurance;

(3) does not condition membership in the association on any health status related factor relating to an individual, including an employee or a dependent of an employee;

(4) makes health insurance coverage offered through the association available to all members regardless of any health status related factor relating to the members or individuals eligible for coverage through a member; and

(5) does not offer health insurance coverage to an individual through the association except in connection with a member of the association;

D. "church plan" means that term as defined pursuant to Section 3(33) of the Employee Retirement Income Security Act of 1974;

E. "COBRA" means the federal Consolidated Omnibus Budget Reconciliation Act of 1985;

F. "COBRA continuation provision" means:

(1) Section 4980 of the Internal Revenue Code of 1986, except for Subsection (f)(1) of that section as it relates to pediatric vaccines;

(2) Part 6 of Subtitle B of Title 1 of the Employee Retirement Income Security Act of 1974 except for Section 609 of that part; or

(3) Title 22 of the federal Health Insurance Portability and Accountability Act of 1996;

G. "creditable coverage" means, with respect to an individual, coverage of the individual pursuant to:

(1) a group health plan;

(2) health insurance coverage;

(3) Part A or Part B of Title 18 of the Social Security Act;

(4) Title 19 of the Social Security Act except coverage consisting solely of benefits pursuant to Section 1928 of that title;

(5) 10 USCA Chapter 55;

(6) a medical care program of the Indian health service or of an Indian nation, tribe or pueblo;

(7) the Comprehensive Health Insurance Pool Act;

(8) a health plan offered pursuant to 5 USCA Chapter 89;

(9) a public health plan as defined in federal regulations; or

(10) a health benefit plan offered pursuant to Section 5(e) of the federal Peace Corps Act;

H. "eligible individual" means, with respect to a health insurance issuer that offers health insurance coverage to a small employer in connection with a group health plan in the small group market, an individual whose eligibility shall be determined:

(1) in accordance with the terms of the plan;

(2) as provided by the issuer under the rules of the issuer that are uniformly applicable in the state to small employers in the small group market; and

(3) in accordance with state laws governing the issuer and the small group market;

I. "employee" means that term as defined in Section 3(6) of the Employee Retirement Income Security Act of 1974;

J. "employer" means that term as defined in Section 3(5) of the Employee Retirement Income Security Act of 1974 but to be an "employer", a person must employ two or more employees;

K. "employer contribution rule" means a requirement relating to the minimum level or amount of employer contribution toward the premium for enrollment of participants and beneficiaries;

L. "enrollment date" means, with respect to an individual covered under a group health plan or health insurance coverage, the date of enrollment of the individual in the plan or coverage or, if earlier, the first day of the waiting period for enrollment;

M. "excepted benefits" means benefits furnished pursuant to the following:

(1) coverage only accident or disability income insurance;

(2) coverage issued as a supplement to liability insurance;

(3) liability insurance;

(4) workers' compensation or similar insurance;

(5) automobile medical payment insurance;

(6) credit-only insurance;

(7) coverage for on-site medical clinics;

(8) other similar insurance coverage specified in regulations under which benefits for medical care are secondary or incidental to other benefits;

(9) the following benefits if offered separately:

(a) limited scope dental or vision benefits;

(b) benefits for long-term care, nursing home care, home health care, community-based care or any combination of those benefits; and

(c) other similar limited benefits specified in regulations;

(10) the following benefits, offered as independent noncoordinated benefits:

(a) coverage only for a specified disease or illness; or

(b) hospital indemnity or other fixed indemnity insurance; and

(11) the following benefits if offered as a separate insurance policy:

(a) medicare supplemental health insurance as defined pursuant to Section 1882(g)(1) of the Social Security Act; and

(b) coverage supplemental to the coverage provided pursuant to Chapter 55 of Title 10 USCA and similar supplemental coverage provided to coverage pursuant to a group health plan;

N. "federal governmental plan" means a governmental plan established or maintained for its employees by the United States government or an instrumentality of that government;

O. "governmental plan" means that term as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 and includes a federal governmental plan;

P. "group health insurance coverage" means health insurance coverage offered in connection with a group health plan;

Q. "group health plan" means an employee welfare benefit plan as defined in Section 3(1) of the Employee Retirement Income Security Act of 1974 to the extent that the plan provides medical care and includes items and services paid for as medical care to employees or their dependents as defined under the terms of the plan directly or through insurance, reimbursement or otherwise;

R. "group participation rule" means a requirement relating to the minimum number of participants or beneficiaries that must be enrolled in relation to a specified percentage or number of eligible individuals or employees of an employer;

S. "health insurance coverage" means benefits consisting of medical care provided directly, through insurance or reimbursement, or otherwise, and items, including items and services paid for as medical care, pursuant to any hospital or medical service policy or certificate, hospital or medical service plan contract or health maintenance organization contract offered by a health insurance issuer;

T. "health insurance issuer" means an insurance company, insurance service or insurance organization, including a health maintenance organization, that is licensed to engage in the business of insurance in the state and that is subject to state law that regulates insurance within the meaning of Section 514(b)(2) of the Employee Retirement Income Security Act of 1974, but "health insurance issuer" does not include a group health plan;

U. "health maintenance organization" means:

(1) a federally qualified health maintenance organization;

(2) an organization recognized pursuant to state law as a health maintenance organization; or

(3) a similar organization regulated pursuant to state law for solvency in the same manner and to the same extent as a health maintenance organization defined in Paragraph (1) or (2) of this subsection;

V. "health status related factor" means any of the factors described in Section 2702(a)(1) of the federal Health Insurance Portability and Accountability Act of 1996;

W. "individual health insurance coverage" means health insurance coverage offered to an individual in the individual market, but "individual health insurance coverage" does not include short-term limited duration insurance;

X. "individual market" means the market for health insurance coverage offered to individuals other than in connection with a group health plan;

Y. "large employer" means, in connection with a group health plan and with respect to a calendar year and a plan year, an employer who employed an average of at least fifty-one employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year;

Z. "large group market" means the health insurance market under which individuals obtain health insurance coverage on behalf of themselves and their dependents through a group health plan maintained by a large employer;

AA. "late enrollee" means, with respect to coverage under a group health plan, a participant or beneficiary who enrolls under the plan other than during:

(1) the first period in which the individual is eligible to enroll under the plan; or

(2) a special enrollment period pursuant to Sections 8 and 9 of the Health Insurance Portability Act;

BB. "medical care" means amounts paid for:

(1) the diagnosis, cure, mitigation, treatment or prevention of disease or for the purpose of affecting any structure or function of the body;

(2) transportation primarily for and essential to medical care; and

(3) insurance covering medical care;

CC. "network plan" means health insurance coverage of a health insurance issuer under which the financing and delivery of medical care are provided through a defined set of providers under contract with the issuer;

DD. "nonfederal governmental plan" means a governmental plan that is not a federal governmental plan;

EE. "participant" means that term as defined in Section 3(7) of the Employee Retirement Income Security Act of 1974;

FF. "placed for adoption" means a child has been placed with a person who assumes and retains a legal obligation for total or partial support of the child in anticipation of adoption of the child;

GG. "plan sponsor" means that term as defined in Section 3(16)(B) of the Employee Retirement Income Security Act of 1974;

HH. "preexisting condition exclusion" means a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the date of the coverage for the benefits whether or not any medical advice, diagnosis, care or treatment was recommended before that date, but genetic information is not included as a preexisting condition for the purposes of limiting or excluding benefits in the absence of a diagnosis of the condition related to the genetic information;

II. "small employer" means, in connection with a group health plan and with respect to a calendar year and a plan year, an employer who employed an average of least two but not more than fifty employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year;

JJ. "small group market" means the health insurance market under which individuals obtain health insurance coverage through a group health plan maintained by a small employer;

KK. "state law" means laws, decisions, rules, regulations or state action having the effect of law; and

LL. "waiting period" means, with respect to a group health plan and an individual who is a potential participant or beneficiary in the plan, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the plan."

Section 3

Section 3. A new section of the New Mexico Insurance Code is enacted to read:

"LIMITATION ON PREEXISTING CONDITION EXCLUSION PERIOD--CREDITING FOR PERIODS OF PREVIOUS COVERAGE.--Except as provided in Section 4 of the Health Insurance Portability Act, a group health plan and a health insurance issuer offering group health insurance coverage may, with respect to a participant or beneficiary, impose a preexisting condition exclusion only if:

A. the exclusion relates to a condition, physical or mental, regardless of the cause of the condition, for which medical advice, diagnosis, care or treatment was recommended or received within the six-month period ending on the enrollment date;

B. the exclusion extends for a period of not more than six months, or eighteen months in the case of a late enrollee, after the enrollment date; and

C. the period of the exclusion is reduced by the aggregate of the periods of creditable coverage applicable to the participant or beneficiary as of the enrollment date."

Section 4

Section 4. A new section of the New Mexico Insurance Code is enacted to read:

"PROHIBITION OF EXCLUSIONS IN CERTAIN CASES.--

A. A group health plan or a health insurer offering group health insurance shall not impose a preexisting condition exclusion:

(1) in the case of an individual who, as of the last day of the thirty-day period beginning with the date of birth, is covered under creditable coverage;

(2) that excludes a child who is adopted or placed for adoption before his eighteenth birthday and who, as of the last day of the thirty-day period beginning on and following the date of the adoption or placement for adoption, is covered under creditable coverage; or

(3) that relates to or includes pregnancy as a preexisting condition.

B. The provisions of Paragraphs (1) and (2) of Subsection A of this section do not apply to any individual after the end of the first continuous sixty-three-day period during which the individual was not covered under any creditable coverage."

Section 5. A new section of the New Mexico Insurance Code is enacted to read:

"RULES FOR CREDITING PREVIOUS COVERAGE.--

A. A period of creditable coverage shall not be counted with respect to enrollment of an individual under a group health plan if, after the period and before the enrollment date, there was a sixty-three-day continuous period during which the individual was not covered under any creditable coverage.

B. In determining the continuous period for the purpose of Subsection A of this section, any period that an individual is in a waiting period for any coverage under a group health plan or for group health insurance coverage, or is in an affiliation period, shall not be counted."

Section 6

Section 6. A new section of the New Mexico Insurance Code is enacted to read:

"METHOD OF CREDITING COVERAGE--ELECTION--NOTICE OF ELECTION.--

A. Except as provided in Subsection B of this section, for purposes of applying Subsection C of Section 3 of the Health Insurance Portability Act a group health plan and a health insurance issuer offering group health insurance coverage shall count a period of creditable coverage without regard to the specific benefits covered during the period.

B. A group health plan or a health insurance issuer offering group health insurance coverage may elect to apply Subsection C of Section 3 of the Health Insurance Portability Act based on coverage of benefits within each of several classes or categories of benefits specified in regulations rather than as provided in Subsection A of this section. The election shall be made uniformly for all participants and beneficiaries. If the election is made, a group health plan or an issuer shall count a period of creditable coverage with respect to any class or category of benefits if any level of benefits is covered within the class or category.

C. A group health plan making an election pursuant to Subsection B of this section, whether or not health insurance coverage is provided in connection with the plan, shall:

(1) prominently state in disclosure statements concerning the plan, and state to each enrollee at the time of enrollment under the plan, that the plan has made the election; and

(2) include in the statements made a description of the effect of this election.

D. A health insurance issuer offering group health insurance coverage in the small or large group market making an election pursuant to Subsection B of this section shall:

(1) prominently state in disclosure statements concerning the coverage, and state to each employer at the time of the offer or sale of the coverage, that the issuer has made the election; and

(2) include in the statements made a description of the effect of this election."

Section 7

Section 7. A new section of the New Mexico Insurance Code is enacted to read:

"CERTIFICATION AND DISCLOSURE OF COVERAGE.--

A. Periods of creditable coverage with respect to an individual shall be established through the certification required by this section. A group health plan and a health insurance issuer offering group health insurance coverage shall provide the certification described in Subsection B of this section:

(1) at the time an individual ceases to be covered under the plan or otherwise becomes covered under a COBRA continuation provision, to the extent practicable, at a time consistent with notices required pursuant to any COBRA continuation provision;

(2) in the case of an individual becoming covered under a COBRA continuation provision, at the time the individual ceases to be covered under that provision; and

(3) on the request on behalf of an individual made not later than twenty-four months after the date of cessation of the coverage described in Paragraph (1) or (2) of this subsection, whichever is later.

B. The required certification is a written certification of:

(1) the period of creditable coverage of the individual under the plan and the coverage, if any, under the COBRA continuation provision; and

(2) the waiting period, if any, and affiliation period, if applicable, imposed with respect to the individual for any coverage under the plan.

C. To the extent that medical care pursuant to a group health plan consists of group health insurance coverage, the plan satisfies the certification requirement of this section if the health insurance issuer offering the coverage provides for the certification pursuant to this section.

D. If a group health plan or health insurance issuer that has made an election pursuant to Subsection B of Section 6 of the Health Insurance Portability Act enrolls an individual for coverage under the plan or insurance and the individual provides a certification pursuant to this section, the entity providing the individual that certification:

(1) shall upon request of the plan or issuer promptly disclose to the requester information on coverage of classes and categories of health benefits available under the entity's plan or coverage; and

(2) may charge the requesting plan or issuer the reasonable cost of disclosing the required information."

Section 8

Section 8. A new section of the New Mexico Insurance Code is enacted to read:

"SPECIAL ENROLLMENT PERIODS FOR INDIVIDUALS LOSING OTHER COVERAGE.--A group health plan and a health insurance issuer offering group health insurance coverage in connection with a group health plan shall permit an employee who is eligible, but not enrolled, for coverage under the terms of the plan, or a dependent of the employee if the dependent is eligible but not enrolled for coverage, to enroll for coverage under the terms of the plan if:

A. the employee or dependent was covered under a group health plan or had health insurance coverage at the time coverage was previously offered to the employee or dependent;

B. the employee stated in writing at the time coverage was offered that coverage under a group health plan or health insurance coverage was the reason for declining enrollment, but only if the plan sponsor or issuer required such a statement at the time and provided the employee with notice of that requirement and the consequences of the requirement at the time;

C. the employee's or dependent's coverage described in Subsection A of this section:

(1) was under a COBRA continuation provision and the coverage under that provision was exhausted; or

(2) was not under a COBRA continuation provision and either the coverage was terminated as a result of loss of eligibility for the coverage, including as a result of legal separation, divorce, death, termination of employment or reduction in the number of hours of employment, or employer contributions toward the coverage were terminated; and

D. under the terms of the plan the employee requested enrollment not later than thirty days after the date of exhaustion of coverage described in Paragraph (1) of Subsection C of this section or termination of coverage or employer contribution described in Paragraph (2) of Subsection C of this section."

Section 9

Section 9. A new section of the New Mexico Insurance Code is enacted to read:

"SPECIAL ENROLLMENT PERIODS FOR DEPENDENT BENEFICIARIES.--

A. A group health plan shall provide for a dependent special enrollment period described in Subsection B of this section during which a person or, if not otherwise enrolled, the individual, may be enrolled under the plan as a dependent of the individual, and in the case of the birth or adoption of a child, the spouse of the individual may be enrolled as a dependent of the individual if the spouse is otherwise eligible for coverage, if:

(1) the plan makes coverage available to a dependent of an individual;

(2) the individual is a participant under the plan or has met any waiting period applicable to becoming a participant and is eligible to be enrolled under the plan but for a failure to enroll during a previous enrollment period; and

(3) a person has become the dependent of the individual through marriage, birth, adoption or placement for adoption.

B. A dependent special enrollment period pursuant to this subsection shall be for a period of not less than thirty days and shall begin on the later of:

(1) the date dependent coverage is made available; or

(2) the date of the marriage, birth, adoption or placement for adoption described in Subsection A of this section.

C. If an individual seeks to enroll a dependent during the first thirty days of a dependent special enrollment period, the coverage of the dependent becomes effective:

(1) in the case of marriage, not later than the first day of the first month beginning after the date the completed request for enrollment is received;

(2) in the case of a dependent's birth, as of the date of the birth; or

(3) in the case of a dependent's adoption or placement for adoption, the date of the adoption or placement."

Section 10

Section 10. A new section of the New Mexico Insurance Code is enacted to read:

"USE OF AFFILIATION PERIOD BY HEALTH MAINTENANCE ORGANIZATIONS AS ALTERNATIVE TO PREEXISTING CONDITION EXCLUSION.--

A. A health maintenance organization that offers health insurance coverage in connection with a group health plan and does not impose any preexisting condition exclusion allowed pursuant to Section 3 of the Health Insurance Portability Act with respect to any particular coverage option may impose an affiliation period for the coverage option if that period:

(1) is applied uniformly without regard to any health status related factors; and

(2) does not exceed two months, or three months in the case of a late enrollee.

B. During an affiliation period, a health maintenance organization is not required to provide health care services or benefits to a participant or beneficiary, and it shall not charge a premium to a participant or beneficiary for any coverage.

C. An affiliation period begins to run on the enrollment date and shall run concurrently with any waiting period under the plan.

D. A health maintenance organization described in Subsection A of this section may use alternative methods different from those described in that subsection to address adverse selection as approved by the superintendent."

Section 11

Section 11. A new section of the New Mexico Insurance Code is enacted to read:

"PROHIBITING DISCRIMINATION BASED ON HEALTH STATUS AGAINST INDIVIDUAL PARTICIPANTS AND BENEFICIARIES IN ELIGIBILITY TO ENROLL.--

A. Except as provided in Subsection B of this section, a group health plan and a health insurance issuer offering group health insurance coverage in connection with a group health plan shall not establish rules for eligibility or continued eligibility of any individual to enroll or continue to participate in a health plan based on any of the following health status related factors in relation to the individual or a dependent of the individual:

(1) health status;

(2) medical condition, including both physical and mental illnesses;

(3) claims experience;

(4) receipt of health care;

(5) medical history;

(6) genetic information;

(7) evidence of insurability, including conditions arising out of acts of domestic violence; or

(8) disability.

B. To the extent consistent with the provisions of Section 3 of the Health Insurance Portability Act, the provisions of Subsection A of this section do not require a group health plan or group health insurance coverage to provide particular benefits other than those provided under the terms of the plan or coverage or to prevent the plan or coverage from establishing limitations or restrictions on the amount, level, extent or nature of the benefits or coverage for similarly situated individuals enrolled in the plan or coverage."

Section 12

Section 12. A new section of the New Mexico Insurance Code is enacted to read:

"PROHIBITING DISCRIMINATION BASED ON HEALTH STATUS AGAINST INDIVIDUAL PARTICIPANTS AND BENEFICIARIES IN PREMIUM CONTRIBUTIONS.--

A. Except as provided in Subsection B of this section, a group health plan and a health insurance issuer offering group health insurance coverage in connection with a group health plan shall not require an individual as a condition to enroll or continue to participate in a health plan to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual enrolled in the plan on the basis of the health status related factors specified in Subsection A of Section 11 of the Health Insurance Portability Act in relation to the individual or an individual enrolled under the plan as a dependent of the individual.

B. The provisions of Subsection A of this section do not restrict the amount that an employer may be charged for coverage under a group health plan and do not prevent a group health plan or a health insurance issuer offering group health insurance coverage from establishing premium discounts or rebates or modifying otherwise applicable copayments or deductibles in return for adherence to programs of health promotion and disease prevention."

Section 13

Section 13. A new section of the New Mexico Insurance Code is enacted to read:

"HEALTH INSURANCE ISSUERS--COVERAGE IN SMALL GROUP MARKET--EXCEPTIONS FOR NETWORK PLANS, INSUFFICIENT FINANCIAL CAPACITY AND BONA FIDE ASSOCIATIONS--EMPLOYER CONTRIBUTION RULES.--

A. Except as provided in Subsections B through G of this section, a health insurance issuer that offers health insurance coverage in the small group market shall:

(1) accept a small employer that applies for coverage;

(2) accept for enrollment under the offered coverage an eligible individual who applies for enrollment during the period in which the individual first becomes eligible to enroll under the terms of the group health plan; and

(3) not place a restriction on an eligible individual being a participant or a beneficiary that is inconsistent with Sections 11 and 12 of the of the Health Insurance Portability Act.

B. A health insurance issuer that offers health insurance coverage in the small group market through a network plan may:

(1) limit the employers that may apply for the coverage to those with eligible individuals who live, work or reside in the service area for the network plan; and

(2) deny coverage to employers within the service area for the network plan if the issuer has demonstrated to the superintendent that it:

(a) will not have the capacity to deliver services adequately to enrollees of any additional groups because of its obligations to existing group contract holders and enrollees; and

(b) is applying this exception uniformly to all employers without regard to the claims experience of those employers, their employees and their dependents or any health status related factor relating to those employees and dependents.

C. A health insurance issuer, upon denying insurance coverage in any service area pursuant to the provisions of Subsection B of this section, shall not offer coverage in the small group market within the service area for a period of one hundred eighty days after the date coverage is denied.

D. A health insurance issuer may deny health insurance coverage in the small group market if the issuer has demonstrated to the superintendent that it:

(1) does not have the financial reserves necessary to underwrite additional coverage; and

(2) is applying this exception uniformly to all employers in the small group market in the state consistent with state law and without regard to the claims experience of those employers, their employees and their dependents or any health status related factor relating to those employees and dependents.

E. A health insurance issuer upon denying health insurance coverage in connection with group health plans pursuant to Subsection D of this section shall not offer coverage in connection with group health plans in the small group market in the state for a period of one hundred eighty days after the date coverage is denied or until the issuer has demonstrated to the superintendent that the issuer has sufficient financial reserves to underwrite the additional coverage, whichever is later. The superintendent may provide for the application of this subsection on a service-area-specific basis.

F. The requirement of Subsection A of this section does not apply to health insurance coverage offered by a health insurance issuer if the coverage is made available in the small group market only through one or more bona fide associations.

G. Subsection A of this section does not preclude a health insurance issuer from establishing employer contribution rules or group

participation rules for the offering of health insurance coverage in connection with a group health plan in the small group market."

Section 14

Section 14. A new section of the New Mexico Insurance Code is enacted to read:

"GUARANTEED RENEWABILITY OF COVERAGE FOR EMPLOYERS IN THE GROUP MARKET--REQUIREMENT AND EXCEPTIONS TO REQUIREMENT.--

A. Except as provided in Subsections B through G of this section, a health insurance issuer that offers health insurance coverage in the small or large group market in connection with a group health plan shall renew or continue that coverage in force at the option of the plan sponsor of the plan.

B. A health insurance issuer may nonrenew or discontinue health insurance coverage offered pursuant to Subsection A of this section if:

(1) the plan sponsor has failed to pay premiums or contributions in accordance with the terms of the health insurance coverage or the issuer has not received timely premium payments;

(2) the plan sponsor has performed an act or practice that constitutes fraud or made an intentional misrepresentation of a material fact under the terms of the coverage;

(3) the plan sponsor has failed to comply with a material plan provision relating to employer contribution or group participation rules permitted pursuant to Subsection G of Section 13 of the Health Insurance Portability Act;

(4) the issuer is ceasing to offer coverage in the market in accordance with Subsection C of this section;

(5) in the case of a health insurance issuer that offers health insurance coverage in the market through a network plan, there is no longer any enrollee in connection with that plan who lives, resides or works in the service area of the issuer or the area for which the issuer is authorized to do business and, in the case of the small group market, the issuer would deny enrollment with respect to the network plan pursuant to Paragraph (1) of Subsection B of Section 13 of the Health Insurance Portability Act; or

(6) in the case of health insurance coverage that is made available only through one or more bona fide associations, the membership of any employer in the association ceases, but only if the coverage is terminated pursuant to this paragraph uniformly without regard to any health status related factor relating to a covered individual.

C. A health insurance issuer may discontinue offering a particular type of group health insurance coverage offered in the small or large group market only if:

(1) the issuer provides notice to each plan sponsor provided coverage of this type in the market and to the participants and beneficiaries covered under the coverage of the discontinuation at least ninety days prior to the date of the discontinuation;

(2) the issuer offers to a plan sponsor provided coverage of this type in the market the option to purchase all, or in the case of the large group market, any, other health insurance coverage currently being offered by the issuer to a group health plan in that market; and

(3) in exercising the option to discontinue coverage of this type and in offering the option of coverage pursuant to Paragraph (2) of this subsection, the issuer acts uniformly without regard to the claims experience of those sponsors or any health status related factors relating to any participants or beneficiaries who may become eligible for that coverage.

D. If a health insurance issuer elects to discontinue offering all health insurance coverage in the small group market or the large group market, coverage may be discontinued only if:

(1) the issuer provides notice to the superintendent and to each plan sponsor and to participants and beneficiaries covered under the plan of the discontinuation at least one hundred eighty days prior to the date of discontinuation; and

(2) all health insurance issued or delivered for issuance in the state in the market is discontinued and coverage is not renewed.

E. After discontinuation pursuant to Subsection D of this section, the health insurance issuer shall not provide for the issuance of any health insurance coverage in the market involved during the five-

year period beginning on the date of the discontinuation of the last health insurance coverage not renewed.

F. At the time of coverage renewal pursuant to Subsection A of this section, a health insurance issuer may modify the coverage for a product offered to a group health plan:

(1) in the large group market; or

(2) in the small group market if, for coverage available in that market other than through a bona fide association, the modification is effective on a uniform basis among group health plans with that product.

G. If health insurance coverage is made available by a health insurance issuer in the small or large group market to employers only through one or more associations, a reference to "plan sponsor" is deemed, with respect to coverage provided to an employer member of the association, to include a reference to that employer."

Section 15

Section 15. A new section of the New Mexico Insurance Code is enacted to read:

"DISCLOSURE OF INFORMATION BY HEALTH INSURANCE ISSUERS.--

A. A health insurance issuer when offering health insurance coverage to a small employer shall:

(1) make a reasonable disclosure to the small employer, as part of its solicitation and sales materials, of the availability of information described in Subsection B of this section; and

(2) upon request of the small employer provide the information described.

B. Except as provided in Subsection D of this section, a health insurance issuer shall provide information pursuant to Subsection A of this section concerning:

(1) the provisions of coverage concerning the issuer's right to change premium rates and the factors that may affect changes in premium rates;

(2) the provisions of coverage relating to renewability of coverage;

(3) the provisions of the coverage relating to preexisting condition exclusions; and

(4) the benefits and premiums available under all health insurance coverage for which the small employer is qualified.

C. Information furnished pursuant to this section shall be provided to small employers in a manner determined to be understandable by the average small employer and shall be sufficient to reasonably inform small employers of their rights and obligations under the health insurance coverage.

D. A health insurance issuer is not required by this section to disclose information that is proprietary and trade secret information."

Section 16

Section 16. A new section of the New Mexico Insurance Code is enacted to read:

"EXCLUSIONS, LIMITATIONS AND EXCEPTIONS FOR CERTAIN PLANS.--

A. The requirements of Sections 3 through 15 of the Health Insurance Portability Act do not apply to any group health plan and health insurance coverage offered in connection with a group health plan if, on the first day of the plan year, the plan has less than two employees who are current employees.

B. The requirements of Sections 3 through 15 of the Health Insurance Portability Act shall not apply with respect to a group health plan that is a nonfederal governmental plan if the plan sponsor makes an election under the provisions of this subsection in conformity with regulations of the federal secretary of health and human services. The period of an election for exclusion made pursuant to this subsection is for a single specified plan year or, in the case of a plan provided pursuant to a collective bargaining agreement, for the term of the agreement. The plan for which an election is made shall provide under the terms of the election for:

(1) notice to enrollees on an annual basis and at the time of enrollment of the facts and consequences of the election; and

(2) certification and disclosure of creditable coverage under the plan with respect to enrollees in accordance with Section 7 of the Health Insurance Portability Act.

C. The requirements of Sections 3 through 15 of the Health Insurance Portability Act do not apply to a group health plan and group health insurance coverage offered in connection with a group health plan in relation to its provision of excepted benefits described in Paragraph (9) of Subsection M of Section 2 of the Health Insurance Portability Act if the benefits are:

(1) provided under a separate policy, certificate or contract of insurance; or

(2) otherwise not an integral part of the plan.

D. The requirements of Sections 3 through 15 of the Health Insurance Portability Act do not apply to any group health plan and group health insurance coverage offered in connection with a group health plan in relation to its provision of excepted benefits described in Paragraph (10) of Subsection M of Section 2 of the Health Insurance Portability Act if:

(1) the benefits are provided under a separate policy, certificate or contract of insurance;

(2) there is no coordination between the provision of the benefits and any exclusion of benefits under any group health plan maintained by the same sponsor; and

(3) the benefits are paid with respect to an event without regard to whether benefits are provided with respect to that event under any group health plan maintained by the same sponsor.

E. The requirements of Sections 3 through 15 of the Health Insurance Portability Act do not apply to any group health plan and group health insurance coverage offered in connection with a group health plan in relation to its provision of excepted benefits described in Paragraph (11) of Subsection M of Section 2 of the Health Insurance Portability Act if the benefits are provided under a separate policy, certificate or contract of insurance."

Section 17

Section 17. A new section of the New Mexico Insurance Code is enacted to read:

"TREATMENT OF PARTNERSHIPS AND SELF-EMPLOYED INDIVIDUALS.--

A. Any plan, fund or program that would not be an employee welfare benefit plan, except for the provisions of this section, that is established or maintained by a partnership, to the extent that the plan, fund or program provides medical care to current or former partners in the partnership or to their dependents directly or through insurance, reimbursement or otherwise, shall be treated as an employee welfare benefit plan that is a group health plan.

B. As used in this section:

(1) "employer" includes a partnership in relation to a partner; and

(2) "participant" includes:

(a) in connection with a group health plan maintained by a partnership, an individual who is a partner in relationship to the partnership; and

(b) in connection with a group health plan maintained by a self-employed individual under which one or more employees are participants, the self-employed individual, if he or his beneficiaries are or may become eligible to receive a benefit under the plan."

Section 18

Section 18. Section 59A-18-13.1 NMSA 1978 (being Laws 1994, Chapter 75, Section 26) is amended to read:

"59A-18-13.1. ADJUSTED COMMUNITY RATING.--

A. Every insurer, fraternal benefit society, health maintenance organization or nonprofit health care plan that provides primary health insurance or health care coverage insuring or covering major medical expenses shall, in determining the initial year's premium charged for an individual, use only the rating factors of age, gender, geographic area of the place of employment and smoking practices, except that for individual policies the rating factor of the individual's place of residence may be used instead of the geographic area of the individual's place of employment. In determining the initial and any subsequent year's rate, the difference in rates in any one age group that may be charged on the basis of a person's gender shall not exceed

another person's rates in the age group by more than twenty percent of the lower rate, and no person's rate shall exceed the rate of any other person with similar family composition by more than two hundred fifty percent of the lower rate, except that the rates for children under the age of nineteen or children aged nineteen to twenty-five who are full-time students may be lower than the bottom rates in the two hundred fifty percent band. The rating factor restrictions shall not prohibit an insurer, society, organization or plan from offering rates that differ depending upon family composition.

B. The superintendent shall adopt regulations to implement the provisions of this section."

Section 19

Section 19. Section 59A-18-16 NMSA 1978 (being Laws 1984, Chapter 127, Section 345.1, as amended) is amended to read:

"59A-18-16. CONTINUATION OF COVERAGE AND CONVERSION RIGHTS--ACCIDENT AND HEALTH INSURANCE POLICIES--NOTICE.--Subject to the provisions of the Health Insurance Portability Act:

A. every accident and health insurance policy that provides hospital, surgical and medical expense benefits and that is delivered, issued for delivery or renewed in this state on or after January 1, 1985 shall provide:

(1) if an individual policy, covered family members the right to continue such policy as the named insured or through a conver

sion policy upon the death of the named insured or upon the divorce, annulment or dissolution of marriage or legal separation of the spouse from the named insured; or

(2) if a group policy:

(a) each member or employee of the group insured the right to continue such coverage for a period of six months and thereafter through a conversion policy upon termination of membership or employment with the group insured; and

(b) covered family members of an employee or member of the group insured the right to continue such coverage through a converted or separate policy upon the death of the member or

employee of the group insured or upon the divorce, annulment or dissolution of marriage or legal separation of the spouse from the member or employee of the group insured.

Where a continuation of coverage or conversion is made in the name of the spouse of the named insured or the spouse of the employee or member of the group insured, such coverage may, at the option of the spouse, include coverage for dependent children for whom the spouse has responsibility for care and support;

B. the right to a continuation of coverage or conversion pursuant to this section shall not exist with respect to any member or employee of the group insured or any covered family member in the event the coverage terminates for nonpayment of premium, nonrenewal of the policy or the expiration of the term for which the policy is issued. With respect to any member or employee of the group insured or any covered family member who is eligible for medicare or any other similar federal or state health insurance program, the right to a continuation of coverage or conversion shall be limited to coverage under a medicare supplement insurance policy as defined by the rules and regulations adopted by the superintendent;

C. coverage continued through the issuance of a converted or separate policy shall be provided at a reasonable, nondiscriminatory rate to the insured and shall consist of a form of coverage then being offered by the insurer as a conversion policy in the jurisdiction where the person exercising the conversion right resides that most nearly approximates the coverage of the policy from which conversion is exercised. Continued and converted coverages shall contain renewal provisions that are not less favorable to the insured than those contained in the policy from which the conversion is made, except that the person who exercises the right of conversion is entitled only to have included a right to coverage under a medicare supplement insurance policy, as defined by the rules and regulations adopted by the superintendent, after the attainment of the age of eligibility for medicare or any other similar federal or state health insurance program;

D. at the time of inception of coverage, the insurer shall furnish to each covered family member who is eighteen years of age or over and to each employee or member of the group insured a statement setting forth in summary form the continuation of coverage and conversion provisions of the policy;

E. the insurer shall notify in writing each employee or member, upon that employee's or member's termination of employment or membership with the group insured, of the continuation and conversion provisions of the policy. The employer may give the written

notice specified herein. The employer should notify the insurer of the employee's or member's change of status and last known address. Under no circumstances shall the employer have any civil liability under the conversion provisions of the Insurance Code;

F. the eligible employee or member of the group insured or covered family member exercising the continuation or conversion right shall notify the employer or insurer and make payment of the applicable premium within thirty days following the date of the notification given by the insurer pursuant to Subsection E of this section. There shall be no lapse of coverage during the period in which conversion is available;

G. coverage shall be provided through continuation or conversion without additional evidence of insurability and shall not impose any preexisting condition, limitations or other contractual time limitations other than those remaining unexpired under the policy or contract from which continuation or conversion is exercised;

H. benefits otherwise payable under a converted or separate policy may be reduced so they are not, during the first policy year of the converted or separate policy, in excess of those that would have been payable under the policy from which conversion is exercised. Benefits, if any, otherwise payable under a converted or separate policy are not payable for a loss claimed under the policy from which conversion is exercised; and

I. any probationary or waiting period set forth in the converted or separate policy is deemed to commence on the effective date of the applicant's coverage under the original policy."

Section 20

Section 20. A new section of Chapter 59A, Article 23 NMSA 1978 is enacted to read:

"OUT-OF-STATE ASSOCIATIONS AND TRUSTS.--Unless the rate applicable to the certificate of coverage of an out-of-state association or trust complies with the requirements of Section 59A-18-13.1 or 59A-23C-5.1 NMSA 1978, the out-of-state association or trust shall not:

A. advertise in the state as a benefit of membership for any group health insurance policy available to its members or beneficiaries;

B. issue a certificate for delivery in New Mexico to any resident of the state; or

C. solicit membership in the state on the basis of the existence or availability of such health insurance coverage."

Section 21

Section 21. Section 59A-23B-6 NMSA 1978 (being Laws 1991, Chapter 111, Section 6, as amended) is amended to read:

"59A-23B-6. FORMS AND RATES--APPROVAL OF THE SUPERINTENDENT--ADJUSTED COMMUNITY RATING.--

A. All policy or plan forms, including applications, enrollment forms, policies, plans, certificates, evidences of coverage, riders, amendments, endorsements and disclosure forms, shall be submitted to the department of insurance for approval prior to use.

B. No policy or plan may be issued in the state unless the rates have first been filed with and approved by the superintendent. This subsection shall not apply to policies or plans subject to the Small Group Rate and Renewability Act.

C. In determining the initial year's premium or rate charged for coverage under a policy or plan, the only rating factors that may be used are age, gender, geographic area of the place of employment and smoking practices except that for individual policies the rating factor of the individual's place of residence may be used instead of the geographic area of the individual's place of employment. In determining the initial and any subsequent year's rate, the difference in rates in any one age group that may be charged on the basis of a person's gender shall not exceed another person's rate in the age group by more than twenty percent of the lower rate, and no person's rate shall exceed the rate of any other person with similar family composition by more than two hundred fifty percent of the lower rate, except that the rates for children under the age of nineteen or children aged nineteen to twenty-five who are full-time students may be lower than the bottom rates in the two hundred fifty percent band. The rating factor restrictions shall not prohibit an insurer, society, organization or plan from offering rates that differ depending upon family composition.

D. The superintendent shall adopt regulations to implement the provisions of this section."

Section 22

Section 22. Section 59A-23C-3 NMSA 1978 (being Laws 1991, Chapter 153, Section 3, as amended) is amended to read:

"59A-23C-3. DEFINITIONS.--As used in the Small Group Rate and Renewability Act:

A. "actuarial certification" means a written statement by a member of the American academy of actuaries or another individual acceptable to the superintendent that a small employer carrier is in compliance with the provisions of Section 59A-23C-5 NMSA 1978, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the carrier in establishing premium rates for applicable health benefit plans;

B. "base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged under a rating system for that class of business by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage;

C. "carrier" means any person who provides health insurance in this state. For the purposes of the Small Group Rate and Renewability Act, "carrier" or "insurer" includes a licensed insurance company, a licensed fraternal benefit society, a prepaid hospital or medical service plan, a health maintenance organization, a nonprofit health care organization, a multiple employer welfare arrangement or any other person providing a plan of health insurance subject to state insurance regulation;

D. "case characteristics" means demographic or other relevant characteristics of a small employer, as determined by a small employer carrier, that are considered by the carrier in the determination of premium rates for the small employer, but "case characteristics" does not include claim experience, health status and duration of coverage since issue;

E. "class of business" means all small employers as shown on the records of the small employer carrier. A separate class of business may be established by the small employer carrier on the basis that the applicable health benefit plans have been acquired from another small employer carrier as a distinct grouping of plans;

F. "creditable coverage" means, with respect to an individual, coverage of the individual pursuant to:

(1) a group health plan;

(2) health insurance coverage;

(3) Part A or Part B of Title 18 of the Social Security Act;

(4) Title 19 of the Social Security Act except coverage consisting solely of benefits pursuant to Section 1928 of that title;

(5) 10 USCA Chapter 55;

(6) a medical care program of the Indian health service or of an Indian nation, tribe or pueblo;

(7) the Comprehensive Health Insurance Pool Act;

(8) a health plan offered pursuant to 5 USCA Chapter 89;

(9) a public health plan as defined in federal regulations; or

(10) a health benefit plan offered pursuant to Section 5(e) of the federal Peace Corps Act;

G. "department" means the department of insurance;

H. "group health plan" means an employee welfare benefit plan as defined Section 3(1) of the Employee Retirement Income Security Act of 1974 to the extent that the plan provides medical care and including items and services paid for as medical care to employees or their dependents as defined under the terms of the plan directly or through insurance, reimbursement or otherwise;

I. "health benefit plan" or "plan" means any hospital or medical expense incurred policy or certificate, hospital or medical service plan contract or health maintenance organization subscriber contract. "Health benefit plan" does not include accident-only, credit, dental or disability income insurance, medicare supplement coverage, coverage issued as a supplement to liability insurance, workers' compensation or similar insurance or automobile medical-payment insurance;

J. "index rate" means, for each class of business for small employers with similar case characteristics, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate;

K. "late enrollee" means, with respect to coverage under a group health plan, a participant or beneficiary who enrolls under the plan other than during:

(1) the first period in which the individual is eligible to enroll under the plan; or

(2) a special enrollment period pursuant to Sections 8 and 9 of the Health Insurance Portability Act;

L. "new business premium rate" means, for each class of business as to a rating period, the premium rate charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage;

M. "rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect, as determined by the small employer carrier;

N. "small employer" means any person, firm, corporation, partnership or association actively engaged in business who, on at least fifty percent of its working days during either of the two preceding years, employed no less than two and no more than fifty eligible employees; provided that:

(1) in determining the number of eligible employees, the spouse or dependent of an employee may, at the employer's discretion, be counted as a separate employee;

(2) companies that are affiliated companies or that are eligible to file a combined tax return for purposes of state income taxation shall be considered one employer; and

(3) in the case of an employer that was not in existence throughout a preceding calendar year, the determination of whether the employer is a small or large employer shall be based on the average number of employees that it is reasonably expected to employ on working days in the current calendar year;

O. "small employer carrier" means any insurer that offers health benefit plans covering the employees of a small employer; and

P. "superintendent" means the superintendent of insurance."

Section 23

Section 23. Section 59A-23C-5 NMSA 1978 (being Laws 1991, Chapter 153, Section 5, as amended) is amended to read:

"59A-23C-5. RESTRICTIONS RELATING TO PREMIUM RATES.--

A. Premium rates for health benefit plans subject to the Small Group Rate and Renewability Act shall be subject to the following provisions:

(1) the index rate for a rating period for any class of business shall not exceed the index rate for any other class of business by more than twenty percent;

(2) for a class of business, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage, or the rates that could be charged to those employers under the rating system for that class of business, shall not vary from the index rate by more than twenty percent of the index rate;

(3) the percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

(a) the percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a class of business for which the small employer carrier is not issuing new policies, the carrier shall use the percentage change in the base premium rate;

(b) an adjustment, not to exceed ten percent annually and adjusted pro rata for rating periods of less than one year due to the claim experience, health status or duration of coverage of the employees or dependents of the small employer as determined from the carrier's rate manual for the class of business; and

(c) any adjustment due to change in coverage or change in the case characteristics of the small employer as determined from the carrier's rate manual for the class of business; and

(4) in the case of health benefit plans issued prior to the effective date of the Small Group Rate and Renewability Act, a

premium rate for a rating period may exceed the ranges described in Paragraph (1) or (2) of this subsection for a period of five years following the effective date of the Small Group Rate and Renewability Act. In that case, the percentage increase in the premium rate charged to a small employer in that class of business for a new rating period may not exceed the sum of the following:

(a) the percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a class of business for which the small employer carrier is not issuing new policies, the carrier shall use the percentage change in the base premium rate; and

(b) any adjustment due to change in coverage or change in the case characteristics of the small employer as determined from the carrier's rate manual for the class of business.

B. Nothing in this section is intended to affect the use by a small employer carrier of legitimate rating factors other than claim experience, health status or duration of coverage in the determination of premium rates. Small employer carriers shall apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business.

C. A small employer carrier shall not involuntarily transfer a small employer into or out of a class of business. A small employer carrier shall not offer to transfer a small employer into or out of a class of business unless the offer is made to transfer all small employers in the class of business without regard to case characteristics, claim experience, health status or duration since issue.

D. Prior to usage and June 14, 1991, each carrier shall file with the superintendent the rate manuals and any updates thereto for each class of business. A rate filing fee is payable under Subsection U of Section 59A-6-1 NMSA 1978 for the filing of each update. The superintendent shall disapprove within sixty days of receipt of a complete filing or the filing is deemed approved. If the superintendent disapproves the form during the sixty-day review period, he shall give the carrier written notice of the disapproval stating the reasons for disapproval. At any time, the superintendent, after a hearing, may disapprove a form or withdraw a previous approval. The superintendent's order after the hearing shall state the grounds for disapproval or withdrawal of a previous approval and the date not less than twenty days later when disapproval or withdrawal becomes effective."

Section 24

Section 24. Section 59A-23C-5.1 NMSA 1978 (being Laws 1994, Chapter 75, Section 33) is amended to read:

"59A-23C-5.1. ADJUSTED COMMUNITY RATING.--

A. Until July 1, 1998, a health benefit plan that is offered by a carrier to a small employer shall be offered without regard to the health status of any individual in the group, except as provided in the Small Group Rate and Renewability Act. The only rating factors that may be used to determine the initial year's premium charged a group, subject to the maximum rate variation provided in this section for all rating factors, are the group members':

(1) ages;

(2) genders;

(3) geographic areas of the place of employment; or

(4) smoking practices.

B. In determining the initial and any subsequent year's rate, the difference in rates in any one age group that may be charged on the basis of a person's gender shall not exceed another person's rate in the age group by more than twenty percent of the lower rate, and no person's rate shall exceed the rate of any other person with similar family composition by more than two hundred fifty percent of the lower rate, except that the rates for children under the age of nineteen or children aged nineteen to twenty-five who are full-time students may be lower than the bottom rates in the two hundred fifty percent band. The rating factor restrictions shall not prohibit a carrier from offering rates that differ depending upon family composition.

C. The superintendent shall adopt regulations to implement the provisions of this section."

Section 25

Section 25. Section 59A-23C-7.1 NMSA 1978 (being Laws 1994, Chapter 75, Section 32) is amended to read:

"59A-23C-7.1. PREEXISTING CONDITIONS--LIMITATIONS.--

A. A health benefit plan that is offered by a carrier to a small employer may include a preexisting condition exclusion only if:

(1) the exclusion relates to a condition, physical or mental, regardless of the cause of the condition, for which medical advice, diagnosis, care or treatment was recommended or received within the six-month period ending on the enrollment date;

(2) the exclusion extends for a period of not more than six months, or eighteen months in the case of a late enrollee, after the enrollment date; and

(3) the period of the exclusion is reduced by the aggregate of the periods of creditable coverage applicable to the participant or beneficiary as of the enrollment date.

B. As used in this section, "preexisting condition exclusion" means a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the date of enrollment for coverage for the benefits whether or not any medical advice, diagnosis, care or treatment was recommended or received before that date, but genetic information is not included as a preexisting condition for the purposes of limiting or excluding benefits in the absence of a diagnosis of the condition related to the genetic information.

C. A carrier shall not impose a preexisting condition exclusion:

(1) in the case of an individual who, as of the last day of the thirty-day period beginning with the date of birth, is covered under creditable coverage;

(2) that excludes a child who is adopted or placed for adoption before his eighteenth birthday and who, as of the last day of the thirty-day period beginning on and following the date of the adoption or placement for adoption, is covered under creditable coverage; or

(3) that relates to or includes pregnancy as a preexisting condition.

D. The provisions of Paragraphs (1) and (2) of Subsection C of this section do not apply to any individual after the end of the first continuous sixty-three-day period during which the individual was not covered under any creditable coverage.

E. The preexisting condition exclusion authorized in this section shall be waived to the extent that similar conditions have been satisfied under a prior health benefit plan that was subject to the Small Group Rate and Renewability Act, provided the effective date of coverage under the new health benefit plan is made not later than sixty-three days after the individual ceases to be a member of the group insured or the group ceases to be insured under the prior health benefit plan, whichever occurs first. If the conditions authorized in this section have been previously satisfied, coverage under the new health benefit plan shall be effective from the date on which the prior coverage terminated.

F. Nothing in this section requires the use in a health benefit plan offered by a carrier of a preexisting condition exclusion. Nothing in this section prohibits the use of a preexisting condition exclusion that is less restrictive on small employers and insured persons than the exclusion authorized in this section.

G. The superintendent shall adopt regulations to implement the provisions of this section."

Section 26

Section 26. Section 59A-23D-1 NMSA 1978 (being Laws 1995, Chapter 93, Section 1) is amended to read:

"59A-23D-1. SHORT TITLE.--Chapter 59A, Article 23D NMSA 1978 may be cited as the "Medical Care Savings Account Act"."

Section 27

Section 27. Section 59A-23D-2 NMSA 1978 (being Laws 1995, Chapter 93, Section 2) is amended to read:

"59A-23D-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 Insurance Code; or

(4) a person approved by the federal health and human services secretary;

B. "deductible" means the total covered medical expense an employee or his dependents must pay prior to any payment by a 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 individual" means an individual who with respect to any month:

(1) is covered under a qualified higher deductible health plan as of the first day of that month;

(2) is not, while covered under a qualified higher deductible health plan, covered under any health plan that:

(a) is not a qualified higher deductible health plan; and

(b) provides coverage for any benefit that is covered under the qualified higher deductible health plan; and

(3) is covered by a qualified higher deductible health plan that is established and maintained by the employer of the individual or of the spouse of the individual;

F. "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 to the extent that those amounts are not compensated for by insurance or otherwise;

G. "employee" includes a self-employed individual;

H. "employer" includes a self-employed individual;

I. "medical care savings account" or "savings account" means an account established by an employer in the United States exclusively for the purpose of paying the eligible medical expenses of the employee or a dependent, but only if the written governing instrument creating the trust meets the following requirements:

(1) except in the case of a rollover contribution, no contribution will be accepted:

(a) unless it is in cash; or

(b) to the extent the contribution, when added to previous contributions to the trust for the calendar year, exceeds seventy-five percent of the highest annual limit deductible permitted pursuant to the Medical Care Savings Account Act;

(2) no part of the trust assets will be invested in life insurance contracts;

(3) the assets of the trust will not be commingled with other property except in a common trust fund or common investment fund; and

(4) the interest of an individual in the balance in his account is nonforfeitable;

J. "program" means the medical care savings account program established by an employer for his employees; and

K. "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, that is purchased by an employer for the benefit of an employee and that has the following deductible provisions:

(1) self-only coverage with an annual deductible of not less than one thousand five hundred dollars ($1,500) or more than two thousand two hundred fifty dollars ($2,250) and a maximum annual out-of-pocket expense requirement of three thousand dollars ($3,000), not including premiums;

(2) family coverage with an annual deductible of not less than three thousand dollars ($3,000) or more than four thousand five hundred dollars ($4,500) and a maximum annual out-of-pocket expense requirement of five thousand five hundred dollars ($5,500), not including premiums; and

(3) preventive care coverage may be provided within the policies without the preventive care being subjected to the qualified higher deductibles."

Section 28

Section 28. Section 59A-23D-3 NMSA 1978 (being Laws 1995, Chapter 93, Section 3) is amended to read:

"59A-23D-3. ACCOUNT ADMINISTRATOR--REGISTRATION WITH DEPARTMENT--DEPARTMENT POWERS AND DUTIES.--

A. An account administrator shall register annually with the department and pay an annual 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, beginning January 1, 1998, shall adjust annually the deductible for qualified higher deductible health plans to reflect the adjustment allowed by the Internal Revenue Code of 1986 for medical savings accounts."

Section 29

Section 29. Section 59A-23D-5 NMSA 1978 (being Laws 1995, Chapter 93, Section 5) is amended to read:

"59A-23D-5. ACCOUNT ADMINISTRATOR--EMPLOYER AND EMPLOYEE RESPONSIBILITIES.--

A. An employer, in conjunction with an 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 59A-23D-6 NMSA 1978, money in a savings account shall be used solely for the purpose of paying the eligible medical expenses of an 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 30

Section 30. Section 59A-23D-6 NMSA 1978 (being Laws 1995, Chapter 93, Section 6) is amended to read:

"59A-23D-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 the employee attains the age specified in Section 1811 of the Social Security Act. An employee may also withdraw money without penalty for payment of coverage for:

(1) a health plan during any period of continuation coverage required under any federal law;

(2) a qualified long-term care insurance contract as defined by Section 7702B(6) of the Internal Revenue Code of 1986; or

(3) a health plan during a period in which the individual is receiving unemployment compensation under any federal or state law.

B. Except as provided in Subsection A of this section, if an employee withdraws money from the employee's medical care savings account that is not used exclusively to pay eligible medical expenses of

the employee or a dependent, it shall be included in the gross income of the employee for taxation purposes.

C. Except as provided in Subsection A of this section, if an employee withdraws money from the employee's medical care savings account for a purpose other than a rollover to a new account administrator:

(1) the amount of the withdrawal shall be considered gross income to the employee and subject to taxation; and

(2) the administrator shall also consider as a withdrawal on behalf of the employee a penalty equal to fifteen percent of the amount of the withdrawal and shall consider this as gross income to the employee for taxation purposes.

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 rollover 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 subject to the provisions of Subsection C of this section, if the withdrawal is not for the purpose of a rollover when within sixty days of the receipt of the funds they are placed with a new account administrator.

E. No more than sixty days after the date of notification by the employee 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.

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 31

Section 31. Section 59A-23D-7 NMSA 1978 (being Laws 1995, Chapter 93, Section 7) is amended to read:

"59A-23D-7. REPORT.--

A. The superintendent 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.

B. The superintendent shall adopt and promulgate regulations for enforcing and administering the provisions of the Medical Care Savings Account Act."

Section 32

Section 32. Section 59A-54-3 NMSA 1978 (being Laws 1987, Chapter 154, Section 3, as amended) is amended to read:

"59A-54-3. DEFINITIONS.--As used in the Comprehensive Health Insurance Pool Act:

A. "board" means the board of directors of the pool;

B. "health care facility" means any entity providing health care services that is licensed by the department of health;

C. "health care services" means any services or products included in the furnishing to any individual of medical care or hospitalization or incidental to the furnishing of such care or hospitalization, as well as the furnishing to any person of any other services or products for the purpose of preventing, alleviating, curing or healing human illness or injury;

D. "health insurance" means any hospital and medical expense-incurred policy, nonprofit health care service plan contract, health maintenance organization subscriber contract, short-term, accident, fixed indemnity, specified disease policy or disability income contracts and limited benefit or credit insurance, or as defined by Section 59A-7-3 NMSA 1978. "Health insurance" does not include insurance arising out of the Workers' Compensation Act or similar law, automobile medical payment insurance or insurance under which benefits are payable with or without regard to fault and which is required by law to be contained in any liability insurance policy;

E. "health maintenance organization" means any person who provides, at a minimum, either directly or through contractual or other arrangements with others, basic health care services to enrollees on a fixed prepayment basis and who is responsible for the availability, accessibility and quality of the health care services provided or arranged, or as defined by Subsection M of Section 59A-46-2 NMSA 1978;

F. "health plan" means any arrangement by which persons, including dependents or spouses, covered or making application to be covered under the pool have access to hospital and medical benefits or reimbursement, including group or individual insurance or subscriber contract; coverage through health maintenance organizations, preferred provider organizations or other alternate delivery systems; coverage under prepayment, group practice or individual practice plans; coverage under uninsured arrangements of group or group-type contracts, including employer self-insured, cost-plus or other benefits methodologies not involving insurance or not subject to New Mexico premium taxes; coverage under group-type contracts that are not available to the general public and can be obtained only because of connection with a particular organization or group; and coverage by medicare or other governmental benefits. "Health plan" includes coverage through health insurance;

G. "insured" means an individual resident of this state who is eligible to receive benefits from any insurer or other health plan;

H. "insurer" means an insurance company authorized to transact health insurance business in this state, a nonprofit health care plan, a health maintenance organization and self-insurers not subject to federal preemption. "Insurer" does not include an insurance company that is licensed under the Prepaid Dental Plan Law or a company that is solely engaged in the sale of dental insurance and is licensed not under that act, but under another provision of the Insurance Code;

I. "medicare" means coverage under both Part A and B of Title XVIII of the Social Security Act, as amended;

J. "pool" means the New Mexico comprehensive health insurance pool;

K. "superintendent" means the superintendent of insurance; and

L. "therapist" means a licensed physical, occupational, speech or respiratory therapist."

Section 33

Section 33. Section 59A-54-12 NMSA 1978 (being Laws 1987, Chapter 154, Section 12, as amended) is amended to read:

"59A-54-12. ELIGIBILITY--POLICY PROVISIONS.--

A. Except as provided in Subsection B of this section, a person is eligible for a pool policy only if on the effective date of coverage or renewal of coverage the person is a New Mexico resident, and:

(1) is not eligible as an insured or covered dependent for any health plan that provides coverage for comprehensive major medical or comprehensive physician and hospital services;

(2) is only eligible for a health plan that is offered at a rate higher than that available from the pool;

(3) has been rejected for coverage for comprehensive major medical or comprehensive physician and hospital services;

(4) is only eligible for a health plan with a rider, waiver or restrictive provision for that particular individual based on a specific condition; or

(5) has as of the date the individual seeks coverage from the pool an aggregate of eighteen or more months of creditable coverage, the most recent of which was under a group health plan, governmental plan or church plan as defined in Subsections Q, O and D, respectively, of Section 2 of the Health Insurance Portability Act, except for the purposes of aggregating creditable coverage a period of creditable coverage shall not be counted with respect to enrollment of an individual for coverage under the pool, if, after that period and before the enrollment date there was a sixty-three-day or longer period during all of which the individual was not covered under any creditable coverage.

B. A person's eligibility for a policy issued under the Health Insurance Alliance Act shall not preclude a person from remaining on a pool policy; provided, a self-employed person who qualifies for an approved health plan under the Health Insurance Alliance Act by using a dependent as the second employee may choose a pool policy in lieu of the health plan under that act.

C. Coverage under a pool policy is in excess of and shall not duplicate coverage under any other form of health insurance.

D. A pool policy shall provide that coverage of a dependent unmarried person terminates when the person becomes nineteen years of age or, if the person is enrolled full time in an accredited educational institution, when he becomes twenty-five years of age. The policy shall also provide in substance that attainment of the limiting age does not operate to terminate coverage when the person is and continues to be:

(1) incapable of self-sustaining employment by reason of developmental disability or physical handicap; and

(2) primarily dependent for support and maintenance upon the person in whose name the contract is issued.

Proof of incapacity and dependency shall be furnished to the insurer within one hundred twenty days of attainment of the limiting age and subsequently as required by the insurer but not more frequently than annually after the two-year period following attainment of the limiting age.

E. A pool policy that provides coverage for a family member of the person in whose name the contract is issued shall, as to the coverage of the family member or the individual in whose name the contract was issued, provide that the health insurance benefits applicable for children are payable with respect to a newly born child of the family member or the person in whose name the contract is issued from the moment of coverage of injury or illness, including the necessary care and treatment of medically diagnosed congenital defects and birth abnormalities. If payment of a specific premium is required to provide coverage for the child, the contract may require that notification of the birth of a child and payment of the required premium shall be furnished to the carrier within thirty-one days after the date of birth in order to have the coverage continued beyond the thirty-one day period.

F. Except for a person eligible as provided in Paragraphs (5) of Subsection A of this section, a pool policy may contain provisions under which coverage is excluded during a six-month period following the

effective date of coverage as to a given individual for pre-existing conditions, as long as either of the following exists:

(1) the condition has manifested itself within a period of six months before the effective date of coverage in such a manner as would cause an ordinarily prudent person to seek diagnoses or treatment; or

(2) medical advice or treatment was recommended or received within a period of six months before the effective date of coverage.

G. The preexisting condition exclusions described in Subsection F of this section shall be waived to the extent to which similar exclusions have been satisfied under any prior health insurance coverage that was involuntarily terminated, if the application for pool coverage is made not later than thirty-one days following the involuntary termination. In that case, coverage in the pool shall be effective from the date on which the prior coverage was terminated. This subsection does not prohibit preexisting conditions coverage in a pool policy that is more favorable to the insured than that specified in this subsection.

H. An individual is not eligible for coverage by the pool if:

(1) he is, at the time of application, eligible for medicare or medicaid which would provide coverage for amounts in excess of limited policies such as dread disease, cancer policies or hospital indemnity policies;

(2) he has terminated coverage by the pool within the past twelve months;

(3) he is an inmate of a public institution or is eligible for public programs for which medical care is provided;

(4) he is eligible for coverage under a group health plan;

(5) he has other health insurance coverage;

(6) the most recent coverages within the coverage period described in Paragraph (5) of Subsection A of this section was terminated as a result of nonpayment of premium or fraud; or

(7) he has been offered the option of continuation coverage under a federal COBRA continuation provision as defined in

Subsection F of Section 2 of the Health Insurance Portability Act or under a similar state program, and he has elected the coverage and did not exhaust the continuation coverage under the provision or program.

I. Any person whose health insurance coverage from a qualified state health policy with similar coverage is terminated because of nonresidency in another state may apply for coverage under the pool. If the coverage is applied for within thirty-one days after that termination and if premiums are paid for the entire coverage period, the effective date of the coverage shall be the date of termination of the previous coverage."

Section 34

Section 34. Section 59A-56-1 NMSA 1978 (being Laws 1994, Chapter 75, Section 1) is amended to read:

"59A-56-1. SHORT TITLE.--Chapter 59A, Article 56 NMSA 1978 may be cited as the "Health Insurance Alliance Act"."

Section 35

Section 35. Section 59A-56-2 NMSA 1978 (being Laws 1994, Chapter 75, Section 2) is amended to read:

"59A-56-2. PURPOSE.--The purpose of the Health Insurance Alliance Act is to provide increased access to voluntary health insurance coverage for small employer groups in New Mexico. An additional purpose of the Health Insurance Alliance Act is to provide for access to voluntary health insurance coverage for individuals in the individual market who have met eligibility criteria established by that act."

Section 36

Section 36. Section 59A-56-3 NMSA 1978 (being Laws 1994, Chapter 75, Section 3) is amended to read:

"59A-56-3. DEFINITIONS.--As used in the Health Insurance Alliance Act:

A. "alliance" means the New Mexico health insurance alliance;

B. "approved health plan" means any arrangement for the provisions of health insurance offered through and approved by the alliance;

C. "board" means the board of directors of the alliance;

D. "child" means a dependent unmarried individual who is less than nineteen years of age or an unmarried individual who is enrolled full time in an accredited educational institution until the individual becomes twenty-five years of age;

E. "creditable coverage" means, with respect to an individual, coverage of the individual pursuant to:

(1) a group health plan;

(2) health insurance coverage;

(3) Part A or Part B of Title 18 of the Social Security Act;

(4) Title 19 of the Social Security Act except coverage consisting solely of benefits pursuant to Section 1928 of that title;

(5) 10 USCA Chapter 55;

(6) a medical care program of the Indian health service or of an Indian nation, tribe or pueblo;

(7) the Comprehensive Health Insurance Pool Act;

(8) a health plan offered pursuant to 5 USCA Chapter 89;

(9) a public health plan as defined in federal regulations; or

(10) a health benefit plan offered pursuant to Section 5(e) of the federal Peace Corps Act;

F. "department" means the department of insurance;

G. "director" means an individual who serves on the board;

H. "earned premiums" means premiums paid or due during a calendar year for coverage under an approved health plan less any unearned premiums at the end of that calendar year plus any unearned premiums from the end of the immediately preceding calendar year;

I. "eligible expenses" means the allowable charges for a health care service covered under an approved health plan;

J. "eligible individual":

(1) means an individual:

(a) who, as of the date of the individual's application for coverage under an approved health plan, has an aggregate of eighteen or more months of creditable coverage, the most recent of which was under a group health plan, governmental plan or church plan as those plans are defined in Subsections Q, O and D of Section 2 of the Health Insurance Portability Act, respectively, or health insurance offered in connection with any of those plans, but for the purposes of aggregating creditable coverage, a period of creditable coverage shall not be counted with respect to enrollment of an individual for coverage under an approved health plan, if, after that period and before the enrollment date there was a sixty-three-day or longer period during all of which the individual was not covered under any creditable coverage; or

(b) entitled to continuation coverage pursuant to Section 59A-56-20 NMSA 1978; and

(2) does not include an individual who:

(a) has or is eligible for coverage under a group health plan;

(b) is eligible for coverage under medicare or a state plan under Title 19 of the federal Social Security Act or any successor program;

(c) has other health insurance coverage;

(d) during the most recent coverage within the coverage period described in Subsection E of Section 59A-36-3 NMSA 1978 was terminated from coverage as a result of nonpayment of premium or fraud; or

(e) has been offered the option of coverage under a COBRA continuation provision as that term is defined in Subsection F of Section 2 of the Health Insurance Portability Act, or under a similar state program, except for continuation coverage under Section 59A-56-20 NMSA 1978, and did not exhaust the coverage available under the offered program;

K. "enrollment date" means, with respect to an individual covered under a group health plan or health insurance coverage, the date of enrollment of the individual in the plan or coverage or, if earlier, the first day of the waiting period for that enrollment;

L. "gross earned premiums" means premiums paid or due during a calendar year for all health insurance written in the state less any unearned premiums at the end of that calendar year plus any unearned premiums from the end of the immediately preceding calendar year;

M. "group health plan" means an employee welfare benefit plan to the extent the plan provides hospital, surgical or medical expenses benefits to employees or their dependents, as defined by the terms of the plan, directly through insurance, reimbursement or otherwise;

N. "health care service" means a service or product furnished an individual for the purpose of preventing, alleviating, curing or healing human illness or injury and includes services and products incidental to furnishing the described services or products;

O. "health insurance" means "health" insurance as defined in Section 59A-7-3 NMSA 1978; any hospital and medical expense-incurred policy; nonprofit health care plan service contract; health maintenance organization subscriber contract; short-term, accident, fixed indemnity, specified disease policy or disability income insurance contracts and limited health benefit or credit health insurance; coverage for health care services under uninsured arrangements of group or group-type contracts, including employer self-insured, cost-plus or other benefits methodologies not involving insurance or not subject to New Mexico premium taxes; coverage for health care services under group-type contracts that are not available to the general public and can be obtained only because of connection with a particular organization or group; coverage by medicare or other governmental programs providing health care services; but "health insurance" does not include insurance issued pursuant to provisions of the Workers' Compensation Act or similar law, automobile medical payment insurance or provisions by which benefits are payable with or without regard to fault that are required by law to be contained in any liability insurance policy;

P. "health maintenance organization" means a health maintenance organization as defined by Subsection M of Section 59A-46-2 NMSA 1978;

Q. "incurred claims" means claims paid during a calendar year plus claims incurred in the calendar year and paid prior to April 1 of

the succeeding year, less claims incurred previous to the current calendar year and paid prior to April 1 of the current year;

R. "insured" means a small employer or its employee and an individual covered by an approved health plan, a former employee of a small employer who is covered by an approved health plan through conversion or an individual covered by an approved health plan that allows individual enrollment;

S. "medicare" means coverage under both Parts A and B of Title 18 of the federal Social Security Act;

T. "member" means a member of the alliance;

U. "nonprofit health care plan" means a "health care plan" as defined in Subsection K of Section 59A-47-3 NMSA 1978;

V. "premiums" means the premiums received for coverage under an approved health plan during a calendar year;

W. "small employer" means a person that is a resident of this state, has employees at least fifty percent of whom are residents of this state, is actively engaged in business and that on at least fifty percent of its working days during either of the two preceding calendar years, employed no less than two and no more than fifty eligible employees; provided that:

(1) in determining the number of eligible employees, the spouse or dependent of an employee may, at the employer's discretion, be counted as a separate employee;

(2) companies that are affiliated companies or that are eligible to file a combined tax return for purposes of state income taxation shall be considered one employer; and

(3) in the case of an employer that was not in existence throughout a preceding calender year, the determination of whether the employer is a small or large employer shall be based on the average number of employees that it is reasonably expected to employ on working days in the current calender year;

X. "superintendent" means the superintendent of insurance;

Y. "total premiums" means the total premiums for business written in the state received during a calendar year; and

Z. "unearned premiums" means the portion of a premium previously paid for which the coverage period is in the future."

Section 37

Section 37. Section 59A-56-4 NMSA 1978 (being Laws 1994, Chapter 75, Section 4) is amended to read:

"59A-56-4. ALLIANCE CREATED--BOARD CREATED.--

A. The "New Mexico health insurance alliance" is created as a nonprofit public corporation for the purpose of providing increased access to health insurance in the state. All insurance companies authorized to transact health insurance business in this state, nonprofit health care plans, health maintenance organizations and self-insurers not subject to federal preemption shall organize and be members of the alliance as a condition of their authority to offer health insurance in this state, except for an insurance company that is licensed under the Prepaid Dental Plan Law or a company that is solely engaged in the sale of dental insurance and is licensed under a provision of the Insurance Code.

B. The alliance shall be governed by a board of directors constituted pursuant to the provisions of this section. The board is a governmental entity for purposes of the Tort Claims Act, but neither the board nor the alliance shall be considered a governmental entity for any other purpose.

C. The superintendent shall, within sixty days after March 4, 1994, give notice to all members of the time and place for the initial organizational meeting of the alliance. Each member shall be entitled to one vote in person or by proxy at the organizational meeting.

D. The alliance shall operate subject to the supervision and approval of the board. The board shall consist of:

(1) five directors, elected by the members, who shall be officers or employees of members and shall consist of one representative of a nonprofit health care plan, two representatives of health maintenance organizations and two representatives of other types of members;

(2) five directors, appointed by the governor, who shall be officers, general partners or proprietors of small employers;

(3) four directors appointed by the governor, who shall be employees of small employers; and

(4) the superintendent or his designee, who shall be a nonvoting member, except when his vote is necessary to break a tie.

E. The superintendent shall serve as chairman of the board unless he declines, in which event he shall appoint the chairman.

F. The directors elected by the members shall be elected for initial terms of three years or less, staggered so that the term of at least one director expires on June 30 of each year. The directors appointed by the governor shall be appointed for initial terms of three years or less, staggered so that the term of at least one director expires on June 30 of each year. Following the initial terms, directors shall be elected or appointed for terms of three years. A director whose term has expired shall continue to serve until his successor is elected or appointed and qualified.

G. Whenever a vacancy on the board occurs, the electing or appointing authority of the position that is vacant shall fill the vacancy by electing or appointing an individual to serve the balance of the unexpired term; provided, when a vacancy occurs in one of the director's positions elected by the members, the superintendent is authorized to appoint a temporary replacement director until the next scheduled election of directors elected by the members is held. The individual elected or appointed to fill a vacancy shall meet the requirements for initial election or appointment to that position.

H. Directors may be reimbursed by the alliance as provided in the Per Diem and Mileage Act for nonsalaried public officers, but shall receive no other compensation, perquisite or allowance from the alliance."

Section 38

Section 38. Section 59A-56-5 NMSA 1978 (being Laws 1994, Chapter 75, Section 5) is amended to read:

"59A-56-5. PLAN OF OPERATION.--

A. The board shall submit a plan of operation to the superintendent and any amendments to the plan necessary or suitable to assure the fair, reasonable and equitable administration of the alliance.

B. The superintendent shall, after notice and hearing, approve the plan of operation if it is determined to assure the fair, reasonable and equitable administration of the alliance. The plan of operation shall become effective upon written approval of the superintendent consistent with the date on which health insurance coverage through the alliance

pursuant to the provisions of the Health Insurance Alliance Act is made available. A plan of operation adopted by the superintendent shall continue in force until modified by him or superseded by a subsequent plan of operation submitted by the board and approved by the superintendent.

C. The plan of operation shall:

(1) establish procedures for the handling and accounting of assets of the alliance;

(2) establish regular times and places for meetings of the board;

(3) establish procedures for records to be kept of all financial transactions and for annual fiscal reporting to the superintendent;

(4) establish the amount of and the method for collecting assessments pursuant to Section 59A-56-11 NMSA 1978;

(5) establish a program to publicize the existence of the alliance, the approved health plans, the eligibility requirements and procedures for enrollment in an approved health plan and to maintain public awareness of the alliance;

(6) establish penalties for nonpayment of assessments by members;

(7) establish procedures for alternative dispute resolution of disputes between members and insureds; and

(8) contain additional provisions necessary and proper for the execution of the powers and duties of the alliance."

Section 39

Section 39. Section 59A-56-6 NMSA 1978 (being Laws 1994, Chapter 75, Section 6) is amended to read:

"59A-56-6. BOARD--POWERS AND DUTIES.--

A. The board shall have the general powers and authority granted to insurance companies licensed to transact health insurance business under the laws of this state.

B. The board:

(1) may enter into contracts to carry out the provisions of the Health Insurance Alliance Act, including, with the approval of the superintendent, contracting with similar alliances of other states for the joint performance of common administrative functions or with persons or other organizations for the performance of administrative functions;

(2) may sue and be sued;

(3) may conduct periodic audits of the members to assure the general accuracy of the financial data submitted to the alliance;

(4) shall establish maximum rate schedules, allowable rate adjustments, administrative allowances, reinsurance premiums and agent referral, servicing fees or commissions subject to applicable provisions in the Insurance Code. In determining the initial year's rate for health insurance, the only rating factors that may be used are age, gender, geographic area of the place of employment and smoking practices. In any year's rate, the difference in rates in any one age group that may be charged on the basis of a person's gender shall not exceed another person's rates in the age group by more than twenty percent of the lower rate, and no person's rate shall exceed the rate of any other person with similar family composition by more than two hundred fifty percent of the lower rate, except that the rates for children under the age of nineteen may be lower than the bottom rates in the two hundred fifty percent band. The rating factor restrictions shall not prohibit a member from offering rates that differ depending upon family composition;

(5) may direct a member to issue policies or certificates of coverage of health insurance in accordance with the requirements of the Health Insurance Alliance Act;

(6) shall establish procedures for alternative dispute resolution of disputes between members and insureds;

(7) shall cause the alliance to have an annual audit of its operations by an independent certified public accountant;

(8) shall conduct all board meetings as if it were subject to the provisions of the Open Meetings Act;

(9) shall draft one or more sample health insurance policies that are the prototype documents for the members;

(10) shall determine the design criteria to be met for an approved health plan;

(11) shall review each proposed approved health plan to determine if it meets the alliance designed criteria and, if it does meet the criteria, approve the plan; provided that the board shall not permit more than one approved health plan per member for each set of plan design criteria;

(12) shall review annually each approved health plan to determine if it still qualifies as an approved health plan based on the alliance designed criteria and, if the plan is no longer approved, arrange for the transfer of the insureds covered under the formerly approved plan to an approved health plan;

(13) may terminate an approved health plan not operating as required by the board;

(14) shall terminate an approved health plan if timely claim payments are not made pursuant to the plan; and

(15) shall engage in significant marketing activities, including a program of media advertising, to inform small employers and eligible individuals of the existence of the alliance, its purpose and the health insurance available or potentially available through the alliance.

C. The alliance is subject to and responsible for examination by the superintendent. No later than March 1 of each year, the board shall submit to the superintendent an audited financial report for the preceding calendar year in a form approved by the superintendent."

Section 40

Section 40. Section 59A-56-8 NMSA 1978 (being Laws 1994, Chapter 75, Section 8) is amended to read:

"59A-56-8. APPROVED HEALTH PLAN .--

A. An approved health plan shall conform to the alliance's approved health plan design criteria. The board may allow more than one plan design for approved health plans. A member may provide one approved health plan for each plan design approved by the board.

B. The board shall designate plan designs for approved health plans. The board may designate plan designs for an approved health plan that provides catastrophic coverage or other benefit plan designs.

C. Each approved health plan shall offer a premium that is no greater than fifteen percent over and no less than fifteen percent under the average of the standard rate index for plans with the same characteristics.

D. Each approved health plan offered to an eligible individual shall offer a premium that is no more than twenty-five percent over and no less than twenty-five percent under the average of the standard risk rate index determined pursuant to Section 59A-56-23 NMSA 1978.

E. Any member that provides or offers to renew a group health insurance contract providing health insurance benefits to employees of the state, a county, a municipality or a school district for which public funds are contributed shall offer at least one approved health plan to small employers and eligible individuals; provided, however, if a member does not offer anywhere in the United States a plan that meets substantially the design criteria of an approved health plan, the member shall not be required to offer an approved health plan.

F. If a plan design approved by the board is not offered by any member already offering an approved health plan, but a member offers a substantially similar plan design outside the alliance, the board may require the member to offer that plan design as an approved health plan through the alliance.

G. A member required to offer, and offering, an approved health plan pursuant to the requirement of Subsection E of this section shall continue to offer that plan for five consecutive years after the date the member was last required to offer the plan. A member offering an approved health plan but not required to offer it pursuant to the cited subsection may withdraw the plan but shall continue to offer it for five consecutive years after the date notice of future withdrawal is given to the board unless:

(1) the member substitutes another approved health plan for the plan withdrawn; or

(2) the board allows the plan to be withdrawn because it imposes a serious hardship upon the member.

H. No member shall be required to offer an approved health plan if the member notifies the superintendent in writing that it will no longer offer health insurance, life insurance or annuities in the state, except for renewal of existing contracts, provided that:

(1) the member does not offer or provide health insurance, life insurance or annuities for a period of five years from the

date of notification to the superintendent to any person in the state who is not covered by the member through a health insurance policy in effect on the date of the notification; and

(2) with respect to health or life insurance policies or annuities in effect on the date of notification to the superintendent, the member continues to comply with all applicable laws and regulations governing the provision of insurance in this state, including the payment of applicable taxes, fees and assessments."

Section 41

Section 41. Section 59A-56-9 NMSA 1978 (being Laws 1994, Chapter 75, Section 9) is amended to read:

"59A-56-9. REINSURANCE.--

A. A member offering an approved health plan shall be reinsured for certain losses by the alliance. Within six months following the end of each calendar year in which the member offering the approved health plan paid more in incurred claims, plus the member's reinsurance premium pursuant to Subsection B of this section, than eighty-five percent of earned premiums received by the member on all approved health plans issued by the member, the member shall receive from the alliance the excess amount for the calendar year by which the incurred claims and reinsurance premium exceeded eighty-five percent of the earned premiums received by the alliance or its administrator.

B. The alliance shall withhold from all premiums that it receives a reinsurance premium as established by the board:

(1) for insured small employer groups, the reinsurance premium shall not exceed five percent of premiums paid by insured groups in the first year of coverage and shall not exceed ten percent of premiums for renewal years; and

(2) for eligible individuals, the reinsurance premium shall not exceed ten percent of premiums paid by individuals in the first year of coverage or continuation coverage and shall not exceed fifteen percent of premiums paid by individuals for renewal years; in determining the reinsurance premium for a particular calendar year, the board shall set the reinsurance premium at a rate that will recover the total reinsurance loss for the preceding year over a reasonable number of years in accordance with sound actuarial principles."

Section 42

Section 42. Section 59A-56-10 NMSA 1978 (being Laws 1994, Chapter 75, Section 10) is amended to read:

"59A-56-10. ADMINISTRATION.--The alliance shall deduct from premiums collected for approved health plans an administrative charge as set by the board. The administrative charge shall be determined before the beginning of each calendar year:

A. for insured small employer groups, the maximum administrative charge the alliance may charge is ten percent of premiums in the first year and five percent of premiums in renewal years; and

B. for eligible individuals, the maximum administrative charge the alliance may charge in any year is ten percent of premiums."

Section 43

Section 43. Section 59A-56-11 NMSA 1978 (being Laws 1994, Chapter 75, Section 11) is amended to read:

"59A-56-11. ASSESSMENTS.--

A. After the completion of each calendar year, the alliance shall assess all its members for the net reinsurance loss in the previous calendar year and for the net administrative loss that occurred in the previous calendar year, taking into account investment income for the period and other appropriate gains and losses using the following definitions:

(1) net reinsurance losses shall be the amount determined for the previous calendar year in accordance with Subsection A of Section 59A-56-9 NMSA 1978 for all members offering an approved health plan reduced by reinsurance premiums charged by the alliance in the previous calendar year. Net reinsurance losses shall be calculated separately for group and individual coverage. If the reinsurance premiums for either category of coverage exceed the amount calculated in accordance with Subsection A of Section 59A-56-9 NMSA 1978, the premiums shall be applied first to offset the net reinsurance losses incurred in the other category of coverage and second to offset administrative losses; and

(2) net administrative losses shall be the administrative expenses incurred by the alliance in the previous calendar year and projected for the current calendar year less the sum of administrative allowances received by the alliance, but, in the event of an administrative gain, net administrative losses for the purpose of assessments shall be

considered zero, and the gain shall be carried forward to the administrative fund for the next calendar year as an additional allowance.

B. The assessment for each member shall be determined by multiplying the total losses of the alliance's operation, as defined in Subsection A of this section, by a fraction, the numerator of which is an amount equal to that member's total premiums, or the equivalent, exclusive of premiums received by the member for an approved health plan for health insurance written in the state during the preceding calendar year and the denominator of which equals the total premiums of all health insurance written in the state during the preceding calendar year exclusive of premiums for approved health plans; provided that total premiums shall not include payments by the secretary of human services pursuant to a contract issued under Section 1876 of the federal Social Security Act, total premiums exempted by the federal Employee Retirement Income Security Act of 1974 or federal government programs.

C. If assessments exceed actual reinsurance losses and administrative losses of the alliance, the excess shall be held at interest by the board to offset future losses.

D. To enable the board to properly determine the net reinsurance amount and its responsibility for reinsurance to each member:

(1) by April 15 of each year, each member offering an approved health plan shall submit a listing of all incurred claims for the previous year; and

(2) by April 15 of each year, each member shall submit a report that includes the total earned premiums received during the prior year less the total earned premiums exempted by federal government programs.

E. The alliance shall notify each member of the amount of its assessment due by May 15 of each year. The assessment shall be paid by the member by June 15 of each year.

F. The proportion of participation of each member in the alliance shall be determined annually by the board, based on annual statements filed by each member and other reports deemed necessary by the board. Any deficit incurred by the alliance shall be recouped by assessments apportioned among the members pursuant to the formula provided in Subsection B of this section; provided that the assessment paid for any member shall be allowed as a credit on the future premium tax return for that member, with the credit limited to fifty percent of the

premium tax due the first year the assessment is imposed; forty percent the second year; and thirty percent the third and all subsequent years.

G. The board may defer, in whole or in part, the payment of an assessment of a member if, in the opinion of the board, after approval of the superintendent, payment of the assessment would endanger the ability of the member to fulfill its contractual obligations. In the event payment of an assessment against a member is deferred, the amount deferred may be assessed against the other members in a manner consistent with the basis for assessments set forth in Subsection A of this section. The member receiving the deferment shall pay the assessment in full plus interest at the prevailing rate as determined by regulation of the superintendent within four years from the date payment is deferred. After four years but within five years of the date of the deferment, the board may sue to recover the amount of the deferred payment plus interest and costs. Board actions to recover deferred payments brought after five years of the date of deferment are barred. Any amount received shall be deducted from future assessments or reimbursed pro rata to the members paying the deferred assessment."

Section 44

Section 44. Section 59A-56-13 NMSA 1978 (being Laws 1994, Chapter 75, Section 13) is amended to read:

"59A-56-13. ALLIANCE ADMINISTRATOR.--

A. The board may select an alliance administrator through a competitive request for proposal process. The board shall evaluate proposals based on criteria established by the board that shall include:

(1) proven ability to administer health insurance programs;

(2) an estimate of total charges for administering the alliance for the proposed contract period; and

(3) ability to administer the alliance in a cost-efficient manner.

B. The alliance administrator contract shall be for a period up to four years, subject to annual renegotiation of the fees and services, and shall provide for cancellation of the contract for cause, termination of the alliance by the legislature or the combining of the alliance with a governmental body.

C. At least one year prior to the expiration of an alliance administrator contract, the board may invite all interested parties, including the current administrator, to submit proposals to serve as alliance administrator for a succeeding contract period. Selection of the administrator for a succeeding contract period shall be made at least six months prior to the expiration of the current contract.

D. The alliance administrator shall:

(1) take applications for an approved health plan from small employers or a referring agent;

(2) establish a premium billing procedure for collection of premiums from insureds. Billings shall be made on a periodic basis, not less than monthly, as determined by the board;

(3) pay the member that offers an approved health plan the net premium due after deduction of reinsurance and administrative allowances;

(4) provide the member with any changes in the status of insureds;

(5) perform all necessary functions to assure that each member is providing timely payment of benefits to individuals covered under an approved health plan, including:

(a) making information available to insureds relating to the proper manner of submitting a claim for benefits to the member offering the approved health plan and distributing forms on which submissions shall be made; and

(b) making information available on approved health plan benefits and rates to insureds;

(6) submit regular reports to the board regarding the operation of the alliance, the frequency, content and form of which shall be determined by the board;

(7) following the close of each fiscal year, determine premiums of members, the expense of administration and the paid and incurred health care service charges for the year and report this information to the board and the superintendent on a form prescribed by the superintendent; and

(8) establish the premiums for reinsurance and the administrative charges, subject to approval of the board."

Section 45

Section 45. Section 59A-56-14 NMSA 1978 (being Laws 1994, Chapter 75, Section 14) is amended to read:

"59A-56-14. ELIGIBILITY--GUARANTEED ISSUE--PLAN PROVISIONS.--

A. A small employer is eligible for an approved health plan if on the effective date of coverage or renewal:

(1) at least fifty percent of its employees not otherwise insured elect to be covered under the approved health plan;

(2) the small employer has not terminated coverage with an approved health plan within three years of the date of application for coverage except to change to another approved health plan; and

(3) the small employer does not offer other general group health insurance coverage to its employees. For the purposes of this paragraph, general group health insurance coverage excludes coverage providing only a specific limited form of health insurance such as accident or disability income insurance coverage or a specific health care service such as dental care.

B. An individual is eligible for an approved health plan if on the effective date of coverage or renewal he meets the definition of an eligible individual under Section 59A-56-3 NMSA 1978.

C. An approved health plan shall provide in substance that attainment of the limiting age by an unmarried dependent individual does not operate to terminate coverage when the individual continues to be incapable of self-sustaining employment by reason of developmental disability or physical handicap and the individual is primarily dependent for support and maintenance upon the employee. Proof of incapacity and dependency shall be furnished to the alliance and the member that offered the approved health plan within one hundred twenty days of attainment of the limiting age. The board may require subsequent proof annually after a two-year period following attainment of the limiting age.

D. An approved health plan shall provide that the health insurance benefits applicable for eligible dependents are payable with respect to a newly born child of the family member or the individual in

whose name the contract is issued from the moment of birth, including the necessary care and treatment of medically diagnosed congenital defects and birth abnormalities. If payment of a specific premium is required to provide coverage for the child, the contract may require that notification of the birth of a child and payment of the required premium shall be furnished to the member within thirty-one days after the date of birth in order to have the coverage from birth. An approved health plan shall provide that the health insurance benefits applicable for eligible dependents are payable for an adopted child in accordance with the provisions of Section 59A-22-34.1 NMSA 1978.

E. Except as provided in Subsections G, H and I of this section, an approved health plan offered to a small employer may contain a preexisting condition exclusion only if:

(1) the exclusion relates to a condition, physical or mental, regardless of the cause of the condition, for which medical advice, diagnosis, care or treatment was recommended or received within the six-month period ending on the enrollment date;

(2) the exclusion extends for a period of not more than six months, after the enrollment date; and

(3) the period of the exclusion is reduced by the aggregate of the periods of creditable coverage applicable to the participant or beneficiary as of the enrollment date.

F. As used in this section, "preexisting condition exclusion" means a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the date of enrollment for coverage for the benefits whether or not any medical advice, diagnosis, care or treatment was recommended or received before that date, but genetic information is not included as a preexisting condition for the purposes of limiting or excluding benefits in the absence of a diagnosis of the condition related to the genetic information.

G. An insurer shall not impose a preexisting condition exclusion:

(1) in the case of an individual who, as of the last day of the thirty-day period beginning with the date of birth, is covered under creditable coverage;

(2) that excludes a child who is adopted or placed for adoption before his eighteenth birthday and who, as of the last day of the

thirty-day period beginning on and following the date of the adoption or placement for adoption, is covered under creditable coverage; or

(3) that relates to or includes pregnancy as a preexisting condition.

H. The provisions of Paragraphs (1) and (2) of Subsection G of this section do not apply to any individual after the end of the first continuous sixty-three-day period during which the individual was not covered under any creditable coverage.

I. The preexisting condition exclusions described in Subsection E of this section shall be waived to the extent to which similar exclusions have been satisfied under any prior health insurance coverage if the effective date of coverage for health insurance through the alliance is made not later than sixty-three days following the termination of the prior coverage. In that case, coverage through the alliance shall be effective from the date on which the prior coverage was terminated. This subsection does not prohibit preexisting conditions coverage in an approved health plan that is more favorable to the covered individual than that specified in this subsection.

J. An approved health plan issued to an eligible individual shall not contain any preexisting condition exclusion.

K. An individual is not eligible for coverage by the alliance under an approved health plan issued to a small employer if he:

(1) is eligible for medicare; provided, however, if an individual has health insurance coverage from an employer whose group includes twenty or more individuals, an individual eligible for medicare who continues to be employed may choose to be covered through an approved health plan;

(2) has voluntarily terminated health insurance issued through the alliance within the past twelve months unless it was due to a change in employment; or

(3) is an inmate of a public institution.

L. The alliance shall provide for an open enrollment period of sixty days from the initial offering of an approved health plan. Individuals enrolled during the open enrollment period shall not be subject to the preexisting conditions limitation.

M. If an insured covered by an approved health plan switches to another approved health plan that provides increased or additional benefits such as lower deductible or co-payment requirements, the member offering the approved health plan with increased or additional benefits may require the six-month period for preexisting conditions provided in Subsection E of this section to be satisfied prior to receipt of the additional benefits."

Section 46

Section 46. Section 59A-56-17 NMSA 1978 (being Laws 1994, Chapter 75, Section 17) is amended to read:

"59A-56-17. BENEFITS.--

A. An approved health plan shall pay for medically necessary eligible expenses that exceed the deductible, co-payment and co-insurance amounts applicable under the provisions of Section 59A-56-18 NMSA 1978 and are not otherwise limited or excluded. The Health Insurance Alliance Act does not prohibit the board from approving additional types of health plan designs with similar cost-benefit structures or other types of health plan designs. An approved health plan for small employers shall, at a minimum, reflect the levels of health insurance coverage generally available in New Mexico for small employer group policies, but an approved health plan for small employers may also offer health plan designs that are not generally available in New Mexico for small employer group policies.

B. The board may design and require an approved health plan to contain cost-containment measures and requirements, including managed care, pre-admission certification and concurrent inpatient review and the use of fee schedules for health care providers, including the diagnosis-related grouping system and the resource-based relative value system."

Section 47

Section 47. Section 59A-56-18 NMSA 1978 (being Laws 1994, Chapter 75, Section 18) is amended to read:

"59A-56-18. DEDUCTIBLES--CO-INSURANCE--MAXIMUM OUT-OF-POCKET PAYMENTS.--

A. Subject to the limitations provided in Subsection C of this section, an approved health plan offered through the alliance may impose a deductible on a per-person calendar year basis. An approved health

plan offered by a health maintenance organization shall provide equivalent cost-benefit structures. The board may authorize deductibles in other amounts and equivalent cost-benefit structures.

B. Subject to the limitations provided in Subsection C of this section, a mandatory co-insurance requirement for an approved health plan may be imposed as a percentage of eligible expenses in excess of a deductible. Health maintenance organizations shall impose equivalent cost-benefit structures.

C. The maximum aggregate out-of-pocket payments for eligible expenses by the covered individual shall be determined by the board."

Section 48

Section 48. Section 59A-56-19 NMSA 1978 (being Laws 1994, Chapter 75, Section 19) is amended to read:

"59A-56-19. DEPENDENT FAMILY MEMBER REQUIRED COVERAGE--SMALL EMPLOYER RESPONSIBILITY.--

A. A small employer shall collect or make a payroll deduction from the compensation of an employee for the portion of the approved health plan cost the employee is responsible for paying. The small employer may contribute to the cost of that plan on behalf of the employee.

B. A small employer shall make available to dependent family members of an employee covered by an approved health plan the same approved health plan. The small employer may contribute to the cost of group coverage.

C. All premiums collected, deducted from the compensation of employees or paid on their behalf by the small employer shall be promptly remitted to the alliance."

Section 49

Section 49. Section 59A-56-20 NMSA 1978 (being Laws 1994, Chapter 75, Section 20) is amended to read:

"59A-56-20. RENEWABILITY.--

A. An approved health plan shall contain provisions under which the member offering the plan is obligated to renew the health

insurance if premiums are paid until the day the plan is replaced by another plan or the small employer terminates coverage. An individual covered by health insurance under an approved health plan may retain coverage until he becomes eligible for medicare as the primary coverage, except that in a family policy coverage under an approved health plan shall continue for any person in the family who is not eligible for medicare.

B. An approved health plan issued to an eligible individual shall contain provisions under which the member offering the plan is obligated to renew the health insurance except for:

(1) nonpayment of premium;

(2) fraud; or

(3) termination of the approved health plan, except that the individual has the right to transfer to another approved health plan.

C. If an approved health plan ceases to exist, the alliance shall provide an alternate approved health plan.

D. An approved health plan shall provide covered individuals the right to continue health insurance coverage through an approved health plan as individual health insurance provided by the same member upon the death of the employee or upon the divorce, annulment or dissolution of marriage or legal separation of the spouse from the employee or by termination of employment by electing to do so within a period of time specified in the health insurance, if the employee was covered under an approved health plan while employed for at least six consecutive months. The individual may be charged an additional administrative charge for the individual health insurance.

E. The right to continue health insurance coverage provided in this section terminates if the covered individual resides outside the United States for more than six consecutive months."

Section 50

Section 50. Section 59A-56-21 NMSA 1978 (being Laws 1994, Chapter 75, Section 21) is amended to read:

"59A-56-21. REGULATIONS.--The superintendent shall:

A. adopt regulations that provide for disclosure by members of the availability of health insurance from the alliance; and

B. adopt regulations to carry out the provisions of the Health Insurance Alliance Act."

Section 51

Section 51. Section 59A-56-23 NMSA 1978 (being Laws 1994, Chapter 75, Section 23) is amended to read:

"59A-56-23. RATES--STANDARD RISK RATE--EXPERIENCE RATING PROHIBITED.--

A. The alliance shall determine a standard risk rate index by actuarially calculating the average index rates that the insurer has filed under the requirements of the Small Group Rate and Renewability Act with the benefits similar to the alliance's standard approved health plan. A standard risk rate based on age and other appropriate demographic characteristics may be used. No standard risk rate shall be more than fifteen percent higher or fifteen percent lower than the average index rate. In determining the standard risk rate, the alliance shall consider the benefits provided by the approved health plan.

B. Experience rating is not allowed other than for reinsurance purposes.

C. All rates and rate schedules shall be submitted to the superintendent for approval prior to use."

Section 52

Section 52. Section 59A-56-24 NMSA 1978 (being Laws 1994, Chapter 75, Section 24) is amended to read:

"59A-56-24. BENEFIT PAYMENTS REDUCTION.--

A. An approved health plan shall be the last payer of benefits whenever any other benefit is available. Benefits otherwise payable under the approved health plan shall be reduced by all amounts paid or payable through any other health insurance and by all hospital and medical expense benefits paid or payable under any workers' compensation coverage, automobile medical payment or liability insurance, whether provided on the basis of fault or no-fault, and by any hospital or medical benefits paid or payable under or provided pursuant to any state or federal program, excluding medicaid.

B. The administrator or the alliance shall have a cause of action against any person covered by an approved health plan for the

recovery of the amount of benefits paid that are not for eligible expenses. Benefits due from the approved health plan may be reduced or refused as a set-off against any amount recoverable under this section."

Section 53

Section 53. TEMPORARY PROVISION--REPORT.--The department of insurance and the New Mexico health insurance alliance shall prepare and publish a report to the legislature by October 1, 1997 on the alliance program and recommendations to facilitate participation in the alliance programs.

Section 54

Section 54. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 832, AS AMENDED

WITH EMERGENCY CLAUSE

SIGNED APRIL 11, 1997

CHAPTER 244

RELATING TO PROFESSIONAL LICENSING; AMENDING SECTIONS OF THE NMSA 1978 TO INCLUDE CLINICAL NURSE SPECIALISTS IN THE ADVANCED PRACTICE NURSING AUTHORIZATION OF PHARMACEUTICAL PRESCRIPTIONS, TO DEFINE THE PRACTICE OF NURSING, TO CHANGE CERTIFICATION PROCEDURES, TO EXTEND THE DEADLINE FOR REPORTING ON THE MEDICATION AIDE TRIAL PROGRAM, TO CHANGE THE LANGUAGE FOR LICENSURE AS A REGISTERED NURSE, TO PROVIDE FOR REGIONAL ADVISORY COMMITTEES AND DIVERSION PROGRAM CONTRACTS AND TO EXTEND THE NURSING PRACTICE ACT.

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

Section 1

Section 1. Section 26-1-2 NMSA 1978 (being Laws 1967, Chapter 23, Section 2, as amended) is amended to read:

"26-1-2. DEFINITIONS.--As used in the New Mexico Drug, Device and Cosmetic Act:

A. "board" means the board of pharmacy or its duly authorized agent;

B. "person" includes individual, partnership, corporation, association, institution or establishment;

C. "biological product" means any virus, therapeutic serum, toxin, antitoxin or analogous product applicable to the prevention, treatment or cure of diseases or injuries of man and domestic animals, and, as used within the meaning of this definition:

(1) a "virus" is interpreted to be a product containing the minute living cause of an infectious disease and includes but is not limited to filterable viruses, bacteria, rickettsia, fungi and protozoa;

(2) a "therapeutic serum" is a product obtained from blood by removing the clot or clot components and the blood cells;

(3) a "toxin" is a product containing a soluble substance poisonous to laboratory animals or man in doses of one milliliter or less of the product and having the property, following the injection of nonfatal doses into an animal, or causing to be produced therein another soluble substance that specifically neutralizes the poisonous substance and that is demonstrable in the serum of the animal thus immunized; and

(4) an "antitoxin" is a product containing the soluble substance in serum or other body fluid of an immunized animal that specifically neutralizes the toxin against which the animal is immune;

D. "controlled substance" means any drug, substance or immediate precursor enumerated in Schedules I through V of the Controlled Substances Act;

E. "drug" means:

(1) articles recognized in an official compendium;

(2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals and includes the domestic animal biological products regulated under the federal Virus-Serum-Toxin Act, 37 Stat 832-833, 21 U.S.C. 151-158 and the biological products applicable to man regulated under Federal 58 Stat 690, as amended, 42 U.S.C. 216, Section 351, and 58 Stat 702, as amended, 42 U.S.C. 262;

(3) articles other than food that affect the structure or any function of the body of man or other animals; and

(4) articles intended for use as a component of Para

graph (1), (2) or (3) of this subsection, but does not include devices or their component parts or accessories;

F. "dangerous drug" means a drug, other than a controlled substance enumerated in Schedule I of the Controlled Substances Act, that because of any potentiality for harmful effect or the method 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 hence for which adequate directions for use cannot be prepared. "Adequate directions for use" means directions under which the layman can use a drug or device safely and for the purposes for which it is intended. A drug shall be dispensed only upon the prescription of a practitioner licensed by law to administer or prescribe such drug if it:

(1) is a habit-forming drug and contains any quantity of a narcotic or hypnotic substance, or any chemical derivative of such substance, that has been found under the federal act and the board to be habit-forming;

(2) because of its toxicity or other potentiality for harmful effect or the method of its use or the collateral measures necessary to its use is not safe for use except under the supervision of a practitioner licensed by law to administer or prescribe such drug;

(3) is limited by an approved application by Section 505 of the federal act to the use under the professional supervision of a practitioner licensed by law to administer or prescribe such drug;

(4) bears the legend: "Caution: federal law prohibits dispensing without prescription."; or

(5) bears the legend: "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian.";

G. "counterfeit drug" means a drug other than a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint or device, or any likeness, of a drug manufacturer, processor, packer or distributor other than the person who in fact manufactured, processed, packed or distributed such drug and that

falsely purports or is represented to be the product of or to have been packed or distributed by such other drug manufacturer, processor, packer or distributor;

H. "device", except when used in Subsection P of this section and in Subsection G of Section 26-1-3, Subsection L and Paragraph (4) of Subsection A of Section 26-1-11 and Subsection C of Section 26-1-24 NMSA 1978, means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component, part or accessory, that is:

(1) recognized in an official compendium;

(2) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment or prevention of disease, in man or other animals; or

(3) intended to affect the structure or any function of the body of man or other animals and that does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and that is not dependent upon being metabolized for achievement of any of its principal intended purposes;

I. "prescription" means 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 bearing 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. No person other than a practitioner shall prescribe or write a prescription;

J. "practitioner" means a physician, dentist, veterinarian, certified nurse practitioner, clinical nurse specialist or other person licensed to prescribe and administer drugs that are subject to the New Mexico Drug, Device and Cosmetic Act;

K. "cosmetic" means:

(1) articles intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance; and

(2) articles intended for use as a component of any articles enumerated in Paragraph (1) of this subsection, except that the term shall not include soap;

L. "official compendium" means the official United States pharmacopoeia national formulary or the official homeopathic pharmacopoeia of the United States or any supplement to either of them;

M. "label" means a display of written, printed or graphic matter upon the immediate container of any article. A requirement made by or under the authority of the New Mexico Drug, Device and Cosmetic Act that any word, statement or other information appear on the label shall not be considered to be complied with unless the word, statement or other information also appears on the outside container or wrapper, if any, of the retail package of the article or is easily legible through the outside container or wrapper;

N. "immediate container" does not include package liners;

O. "labeling" means all labels and other written, printed or graphic matter:

(1) upon any article or any of its containers or wrappers; or

(2) accompanying any article;

P. "misbranded" means a label to an article that is misleading. In determining whether the label is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device or any combination of the foregoing, but also the extent to which the label fails to reveal facts material in the light of such representations or material with respect to consequences that may result from the use of the article to which the label relates under the conditions of use prescribed in the label or under such conditions of use as are customary or usual;

Q. "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of drugs, devices or cosmetics;

R. "antiseptic", when used in the labeling or advertisement of an antiseptic, shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be or represented

as an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder or such other use as involves prolonged contact with the body;

S. "new drug" means:

(1) any drug, the composition of which is such that the drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and efficacy of drugs, as safe and effective for use under the conditions prescribed, recommended or suggested in the labeling thereof; or

(2) any drug, the composition of which is such that the drug, as a result of investigation to determine its safety and efficacy for use under such conditions, has become so recognized, but that has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions;

T. "contaminated with filth" applies to any drug, device or cosmetic not securely protected from dirt, dust and, as far as may be necessary by all reasonable means, from all foreign or injurious contaminations, or any drug, device or cosmetic found to contain any dirt, dust, foreign or injurious contamination or infestation;

U. "selling of drugs, devices or cosmetics" shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession and holding of any such article for sale and the sale and the supplying or applying of any such article in the conduct of any drug or cosmetic establishment;

V. "color additive" means a material that:

(1) is a dye, pigment or other substance made by a process of synthesis or similar artifice or extracted, isolated or otherwise derived, with or without intermediate or final change of identity, from a vegetable, mineral, animal or other source; or

(2) when added or applied to a drug or cosmetic or to the human body or any part thereof, is capable, alone or through reaction with other substances, of imparting color thereto; except that such term does not include any material that has been or hereafter is exempted under the federal act;

W. "federal act" means the Federal Food, Drug and Cosmetic Act;

X. "restricted device" means a device for which the sale, distribution or use is lawful only upon the written or oral authorization of a practitioner licensed by law to administer, prescribe or use the device and for which the federal food and drug administration requires special training or skills of the practitioner to use or prescribe. This definition does not include custom devices defined in the federal act and exempt from performance standards or premarket approval requirements under Section 520 (b) of the federal act; and

Y. "prescription device" means a device that, because of its potential for harm, the method of its use or the collateral measures necessary to its use, is not safe except under the supervision of a practitioner licensed in this state to direct the use of such device and for which "adequate directions for use" cannot be prepared, but that bears the label: "Caution: Federal law restricts this device to sale by or on the order of a ", the blank to be filled with the word "physician", "dentist", "veterinarian", certified nurse practitioner, clinical nurse specialist or with the descriptive designation of any other practitioner licensed in this state to use, or order the use of, the device."

Section 2

Section 2. Section 30-31-2 NMSA 1978 (being Laws 1972, Chapter 84, Section 2, as amended) is amended to read:

"30-31-2. DEFINITIONS.--As used in the Controlled Substances Act:

A. "administer" means the direct application of a controlled substance by any means to the body of a patient or research subject by a practitioner or his agent;

B. "agent" includes an authorized person who acts on behalf of a manufacturer, distributor or dispenser. "Agent" does not include a common or contract carrier, public warehouseman or employee of the carrier or warehouseman;

C. "board" means the board of pharmacy;

D. "bureau" means the bureau of narcotics and dangerous drugs, United States department of justice, or its successor agency;

E. "controlled substance" means a drug or substance listed in Schedules I through V of the Controlled Substances Act or regulations adopted thereto;

F. "counterfeit substance" means a controlled substance that bears the unauthorized trademark, trade name, imprint, number, device or other identifying mark or likeness of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the controlled substance;

G. "deliver" means the actual, constructive or attempted transfer from one person to another of a controlled substance or controlled substance analog, whether or not there is an agency relationship;

H. "dispense" means to deliver a controlled substance to an ultimate user or research subject pursuant to the lawful order of a practitioner, including the administering, prescribing, packaging, labeling or compounding necessary to prepare the controlled substance for that delivery;

I. "dispenser" means a practitioner who dispenses and includes hospitals, pharmacies and clinics where controlled substances are dispensed;

J. "distribute" means to deliver other than by administering or dispensing a controlled substance or controlled substance analog;

K. "drug" or "substance" means substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any respective supplement to those publications. It does not include devices or their components, parts or accessories;

L. "hashish" means the resin extracted from any part of marijuana, whether growing or not, and every compound, manufacture, salt, derivative, mixture or preparation of such resins;

M. "manufacture" means the production, preparation, compounding, conversion or processing of a controlled substance or controlled substance analog by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance:

(1) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(2) by a practitioner, or by his agent under his supervision, for the purpose of or as an incident to research, teaching or chemical analysis and not for sale;

N. "marijuana" means all parts of the plant Cannabis, including any and all varieties, species and subspecies of the genus Cannabis, whether growing or not, the seeds thereof and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds. "Marijuana" does not include the mature stalks of the plant, hashish, tetrahydrocannabinols extracted or isolated from marijuana, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination;

O. "narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

(1) opium and opiate and any salt, compound, derivative or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative or preparation that is a chemical equivalent of any of the substances referred to in Paragraph (1) of this subsection, except the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw, including all parts of the plant of the species Papaver somniferum L. except its seeds; or

(4) coca leaves and any salt, compound, derivative or preparation of coca leaves, any salt, compound, isomer, derivative or preparation that is a chemical equivalent of any of these substances except decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine;

P. "opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. Opiate does not include, unless specifically designated as controlled under Section 30-31-5 NMSA 1978, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). "Opiate" does include its racemic and levorotatory forms;

Q. "person" includes a partnership, corporation, association, institution, political subdivision, government agency or other legal entity;

R. "practitioner" means a physician, dentist, veterinarian, certified nurse practitioner, clinical nurse specialist or other person licensed to prescribe and administer drugs that are subject to the Controlled Substances Act;

S. "prescription" means an order given individually for the person for whom is prescribed a controlled substance, either directly from the prescriber to the pharmacist or indirectly by means of a written order signed by the prescriber, in accordance with the Controlled Substances Act or regulations adopted thereto;

T. "scientific investigator" means a person registered to conduct research with controlled substances in the course of his professional practice or research and includes analytical laboratories;

U. "ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal under the care, custody and control of the person or by a member of his household;

V. "drug paraphernalia" means all equipment, products and materials of any kind that are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance or controlled substance analog in violation of the Controlled Substances Act. "Drug paraphernalia" includes:

(1) kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting any species of plant that is a controlled substance or controlled substance analog or from which a controlled substance can be derived;

(2) kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances or controlled substance analogs;

(3) isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant that is a controlled substance;

(4) testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances or controlled substance analogs;

(5) scales or balances used, intended for use or designed for use in weighing or measuring controlled substances or controlled substance analogs;

(6) diluents and adulterants, such as quinine hydrochloride, mannitol, mannite dextrose and lactose, used, intended for use or designed for use in cutting controlled substances or controlled substance analogs;

(7) separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from or in otherwise cleaning and refining marijuana;

(8) blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances or controlled substance analogs;

(9) capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances or controlled substance analogs;

(10) containers and other objects used, intended for use or designed for use in storing or concealing controlled substances or controlled substance analogs;

(11) hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances or controlled substance analogs into the human body;

(12) objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

(a) metal, wooden, acrylic, glass, stone, plastic or ceramic pipes, with or without screens, permanent screens, hashish heads or punctured metal bowls;

(b) water pipes;

(c) carburetion tubes and devices;

(d) smoking and carburetion masks;

(e) roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small to hold in the hand;

(f) miniature cocaine spoons and cocaine vials;

(g) chamber pipes;

(h) carburetor pipes;

(i) electric pipes;

(j) air-driven pipes;

(k) chilams;

(l) bongs; or

(m) ice pipes or chillers; and

(13) in determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(a) statements by the owner or by anyone in control of the object concerning its use;

(b) the proximity of the object, in time and space, to a direct violation of the Controlled Substances Act or any other law relating to controlled substances or controlled substance analogs;

(c) the proximity of the object to controlled substances or controlled substance analogs;

(d) the existence of any residue of a controlled substance or controlled substance analog on the object;

(e) instructions, written or oral, provided with the object concerning its use;

(f) descriptive materials accompanying the ob

ject that explain or depict its use;

(g) the manner in which the object is displayed for sale; and

(h) expert testimony concerning its use;

W. "controlled substance analog" means a substance other than a controlled substance that has a chemical structure substantially similar to that of a controlled substance in Schedule I, II, III, IV or V or that was specifically designed to produce effects substantially similar to that of controlled substances in Schedule I, II, III, IV or V. Examples of chemical classes in which controlled substance analogs are found include the following:

(1) phenethylamines;

(2) N-substituted piperidines;

(3) morphinans;

(4)ecgonines;

(5) quinazolinones;

(6) substituted indoles; and

(7) arylcycloalkylamines.

Specifically excluded from the definition of "controlled substance analog" are those substances that are generally recognized as safe and effective within the meaning of the Federal Food, Drug and Cosmetic Act or have been manufactured, distributed or possessed in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of Section 505 of the Federal Food, Drug and Cosmetic Act;

X. "human consumption" includes application, injection, inhalation, ingestion or any other manner of introduction whatsoever; and

Y. "drug-free school zone" means any public school or property that is used for public school purposes and the area within one thousand feet of the school property line, but it does not mean any post-secondary school."

Section 3

Section 3. Section 61-3-3 NMSA 1978 (being Laws 1991, Chapter 190, Section 2, as amended) is amended to read:

"61-3-3. DEFINITIONS.--As used in the Nursing Practice Act:

A. "advanced practice" means the practice of professional registered nursing by a registered nurse who has been prepared through additional formal education as provided in Sections 61-3-23.2 through 61-3-23.4 NMSA 1978 to function beyond the scope of practice of professional registered nursing, including certified nurse practitioners, certified registered nurse anesthetists and clinical nurse specialists;

B. "board" means the board of nursing;

C. "certified nurse practitioner" means a registered nurse who is licensed by the board for advanced practice as a certified nurse practitioner and whose name and pertinent information are entered on the list of certified nurse practitioners maintained by the board;

D. "certified registered nurse anesthetist" means a registered nurse who is licensed by the board for advanced practice as a certified registered nurse anesthetist and whose name and pertinent information are entered on the list of certified registered nurse anesthetists maintained by the board;

E. "clinical nurse specialist" means a registered nurse who is licensed by the board for advanced practice as a clinical nurse specialist and whose name and pertinent information are entered on the list of clinical nurse specialists maintained by the board;

F. "collaboration" means the cooperative working relationship with another health care provider in the provision of patient care, and such collaborative practice includes the discussion of patient diagnosis and cooperation in the management and delivery of health care;

G. "licensed practical nurse" means a nurse who practices licensed practical nursing and whose name and pertinent information are entered in the register of licensed practical nurses maintained by the board;

H. "licensed practical nursing" means the practice of a directed scope of nursing requiring basic knowledge of the biological, physical, social and behavioral sciences and nursing procedures, which

practice is at the direction of a registered nurse, physician or dentist licensed to practice in this state. This practice includes, but is not limited to:

(1) contributing to the assessment of the health status of individuals, families and communities;

(2) participating in the development and modification of the plan of care;

(3) implementing appropriate aspects of the plan of care commensurate with education and verified competence;

(4) collaborating with other health care professionals in the management of health care; and

(5) participating in the evaluation of responses to interventions;

I. "nursing diagnosis" means a clinical judgment about individual, family or community responses to actual or potential health problems or life processes, which judgment provides a basis for the selection of nursing interventions to achieve outcomes for which the person making the judgment is accountable;

J. "practice of nursing" means assisting individuals, families or communities in maintaining or attaining optimal health, assessing and implementing a plan of care to accomplish defined goals and evaluating responses to care and treatment. This practice is based on specialized knowledge, judgment and nursing skills acquired through educational preparation in nursing and in the biological, physical, social and behavioral sciences and includes but is not limited to:

(1) initiating and maintaining comfort measures;

(2) promoting and supporting optimal human functions and responses;

(3) establishing an environment conducive to well-being or to the support of a dignified death;

(4) collaborating on the health care regimen;

(5) administering medications and performing

treatments prescribed by a person authorized in this state or in any other state in the United States to prescribe them;

(6) recording and reporting nursing observations, assessments, interventions and responses to health care;

(7) providing counseling and health teaching;

(8) delegating and supervising nursing interventions that may be performed safely by others and are not in conflict with the Nursing Practice Act; and

(9) maintaining accountability for safe and effective nursing care;

K. "professional registered nursing" means the practice of the full scope of nursing requiring substantial knowledge of the biological, physical, social and behavioral sciences and of nursing theory and may include advanced practice pursuant to the Nursing Practice Act. This practice includes but is not limited to:

(1) assessing the health status of individuals, families and communities;

(2) establishing a nursing diagnosis;

(3) establishing goals to meet identified health care needs;

(4) developing a plan of care;

(5) determining nursing intervention to implement the plan of care;

(6) implementing the plan of care commensurate with education and verified competence;

(7) evaluating responses to interventions;

(8) teaching based on the theory and practice of nursing;

(9) managing and supervising the practice of nursing;

(10) collaborating with other health care professionals in the management of health care; and

(11) conducting nursing research;

L. "registered nurse" means a nurse who practices professional registered nursing and whose name and pertinent information are entered in the register of licensed registered nurses maintained by the board; and

M. "scope of practice" means the parameters within which nurses practice based upon education, experience, licensure, certification and expertise."

Section 4. Section 61-3-5 NMSA 1978 (being Laws 1968, Chapter 44, Section 4, as amended) is amended to read:

"61-3-5. LICENSE REQUIRED.--

A. Unless licensed as a registered nurse under the Nursing Practice Act, no person shall:

(1) practice professional nursing;

(2) use the title "registered nurse", "professional nurse", "professional registered nurse" or the abbreviation "R.N." or any other abbreviation thereof or use any other title, abbreviation, letters, figures, signs or devices to indicate or imply that the person is a registered nurse; or

(3) engage in a nursing specialty as defined by the board.

B. Unless licensed as a licensed practical nurse under the Nursing Practice Act, no person shall:

(1) practice licensed practical nursing; or

(2) use the title "licensed practical nurse" or the abbreviation "L.P.N." or any other abbreviation thereof or use any other title, abbreviation, letters, figures, signs or devices to indicate or imply that the person is a licensed practical nurse.

C. Unless licensed as a certified nurse practitioner under the Nursing Practice Act, no person shall:

(1) practice as a certified nurse practitioner; or

(2) use the title "certified nurse practitioner" or the abbreviations "C.N.P." or "N.P." or any other title, abbreviation, letters, figures, signs or devices to indicate or imply that the person is a certified nurse practitioner.

D. Unless licensed as a certified registered nurse anesthetist under the Nursing Practice Act, no person shall:

(1) practice as a nurse anesthetist; or

(2) use the title "certified registered nurse anesthetist" or the abbreviation "C.R.N.A." or any other title, abbreviation, letters, figures, signs or devices to indicate or imply that the person is a certified registered nurse anesthetist.

E. Unless licensed as a clinical nurse specialist under the Nursing Practice Act, no person shall:

(1) practice as a clinical nurse specialist; or

(2) use the title "clinical nurse specialist" or the abbreviation "C.N.S." or any other title, abbreviation, letters, figures, signs or devices to indicate or imply that the person is a clinical nurse specialist.

F. No licensed nurse shall be prohibited from identifying himself or his licensure status."

Section 5. Section 61-3-6 NMSA 1978 (being Laws 1973, Chapter 149, Section 2, as amended) is amended to read:

"61-3-6. ADMINISTRATION OF ANESTHETICS.--It is unlawful for any person, other than a person licensed in New Mexico to practice medicine, osteopathy or dentistry or a currently licensed certified registered nurse anesthetist, to administer anesthetics to any person. Nothing in this section prohibits a person currently licensed pursuant to the Nursing Practice Act from using hypnosis or from administering local anesthetics or conscious sedation."

Section 6

Section 6. Section 61-3-10 NMSA 1978 (being Laws 1968, Chapter 44, Section 7, as amended) is amended to read:

"61-3-10. POWERS--DUTIES.--The board:

A. shall adopt and revise such rules and regulations as may be necessary to enable it to carry into effect the provisions of the Nursing Practice Act and to maintain high standards of practice;

B. shall prescribe standards and approve curricula for educational programs preparing persons for licensure under the Nursing Practice Act;

C. shall provide for surveys of educational programs preparing persons for licensure under the Nursing Practice Act;

D. shall grant, deny or withdraw approval from educational programs for failure to meet prescribed standards, provided that a majority of the board concurs in any decision;

E. shall provide for the examination, licensing and renewal of licenses of applicants;

F. shall conduct hearings upon charges relating to discipline of a licensee or the denial, suspension or revocation of a license in accordance with the procedures of the Uniform Licensing Act;

G. shall cause the prosecution of all persons, including firms, associations, institutions and corporations, violating the Nursing Practice Act and have the power to incur such expense as is necessary therefor;

H. shall keep a record of all proceedings;

I. shall make an annual report to the governor;

J. shall appoint and employ a qualified registered nurse, who shall not be a member of the board, to serve as executive officer to the board, who shall define the duties and responsibilities of the executive officer, except that the power to grant, deny or withdraw approval for schools of nursing or to revoke, suspend or withhold any license authorized by the Nursing Practice Act shall not be delegated by the board;

K. shall provide for such qualified assistants as may be necessary to carry out the provisions of the Nursing Practice Act. Such employees shall be paid a salary commensurate with their duties;

L. shall, for the purpose of protecting the health and well-being of the citizens of New Mexico and promoting current nursing knowledge and practice, adopt rules and regulations establishing continuing education requirements as a condition of license renewal and shall study methods of monitoring continuing competence;

M. may appoint advisory committees consisting of at least one member who is a board member and at least two members expert in the pertinent field of health care to assist it in the performance of its duties. Committee members may be reimbursed as provided in the Per Diem and Mileage Act;

N. may adopt and revise rules and regulations designed to maintain an inactive status listing for registered nurses and licensed practical nurses;

O. may adopt rules and regulations to regulate the advanced practice of professional registered nursing and expanded practice of licensed practical nursing;

P. shall license qualified certified nurse practitioners, certified registered nurse anesthetists and clinical nurse specialists; and

Q. shall adopt rules and regulations establishing standards for authorizing prescriptive authority to certified nurse practitioners and clinical nurse specialists."

Section 7

Section 7. Section 61-3-10.1 NMSA 1978 (being Laws 1993, Chapter 61, Section 2) is amended to read:

"61-3-10.1. HEMODIALYSIS TECHNICIANS--TRAINING PROGRAMS--CERTIFICATION.--

A. As used in this section:

(1) "hemodialysis technician" means a person who is certified by the board to assist with the direct care of a patient undergoing hemodialysis, including performing arteriovenous punctures for dialysis access, injecting intradermal lidocaine in preparation for dialysis access, administering heparin bolus and connecting a dialysis access to isotonic saline or heparinized isotonic saline according to standards adopted by the board; and

(2) "training program" means an educational program approved by the board for persons seeking certification as hemodialysis technicians.

B. Unless certified as a hemodialysis technician pursuant to this section, no person shall practice as a hemodialysis technician or use the title "certified hemodialysis technician", "hemodialysis technician" or other title, abbreviation, letters, figures, signs or devices to indicate or imply that the person is a hemodialysis technician.

C. The board shall:

(1) maintain a permanent register of all hemodialysis technicians;

(2) adopt rules and regulations that set reasonable requirements for training programs, including prescribing standards and approving curricula;

(3) provide for periodic evaluation of training programs at least every two years;

(4) grant, deny or withdraw approval from training programs for failure to meet prescribed standards; and

(5) conduct hearings on charges relating to discipline of a hemodialysis technician and may deny certification, place a technician on probation or suspend or revoke a certificate in accordance with the Uniform Licensing Act.

D. Every applicant for certification as a hemodialysis technician shall pay the required application fee, submit written evidence of having completed a training program and successfully complete a board-approved examination. The board shall issue a certificate to any person who fulfills the requirements for certification.

E. A certificate shall be renewed every two years by the last day of the hemodialysis technician's birth month upon payment of the required fee, proof of employment as a hemodialysis technician and proof of having met any continuing education requirements adopted by the board.

F. The board shall set the following nonrefundable fees:

(1) for initial certification of a hemodialysis technician by examination, not to exceed sixty dollars ($60.00);

(2) for renewal of certification of a hemodialysis technician, not to exceed sixty dollars ($60.00);

(3) for reactivation of a certificate of a hemodialysis technician after failure to renew a certificate, not to exceed thirty dollars ($30.00);

(4) for initial review and approval of a training program, not to exceed one hundred fifty dollars ($150);

(5) for each subsequent review and approval of a training program where the hemodialysis unit has changed the program, not to exceed fifty dollars ($50.00);

(6) for each subsequent review and approval of a training program when a change has been required by a change in board policy, rules or regulations, not to exceed twenty-five dollars ($25.00); and

(7) for periodic evaluation of a training program, not to exceed seventy-five dollars ($75.00)."

Section 8

Section 8. 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 every two years by the last day of the medication aide's birth month and 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 medication 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 9

Section 9. Section 61-3-10.3 NMSA 1978 (being Laws 1995, Chapter 117, Section 1) is amended to read:

"61-3-10.3. MEDICATION AIDES.--

A. This section provides for the operation of a statewide program for certification or medication aides and medication aide training programs to serve persons with developmental disabilities in programs that are funded by the department of health.

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. 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 persons with developmental disabilities in programs that are funded by the department of health, according to standards adopted by the board.

D. Medication aides 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 10

Section 10. Section 61-3-13 NMSA 1978 (being Laws 1968, Chapter 44, Section 10, as amended) is amended to read:

"61-3-13. QUALIFICATIONS FOR LICENSURE AS A REGISTERED NURSE.--Before being considered for licensure as a registered nurse, either by endorsement or examination, under Section 61-3-14 NMSA 1978, an applicant shall furnish evidence satisfactory to the board that the applicant has successfully completed an approved program of nursing for licensure as a registered nurse and has graduated or is eligible for graduation."

Section 11

Section 11. Section 61-3-16 NMSA 1978 (being Laws 1968, Chapter 44, Section 13, as amended) is amended to read:

"61-3-16. FEES FOR LICENSURE AS REGISTERED NURSES.--Applicants for licensure as registered nurses shall pay the following fees, which fees shall not be returnable:

A. for licensure without examination, the fee shall be set by the board not to exceed one hundred fifty dollars ($150);

B. for licensure by examination when the examination is the first for the applicant in this state, the fee shall be set by the board not to exceed one hundred fifty dollars ($150);

C. for licensure by examination when the examination is other than the first examination, the fee shall be set by the board not to exceed sixty dollars ($60.00); and

D. for initial licensure as a certified nurse practitioner, certified registered nurse anesthetist and clinical nurse specialist, the fee shall be set by the board not to exceed fifty dollars ($50.00). This fee shall be in addition to the fee paid for registered nurse licensure."

Section 12

Section 12. Section 61-3-18 NMSA 1978 (being Laws 1968, Chapter 44, Section 15, as amended) is amended to read:

"61-3-18. QUALIFICATIONS FOR LICENSURE AS A LICENSED PRACTICAL NURSE.--Before being considered for licensure as a licensed practical nurse, either by endorsement or examination, under Section 61-3-19 NMSA 1978, an applicant shall furnish evidence satisfactory to the board that the applicant has successfully completed an approved program of nursing for licensure as a licensed practical nurse and has graduated or is eligible for graduation."

Section 13

Section 13. Section 61-3-19 NMSA 1978 (being Laws 1968, Chapter 44, Section 16, as amended) is amended to read:

"61-3-19. LICENSURE OF LICENSED PRACTICAL NURSES.--

A. Applicants for licensure by examination shall be required to pass the national licensing examination for licensed practical nurses. The applicant who successfully passes the examination may be issued by the board a license to practice as a licensed practical nurse.

B. The board may issue a license as a licensed practical nurse without an examination to an applicant who has been duly licensed by passing the national licensing examination for licensed practical nurses under the laws of another state or by passing a state-board-constructed licensing examination prior to October 1986 if the applicant meets the qualifications required of licensed practical nurses in this state.

C. The board may issue a license to practice as a licensed practical nurse to an applicant licensed under the laws of another territory or foreign country if the applicant meets the qualifications required of licensed practical nurses in this state, is proficient in English and successfully passes the national licensing examination for licensed practical nurses."

Section 14

Section 14. Section 61-3-23.2 NMSA 1978 (being Laws 1991, Chapter 190, Section 14, as amended) is amended to read:

"61-3-23.2. CERTIFIED NURSE PRACTITIONER--

QUALIFICATIONS--PRACTICE--EXAMINATION.--

A. The board may license for advanced practice as a certified nurse practitioner an applicant who furnishes evidence satisfactory to the board that the applicant:

(1) is a registered nurse;

(2) has successfully completed a graduate program for the education and preparation of nurse practitioners; provided that if the applicant is initially licensed by the board or a board in another jurisdiction after January 1, 2001, the program shall be at the master's level or higher;

(3) has successfully completed the national certifying examination in the applicant's specialty area; and

(4) is certified by a national nursing organization.

B. Certified nurse practitioners may:

(1) perform an advanced practice that is beyond the scope of practice of professional registered nursing; and

(2) make independent decisions regarding health care needs of the individual, family or community and carry out health regimens, including the prescription and distributing of dangerous drugs, including controlled substances included in Schedules II through V of the Controlled Substances Act.

C. Certified nurse practitioners who have fulfilled requirements for prescriptive authority may prescribe in accordance with

rules, regulations, guidelines and formularies for individual certified nurse practitioners promulgated by the board. As used in this subsection, "prescriptive authority" means the ability of the certified nurse practitioner to practice independently, serve as a primary health care provider and as necessary collaborate with licensed medical doctors, osteopathic physicians or podiatrists.

D. Certified nurse practitioners who have fulfilled requirements for prescriptive authority may distribute to their patients dangerous drugs, including controlled substances included in Schedules II through V of the Controlled Substances Act, that have been prepared, packaged or fabricated by a registered pharmacist or doses of drugs that have been prepackaged by a pharmaceutical manufacturer in accordance with the Pharmacy Act and the New Mexico Drug, Device and Cosmetic Act.

E. Certified nurse practitioners licensed by the board on and after December 2, 1985 shall successfully complete a national certifying examination and shall maintain national professional certification in their specialty area. Certified nurse practitioners licensed by a board prior to December 2, 1985 are not required to sit for a national certification examination or be certified by a national organization."

Section 15

Section 15. Section 61-3-23.3 NMSA 1978 (being Laws 1991, Chapter 190, Section 15) is amended to read:

"61-3-23.3. CERTIFIED REGISTERED NURSE ANESTHETIST--QUALIFICATIONS--LICENSURE--PRACTICE.--

A. The board may license for advanced practice as a certified registered nurse anesthetist an applicant who furnishes evidence satisfactory to the board that the applicant:

(1) is a registered nurse;

(2) has successfully completed a nurse anesthesia education program accredited by the American association of nurse anesthetists' council on accreditation, provided that if the applicant is initially licensed by the board or a board in another jurisdiction after January 1, 2001, the program shall be at a master's level or higher; and

(3) is certified by the American association of nurse anesthetists' council on certification.

B. A certified registered nurse anesthetist may provide pre-operative, intra-operative and post-operative anesthesia care and related services in accordance with the current American association of nurse anesthetists' guidelines for nurse anesthesia practice.

C. Certified registered nurse anesthetists shall function under the direction of and in collaboration with a licensed physician, osteopathic physician, dentist or podiatrist licensed in New Mexico pursuant to Chapter 61, Article 5A, 6, 8 or 10 NMSA 1978 in performing the advanced practice of nurse anesthesia care. As used in this subsection, "collaboration" means the process in which a certified registered nurse anesthetist functions jointly with a licensed physician, osteopathic physician, dentist or podiatrist licensed in New Mexico pursuant to Chapter 61, Article 5A, 6, 8 or 10 NMSA 1978 to deliver health care services within the scope of the certified registered nurse anesthetist's expertise. "Collaboration" includes systematic formal planning and evaluation between the professionals involved in the collaborative practice arrangements."

Section 16

Section 16. Section 61-3-23.4 NMSA 1978 (being Laws 1991, Chapter 190, Section 16) is amended to read:

"61-3-23.4. CLINICAL NURSE SPECIALIST--

QUALIFICATIONS--ENDORSEMENT.--

A. The board may license for advanced practice as a clinical nurse specialist an applicant who furnishes evidence satisfactory to the board that the applicant:

(1) is a registered nurse;

(2) has a master's degree or doctoral degree in a defined clinical nursing specialty;

(3) has successfully completed a national certifying examination in the applicant's area of specialty; and

(4) is certified by a national nursing organization.

B. Clinical nurse specialists may:

(1) perform an advanced practice that is beyond the scope of practice of professional registered nursing;

(2) make independent decisions in a specialized area of nursing practice using expert knowledge regarding the health care needs of the individual, family and community, collaborating as necessary with other members of the health care team when the health care need is beyond the scope of practice of the clinical nurse specialist; and

(3) carry out therapeutic regimens in the area of specialty practice, including the prescription and distribution of dangerous drugs.

C. A clinical nurse specialist who has fulfilled the requirements for prescriptive authority in the area of specialty practice is authorized to prescribe, administer and distribute therapeutic measures, including dangerous drugs and controlled substances included in Schedules II through V of the Controlled Substances Act within the scope of specialty practice, including controlled substances pursuant to the Controlled Substances Act that have been prepared, packaged or fabricated by a registered pharmacist or doses of drugs that have been prepackaged by a pharmaceutical manufacturer in accordance with the Pharmacy Act and the New Mexico Drug, Device and Cosmetic Act.

D. Clinical nurse specialists who have fulfilled the requirements for prescriptive authority in the area of specialty practice may prescribe in accordance with rules, regulations, guidelines and formularies based on scope of practice and clinical setting for individual clinical nurse specialists promulgated by the board.

E. Clinical nurse specialists licensed by the board shall maintain certification in their specialty area."

Section 17

Section 17. Section 61-3-24 NMSA 1978 (being Laws 1968, Chapter 44, Section 20, as amended) is amended to read:

"61-3-24. RENEWAL OF LICENSES.--

A. Any person licensed pursuant to the provisions of the Nursing Practice Act who intends to continue practice shall renew the license every two years by the end of the applicant's birth month except when on active military duty during a military action.

B. At least six weeks before the end of the birth month, the board shall mail to the licensee an application blank, which shall be returned to the board before the end of the birth month, together with

proof of completion of continuing education requirements as required by the board and the renewal fee set by the board in an amount not to exceed one hundred dollars ($100).

C. Upon receipt of the application and fee, the board shall verify the licensee's eligibility for continued licensure and issue to the applicant a renewal license for two years. Renewal shall render the holder a legal practitioner of nursing for the period stated on the renewal license.

D. Applicants for renewal who have not been actually engaged in nursing for five years or more shall furnish the board evidence of having completed refresher courses of continuing education as required by regulations adopted by the board.

E. Any person who allows his license to lapse by failure to secure renewal as provided in this section shall be reinstated by the board on payment of the fee for the current two years plus a reinstatement fee to be set by the board in an amount that shall not exceed two hundred dollars ($200), provided that all requirements have been met."

Section 18

Section 18. Section 61-3-29 NMSA 1978 (being Laws 1968, Chapter 44, Section 25, as amended) 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 transport a citizen of this state or who is a camp nurse who accompanies and cares for a patient temporarily residing in this state, provided that the nurse's practice in this state 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 pursuant to the Nursing Practice Act;

H. any nursing aide or orderly, unless performing acts defined as professional nursing or practical nursing pursuant to 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 19

Section 19. Section 61-3-29.1 NMSA 1978 (being Laws 1987, Chapter 285, Section 1, as amended by Laws 1991, Chapter 190, Section 21 and also by Laws 1991, Chapter 253, Section 2) is amended to read:

"61-3-29.1. DIVERSION PROGRAM CREATED--ADVISORY COMMITTEE--RENEWAL FEE--REQUIREMENTS--IMMUNITY FROM CIVIL ACTIONS.--

A. The board shall establish a diversion program to rehabilitate nurses whose competencies may be impaired because of the abuse of drugs or alcohol so that nurses can be treated and returned to or continue the practice of nursing in a manner that will benefit the public. The intent of the diversion program is to develop a voluntary alternative to traditional disciplinary actions and an alternative to lengthy and costly investigations and administrative proceedings against such nurses, at the same time providing adequate safeguards for the public.

B. The board shall appoint one or more evaluation committees, hereinafter called "regional advisory committees", each of which shall be composed of members with expertise in chemical dependency; at least one member shall be a registered nurse. No current member of the board shall be appointed to a regional advisory committee. The executive officer of the board or his designee shall be the liaison between each regional advisory committee and the board.

C. Each regional advisory committee shall function under the direction of the board and in accordance with regulations of the board. The regulations shall include directions to a regional advisory committee to:

(1) establish criteria for continuance in the program;

(2) develop a written diversion program contract to be approved by the board that sets forth the requirements that shall be met by the nurse and the conditions under which the diversion program may be successfully completed or terminated;

(3) recommend to the board in favor of or against each nurse's discharge from the diversion program;

(4) evaluate each nurse's progress in recovery and compliance with his diversion program contract;

(5) report violations to the board;

(6) submit an annual report to the board; and

(7) coordinate educational programs and research related to chemically dependent nurses.

D. The board may increase the renewal fee for each nurse in the state not to exceed twenty dollars ($20.00) for the purpose of implementing and maintaining the diversion program.

E. Files of nurses in the diversion program shall be maintained in the board office and shall be confidential except for making a report to the board concerning any nurse who is not cooperating and complying with the diversion program contract. However, such files shall be subject to discovery or subpoena. The confidential provisions of this subsection are of no effect if the nurse admitted to the diversion program leaves the state prior to the completion of the program.

F. Any person making a report to the board or to a regional advisory committee regarding a nurse suspected of practicing nursing while habitually intemperate or addicted to the use of habit-forming drugs or making a report of a nurse's progress or lack of progress in rehabilitation shall be immune from civil action for defamation or other cause of action resulting from such reports, provided such reports are made in good faith and with some reasonable basis in fact.

G. Any person admitted to the diversion program for chemically dependent nurses who fails to comply with the provisions of this section or with the rules and regulations adopted by the board pursuant to this section or with the written diversion program contract or with any amendments to the written diversion program contract may be subject to disciplinary action in accordance with Section 61-3-28 NMSA 1978."

HOUSE BILL 939, AS AMENDED
Approved April 11, 1997

CHAPTER 245

RELATING TO EDUCATION; AMENDING A SECTION OF THE PUBLIC SCHOOL CODE PERTAINING TO STUDENT PARTICIPATION IN INTERSCHOLASTIC EXTRACURRICULAR ACTIVITIES.

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

Section 1

Section 1. Section 22-12-2.1 NMSA 1978 (being Laws 1986, Chapter 33, Section 27, as amended) is amended to read:

"22-12-2.1. INTERSCHOLASTIC EXTRACURRICULAR ACTIVITIES--STUDENT PARTICIPATION.--

A. A student shall have a 2.0 grade point average on a 4.0 scale, or its equivalent, either cumulatively or for the grading period immediately preceding participation, in order to be eligible to participate in any interscholastic extracurricular activity. For purposes of this section, "grading period" is a period of time not less than six weeks. The provisions of this subsection shall not apply to special education students placed in class C and class D programs.

B. No student shall be absent from school for school-sponsored interscholastic extracurricular activities in excess of fifteen days per semester, and no class may be missed in excess of fifteen times per semester.

C. The provisions of Subsections A and B of this section apply only to interscholastic extracurricular activities.

D. The state superintendent may issue a waiver relating to the number of absences for participation in any state or national competition. The state superintendent shall develop a procedure for petitioning cumulative provision eligibility cases, similar to other eligibility situations.

E. Student standards for participation in interscholastic extracurricular activities shall be applied beginning with a student's academic record in grade nine."

HOUSE BILL 1128

Approved April 11, 1997

CHAPTER 246

RELATING TO WATER; AUTHORIZING THE ISSUANCE OF REVENUE BONDS FOR HYDROGRAPHIC SURVEYS USED FOR DETERMINATION OF WATER RIGHTS; 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 72-14-4 NMSA 1978 (being Laws 1935, Chapter 24, Section 1, as amended) is amended to read:

"72-14-4. BUDGET AND PLAN SUBMITTED TO GOVERNOR ANNUALLY.--The interstate stream commission shall annually prepare and submit a budget together with a complete and detailed plan looking toward the improvement of the Rio Grande in this state, and increasing the surface flow of water in the river, during the ensuing fiscal year. The plan and budget shall be submitted annually in accordance with the provisions of Sections 6-3-1 through 6-3-22 NMSA 1978."

Section 2

Section 2. Section 72-14-5 NMSA 1978 (being Laws 1935, Chapter 24, Section 2, as amended) is amended to read:

"72-14-5. ANNUAL EXPENDITURES MADE UNDER BUDGET AND PLAN.--The interstate stream commission shall annually expend from the money appropriated, within the money actually available and within the budget submitted and approved, in accordance with the provisions of Sections 6-3-1 through 6-3-22 NMSA 1978, such sum as may be necessary for the improvement of the Rio Grande in this state, and increasing the surface flow of water in the river, and in accordance with the plan submitted by the commission."

Section 3

Section 3. Section 72-14-6 NMSA 1978 (being Laws 1935, Chapter 24, Section 3, as amended) is amended to read:

"72-14-6. APPROPRIATION--HOW DISBURSEMENTS ARE TO BE MADE.--There is ppropriated annually all money in the improvement of the Rio Grande income fund or as much thereof as may be necessary for the purpose of complying with Sections 72-14-4 through 72-14-6 and 72-14-9 through 72-14-28 NMSA 1978 and to fulfill and carry out their purposes and intentions. The appropriations authorized shall be paid, from time to time as may be necessary, upon vouchers approved by the interstate stream commission."

Section 4

Section 4. Section 72-14-9 NMSA 1978 (being Laws 1955, Chapter 266, Section 1) is amended to read:

"72-14-9. DEFINITIONS.--As used in Sections 72-14-9 through 72-14-28 NMSA 1978:

A. "engineer" or "state engineer" means the state engineer of New Mexico;

B. "commission" means the interstate stream commission or other department or agency which may be created and charged with the duties and functions of the commission;

C. "works" includes all property, rights, easements and franchises relating thereto and deemed necessary or convenient for their operation, and all water rights acquired or exercised by the commission in connection with such works, and shall embrace all means of conserving and distributing water, including, without limiting the generality of the foregoing, reservoirs, dams, diversion canals, distributing canals, lateral ditches, pumping units, wells, mains, pipelines and waterworks systems and shall include all such works for the conservation, development, storage, distribution and utilization of water, including, without limiting the generality of the foregoing, works for the purpose of irrigation, development of power, watering of stock, supplying of water for public, domestic, industrial and other uses, for fire protection and for the purpose of obtaining hydrographic surveys used by the state engineer for determining water rights;

D. "cost of works" includes the cost of construction; the cost of all lands, property, rights, easements and franchises acquired which are deemed necessary for such construction; the cost of all water rights acquired or exercised by the commission in connection with a project; the cost of all machinery and equipment, financing charges, interest prior to and during construction and for a period not exceeding three years after the completion of construction; the cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost and other expenses necessary or incident to determining the feasibility or practicability of any project; and administrative expense and such other expenses as may be necessary or incident to the financing and the completion of a project and the placing of the project in operation;

E. "owner" includes all individuals, irrigation districts, incorporated companies, societies or associations having any title or interest in any properties, rights, easements or franchises to be acquired; and

F. "project" means any one of the works defined in this section or any combination of such works which are jointly managed and operated as a single unit."

Section 5

Section 5. Section 72-14-11 NMSA 1978 (being Laws 1955, Chapter 266, Section 3) is amended to read:

"72-14-11. PROJECTS USING REVENUE BOND PROCEEDS AUTHORIZED.--

A. The commission is authorized to conduct, whenever it deems such project expedient, any project, the cost of which is to be paid wholly by means of or with the proceeds of revenue bonds authorized, or in connection with a grant to aid in financing such project from the United States or any instrumentality or agency thereof, or with other funds provided under the authority of Sections 72-14-9 through 72-14-28 NMSA 1978. If revenues from the project are intended to pay the cost of maintaining, repairing and operating the project and to pay the principal and interest of revenue bonds that may be issued for the cost of the project, before conducting any project, the commission shall make estimates of the cost of the project, of the cost of maintaining, repairing and operating the project and of the revenues to be derived from the project, and no such project shall be conducted unless, according to the estimates, the revenues to be derived will be sufficient to pay the cost of maintaining, repairing and operating the project and, if no other revenues are to be pledged to repayment of bonds that may be issued for the cost of the project, to pay the principal and interest of revenue bonds which may be issued for the cost of such project; provided, however, that in connection with the issuance of any of the bonds, the failure of the commission to make the estimates required by this section or to make the estimates in proper form shall in no way affect the validity or enforceability of any such bonds or of the trust indenture, resolution or other security for the bonds.

B. The purpose of Sections 72-14-9 through 72-14-28 NMSA 1978 is to meet a statewide need for the conservation and use of water through projects designed or intended for such purposes. The commission is empowered to make such investigations as may be necessary to plan and carry out a comprehensive statewide program of water conservation; provided, however, that those sections shall not be construed to repeal or amend by implication or otherwise the provisions of law enacted with respect to permits for the acquisition of water rights, permits for the change in place or method of use of water or permits for the construction of works. The projects to be finally conducted shall qualify as parts of such statewide program and, if applicable shall be approved by the commission upon the showing of their prospective ability to meet, through the sale of water or other services, the cost of operation, maintenance and repair and the amortization of the cost of the project; provided, however, that the failure of the commission to determine such prospective ability of a project shall in no way affect the validity or enforceability of any such bonds."

Section 6

Section 6. Section 72-14-13 NMSA 1978 (being Laws 1955, Chapter 266, Section 5, as amended) is amended to read:

"72-14-13. WATER CONSERVATION REVENUE BONDS AUTHORIZED--EXTENT OF STATE OBLIGATION.--

A. The commission, with the approval of the state board of finance and in accordance with the state board of finances adopted policies and procedures on financing approvals, is authorized to provide by resolution for the issuance of water conservation revenue bonds of the state for the purpose of paying the cost, as defined in Section 72-14-9 NMSA 1978, of any one or more projects subject to the conditions provided for in Subsection F of this section. The principal of and interest on revenue bonds shall be payable solely from the special fund to be provided for such payment. Revenue bonds shall mature at such time, not more than fifty years from their date, as may be fixed by the resolution, but may be made redeemable before maturity at the option of the state, to be exercised by the commission, at such price and under such terms and conditions as may be fixed by the commission prior to the issuance of the bonds. The commission shall determine the rate of interest not in excess of the maximum net effective interest rate permitted by the Public Securities Act or the Public Securities Short-Term Interest Rate Act on such bonds, the time of payment of such interest, the form of the bonds and the manner of executing the bonds, and shall fix the denomination of the bonds and the place of payment of principal and interest thereof.

B. All bonds issued under Sections 72-14-9 through 72-14-28 NMSA 1978 shall contain a statement on their faces that the state shall not be obligated to pay the bonds or the interest on the bonds except from the "debt service fund" hereinafter set forth. In case any of the officers whose signatures appear on the bonds cease to be officers before the delivery of the bonds, the signatures shall nevertheless be valid and sufficient for all purposes, as if the officers had remained in office until delivery. All the bonds are declared to have all the qualities and incidents of negotiable instruments. The bonds shall not constitute or be a debt, liability or obligation of the state, and shall be secured only by the revenues of such works and the funds received from the sale or disposal of water and from the operation, lease, sale or other disposition of the works, property and facilities to be acquired out of the proceeds of such bonds and, if so pledged by the commission, from income credited to the permanent reservoirs for irrigation purposes income fund and the improvement of Rio Grande income fund.

C. Provisions may be made for the registration of any of the bonds in the resolution authorizing the bonds. The bonds authorized under the

provisions of Sections 72-14-9 through 72-14-28 NMSA 1978 may be issued and sold from time to time at a public or private sale to any purchaser, including the New Mexico finance authority, and in such amounts as may be determined by the commission, and the commission may sell the bonds in such manner and for such price as it may determine to be for the best interests of the state. The state investment officer is authorized to invest the permanent funds of the state in the bonds. The proceeds of such bonds shall be used solely for the payment of the cost of a project and shall be used in such manner and under such restrictions, if any, as the commission may provide.

D. If the proceeds of the bonds, by error of calculation or otherwise, are less than the cost of the project, additional bonds may in like manner be issued to provide the amount of such deficit and, unless otherwise provided in the resolution authorizing the bonds, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same project. If the proceeds of bonds issued for any such project exceed the cost of the project, the surplus shall be paid into the debt service fund provided for the payment of principal and interest of such bonds. Prior to the preparation of definitive bonds, the commission may issue temporary bonds exchangeable for definitive bonds when such bonds have been executed and are available for delivery. Such bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions and things which are specified and required by Sections 72-14-9 through 72-14-28 NMSA 1978 or by the constitution of New Mexico.

E. Each resolution providing for the issuance of bonds shall set forth a project for which the bonds are to be issued, and the bonds authorized by each such resolution shall constitute a separate series. The bonds of each series shall be identified by a series number or letter and may be sold and delivered at one time or from time to time."

F. Revenue bonds issued by the commission for obtaining hydrographic surveys used by the state engineer shall mature not later than ten years from their date of issuance. The commission shall issue bonds for hydrographic surveys in a total amount not exceeding four million dollars ($4,000,000) and in amounts not to exceed two million dollars ($2,000,000) in any fiscal year commencing July 1, 1998.

Section 7

Section 7. Section 72-14-14 NMSA 1978 (being Laws 1955, Chapter 266, Section 6) is amended to read:

"72-14-14. REVENUES FROM BONDS TO BE APPLIED TO COST OF PROJECTS AND ASSOCIATED EXPENSES.--All money received from any bonds issued pursuant to Sections 72-14-9 through 72-14-28 NMSA 1978 shall be applied solely to the payment of the cost of the project or to the appurtenant debt service fund, and there is created and granted a lien upon such money until so applied in favor of the holders of the bonds or the trustee provided for in respect of such bonds."

Section 8

Section 8. Section 72-14-15 NMSA 1978 (being Laws 1955, Chapter 266, Section 7) is amended to read:

"72-14-15. FUNDS ESTABLISHED.--The commission shall create three separate funds in respect of the bonds of each series: one fund to be known as the "project fund, series . . . . . ."; another fund to be known as the "income fund, series . . . . . "; and another fund to be known as the "debt service fund, series . . . . . "; each fund to be identified by the same series number or letter as the bonds of such series. The money in each fund shall be deposited in such depository and secured in such manner as may be determined by the commission. It is lawful for any bank or trust company incorporated under the laws of this state or of the United States to act as such depository and to furnish such indemnifying bonds or to pledge such securities as may be required by the commission. A separate account shall be kept in each project fund and in each income fund for each project. All expenditures not properly chargeable to the project fund account or to the income fund account of any one project shall be charged by the commission in such proportions as it determines to the project fund accounts or to the income fund accounts, as the case may be, of the projects in respect of which such expenditures were incurred."

Section 9

Section 9. Section 72-14-16 NMSA 1978 (being Laws 1955, Chapter 266, Section 8) is amended to read:

"72-14-16. BOND PROCEEDS TO BE APPROPRIATELY CREDITED.--The proceeds of the bonds of each series issued under the provisions of Sections 72-14-9 through 72-14-28 NMSA 1978 shall be placed to the credit of the appropriate project fund, which fund shall be kept segregated and set apart from all other funds. There shall be credited to the appropriate debt service fund all accrued interest received upon sale of the bonds and there shall also be credited to the appropriate project fund the interest received upon the deposits of

money in the project fund and money received by way of grant from the United States or from any other source for the project. The money in each project fund shall be paid out or disbursed in such manner as may be determined by the commission, subject to the provisions of those sections, to pay the cost of the project and there is hereby appropriated annually the money in each project fund for the purposes intended by the commission."

Section 10

Section 10. Section 72-14-17 NMSA 1978 (being Laws 1955, Chapter 266, Section 9) is amended to read:

"72-14-17. COMMISSION TO SET PRICES, RATES OR CHARGES--CONTRACTS--DISPOSITION OF PROPERTY.--

A. The commission is authorized, subject to the provisions of Sections 72-14-9 through 72-14-28 NMSA 1978, to fix and establish the prices, rates and charges at which the resources and facilities made available under the provisions of those sections shall be sold and disposed of; to enter into contracts and agreements, and to do things which in its judgment are necessary, convenient or expedient for the accomplishment of the purposes and objects of those sections, under such general regulations and upon such terms, limitations and conditions as it shall prescribe. If no other revenues are pledged to repay the bonds, it is the duty of the commission to enter into such contracts and fix and establish such prices, rates and charges so as to provide funds that will be sufficient to pay costs of operation and maintenance of the works authorized by those sections, together with necessary repairs thereto, and that will provide sufficient funds to meet and pay the principal and interest of all bonds as they severally become due and payable; provided that nothing contained in Sections 72-14-9 through 72-14-28 NMSA 1978 shall authorize any change, alteration or revision of any such rates, prices or charges as established by any contract entered into under authority of those sections except as provided by any such contract.

B. Every contract made by the commission for the sale of water, use of water, water storage or other service or for the sale of any property or facilities shall provide that in the event of failure or default in the payment of money specified in the contract to be paid to the commission, the commission may, upon such notice as shall be prescribed in the contract, terminate the contract and all obligations under it. The act of the commission in ceasing on any default to furnish or deliver water, use of water, water storage or other service under the contract shall not deprive the commission of or limit any remedy

provided by such contract or by law for the recovery of money due or which may become due under the contract.

C. The commission is empowered to sell or otherwise dispose of any rights of way, easements or property when it determines that the same is no longer needed for the purposes of Sections 72-14-9 through 72-14-28 NMSA 1978, or to lease or rent the same or to otherwise take and receive the income or profit and revenue therefrom. All income or profit and revenue of the works and all money received from the sale or disposal of water, use of water, water storage or other service and from the operation, lease, sale or other disposition of the works, property and facilities acquired under the provisions of those sections shall be paid to the credit of the appropriate income fund."

Section 11

Section 11. Section 72-14-18 NMSA 1978 (being Laws 1955, Chapter 266, Section 10) is amended to read:

"72-14-18. DEBT SERVICE FUND--PAYMENTS INTO FUND--FUND PLEDGED FOR PAYMENT OF INTEREST, FISCAL CHARGES AND REPAYMENT OF PRINCIPAL.--The commission shall provide, in the proceedings authorizing the issuance of each series of bonds, for the paying into the appropriate debt service funds at stated intervals money from other revenues pledged to repay the bonds or all money then remaining in the income fund, after paying all cost of operation, maintenance and repairs of the works. All money in each debt service fund shall be pledged for the payment of and used only for the purpose of paying:

A. interest upon the bonds as such interest falls due;

B. the necessary fiscal agency charges for paying bonds and interest;

C. the principal of the bonds as they fall due; and

D. any premiums upon bonds retired by call or purchase as herein provided.

Prior to the issuance of the bonds of each series, the commission may provide by resolution for using the debt service fund or any part thereof in the purchase of any of the outstanding bonds payable therefrom at the market price thereof. The money in each debt service fund, less such reserve as may be provided for in the resolution authorizing the bonds for the payment of interest, principal, or both, if

not used within a reasonable time for the purchase of bonds as provided in this section, shall be applied to the redemption of bonds then subject to redemption at the redemption price then applicable."

Section 12

Section 12. Section 72-14-19 NMSA 1978 (being Laws 1955, Chapter 266, Section 11) is amended to read:

"72-14-19. PERMANENT RESERVOIRS FOR IRRIGATION PURPOSES INCOME FUND--RIO GRANDE INCOME FUND--APPROPRIATION.--Each year's income credited to the permanent reservoirs for irrigation purposes income fund and the improvement of Rio Grande income fund may be pledged irrevocably to the payment of the principal of and interest on revenue bonds by the commission with the approval of the state board of finance, and there are irrevocably appropriated to the commission amounts from the funds for such purposes. The commission shall provide in the proceedings authorizing the issuance of each series of bonds for the paying into the appropriate income and debt service funds all money received pursuant to this section."

Section 13

Section 13. Section 72-14-22 NMSA 1978 (being Laws 1955, Chapter 266, Section 14) is amended to read:

"72-14-22. RIGHTS OF BONDHOLDERS--ENFORCEMENT.--Any holder of any bonds issued under the provisions of Sections 72-14-9 through 72-14-28 NMSA 1978 except to the extent the rights herein given may be restricted by resolution passed before the issuance of the bonds, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any rights granted hereunder or under such resolution and may enforce and compel performance of all duties required by those sections or by such resolution to be performed by the commission. The state pledges and agrees that while any bonds issued by the commission remain outstanding, the powers, duties or existence of the commission or any official or agency of the state and the distribution of revenues pledged to payment of the bonds to the commission shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of such bonds. The commission is authorized to include this pledge and agreement of the state in any agreement with the holders of the bonds."

Section 14

Section 14. Section 72-14-26 NMSA 1978 (being Laws 1955, Chapter 266, Section 17) is amended to read:

"72-14-26. DISPOSITION OF WATER FOR PUBLIC, DOMESTIC, INDUSTRIAL AND OTHER USES--RECONVEYANCE TO GRANTORS.--In addition to the powers conferred upon the commission to sell, lease and otherwise dispose of waters for the purpose of irrigation, development of power, watering of stock or other purposes, the commission shall have power to sell, lease and otherwise dispose of waters from its waterworks systems for public, domestic, industrial and other uses and for fire protection. The commission, after the discharge of all of the bonds issued by the commission to finance the construction or acquisition of any works, except for hydrographic surveys used by the state engineer for determining water rights, and of all interest thereon and costs and expenses incurred in connection with any action or proceeding by or on behalf of the holders of such bonds, shall reconvey the same to the grantors thereof.

Section 15

Section 15. APPROPRIATIONS.--

A. One million dollars ($1,000,000) is appropriated from the irrigation works construction fund to the state engineer for expenditure in fiscal years 1998 and 1999 for the purpose of conducting hydrographic surveys. Any unexpended or unencumbered balance remaining at the end of fiscal year 1999 shall revert to the irrigation works construction fund.

B. Five hundred thousand dollars ($500,000) is appropriated from the improvement of the Rio Grande income fund to the state engineer for expenditure in fiscal years 1998 and 1999 for the purpose of conducting hydrographic surveys. Any unexpended or unencumbered balance remaining at the end of fiscal year 1999 shall revert to the improvement of the Rio Grande income fund.

HOUSE BILL 1308, AS AMENDED

WITH CERTIFICATE OF CORRECTION

Approved April 11, 1997

CHAPTER 247

RELATING TO HEALTH; CREATING THE BRAIN INJURY SERVICES FUND; IMPOSING A FEE; 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 35-6-1 NMSA 1978 (being Laws 1968, Chapter 62, Section 92, as amended) is amended to read:

"35-6-1. MAGISTRATE COSTS--SCHEDULE--DEFINITION OF "CONVICTED".--

A. Magistrate judges, including metropolitan court judges, shall collect the following costs:

Docket fee, criminal actions under Section 29-5-1 NMSA 1978 $ 1.00

Docket fee, to be collected prior to docketing any other criminal action, except as provided in Subsection B of Section 35-6-3 NMSA 1978 ..... . 20.00

Docket fee, ten dollars ($10.00) of which shall be deposited in the court automation fund, to be collected prior to docketing any civil action, except as provided in Subsection A of Section 35-6-3 NMSA 1978 .....47.00

Jury fee, to be collected from the party demanding trial by jury in any civil action at the time the demand is filed or made 25.00

Copying fee, for making and certifying copies of any records in the court, for each page copied by photographic process .50

Copying fee, for computer-generated or electronically transferred copies, per page 1.00.

Proceeds from this copying fee shall be transferred to the administrative office of the courts for deposit in the court automation fund. Except as otherwise specifically provided by law, docket fees shall be paid into the general fund.

B. Except as otherwise provided by law, no other costs or fees shall be charged or collected in the magistrate or metropolitan court.

C. The magistrate or metropolitan court may grant free process to any party in any civil proceeding or special statutory proceeding upon a proper showing of indigency. The magistrate or metropolitan court may deny free process if it finds that the complaint on its face does not state a cause of action.

D. As used in this subsection, "convicted" means the defendant has been found guilty of a criminal charge by the magistrate or metropolitan judge, either after trial, a plea of guilty or a plea of nolo contendere. Magistrate judges, including metropolitan court judges, shall collect the following costs:

(1) corrections fee, to be collected upon conviction from persons convicted of violating any provision of the Motor Vehicle Code involving the operation of a motor vehicle, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance that may be enforced by the imposition of a term of imprisonment $10.00;

(2) court automation fee, to be collected upon conviction from persons convicted of violating any provision of the Motor Vehicle Code involving the operation of a motor vehicle, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance that may be enforced by the imposition of a term of imprisonment 10.00;

(3) traffic safety fee, to be collected upon conviction from persons convicted of violating any provision of the Motor Vehicle Code involving the operation of a motor vehicle 3.00;

(4) judicial education fee, to be collected upon conviction from persons convicted of operating a motor vehicle in violation of the Motor Vehicle Code, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance punishable by a term of imprisonment . . . . . 1.00; and

(5) brain injury services fee, to be collected upon conviction from persons convicted of violating any provision of the Motor Vehicle Code involving the operation of a motor vehicle . . . . . 5.00.

E. Metropolitan court judges shall collect as costs a mediation fee not to exceed five dollars ($5.00) for the docketing of small claims and criminal actions specified by metropolitan court rule. Proceeds of the mediation fee shall be deposited into the metropolitan court mediation fund."

Section 2

Section 2. Section 66-8-116.3 NMSA 1978 (being Laws 1989, Chapter 320, Section 5, as amended) is amended to read:

"66-8-116.3. PENALTY ASSESSMENT MISDEMEANORS--ADDITIONAL FEES.--In addition to the penalty assessment established for each penalty assessment misdemeanor, there shall be assessed:

A. ten dollars ($10.00) to help defray the costs of local government corrections;

B. a court automation fee of ten dollars ($10.00);

C. a traffic safety fee of three dollars ($3.00), which shall be credited to the traffic safety education and enforcement fund;

D. a judicial education fee of one dollar ($1.00), which shall be credited to the judicial education fund; and

E. a brain injury services fee of five dollars ($5.00), which shall be credited to the brain injury services fund."

Section 3

Section 3. Section 66-8-119 NMSA 1978 (being Laws 1968, Chapter 62, Section 159, as amended) is amended to read:

"66-8-119. PENALTY ASSESSMENT REVENUE--DISPOSITION.--

A. The division shall remit all penalty assessment receipts, except receipts collected pursuant to Subsections A through E of Section 66-8-116.3 NMSA 1978, to the state treasurer for credit to the general fund.

B. The division shall remit all penalty assessment fee receipts collected pursuant to:

(1) Subsection A of Section 66-8-116.3 NMSA 1978 to the state treasurer for credit to the local government corrections fund;

(2) Subsection B of Section 66-8-116.3 NMSA 1978 to the state treasurer for credit to the court automation fund;

(3) Subsection C of Section 66-8-116.3 NMSA 1978 to the state treasurer for credit to the traffic safety education and enforcement fund;

(4) Subsection D of Section 66-8-116.3 NMSA 1978 to the state treasurer for credit to the judicial education fund; and

(5) Subsection E of Section 66-8-116.3 NMSA 1978 to the state treasurer for credit to the brain injury services fund."

Section 4

Section 4. BRAIN INJURY SERVICES FUND CREATED.--

A. There is created in the state treasury the "brain injury services fund". The fund shall be invested in accordance with the provisions of Section 6-10-10 NMSA 1978, and all income earned on the fund shall be credited to the fund.

B. The brain injury services fund shall be used to institute and maintain a statewide brain injury services program designed to increase the independence of persons with traumatic brain injuries.

C. The department of health shall adopt all rules, regulations and policies necessary to administer a statewide brain injury services program. The department of health shall coordinate with and seek advice from the brain injury advisory council to ensure that the statewide brain injury services program is appropriate for persons with traumatic brain injuries.

D. All money credited to the brain injury services fund shall be appropriated to the department of health for the purpose of carrying out the provisions of this section and shall not revert to the general fund.

Section 5

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

SENATE BILL 37, AS AMENDED

Approved April 11, 1997

CHAPTER 248

RELATING TO INSURANCE; AMENDING CERTAIN SECTIONS OF THE NEW MEXICO INSURANCE CODE.

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

Section 1

Section 1. Section 59A-37-2 NMSA 1978 (being Laws 1984, Chapter 127, Section 617, as amended) is amended to read:

"59A-37-2. DEFINITIONS.--As used in Chapter 59A, Article 37 NMSA 1978:

A. "acquire" means to come into possession or control of, and "acquisition" means any agreement, arrangement or activity the consummation of which results in a person acquiring directly or indirectly the control of another person and includes the acquisition of voting securities or assets, bulk reinsurance and mergers;

B. "affiliate" means a person that directly or indirectly is controlled by, is under common control with or controls another person;

C. "control" means the possession of the power to direct or cause the direction of the management and policies of a person, whether directly or indirectly, through the ownership of voting securities, through licensing or franchise agreements, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by an individual. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote or holds ten or more percent of the voting securities of any other person. This presumption may be rebutted by a showing, in the manner provided by Section 59A-37-19 NMSA 1978, that control does not in fact exist. The superintendent may determine, after furnishing all persons in interest notice and an opportunity to be heard, that control exists in fact, notwithstanding the absence of a presumption to that effect, provided that the determination is based on specific findings of fact in its support;

D. "insurance holding company" is a person that controls an insurer; "insurance holding company system" means a combination of two or more affiliated persons, at least one of which is an insurer;

E. "insurer" means a person that undertakes, under contract, to indemnify a person against loss, damage or liability arising from an unknown or contingent future event. The term does not include agencies, authorities or instrumentalities of the United States, its possessions or territories, the commonwealth of Puerto Rico, the District of Columbia, a state or any of its political subdivisions, a fraternal benefit society or a nonprofit medical and hospital service association;

F. "person" means an individual, corporation, association, partnership, joint stock company, trust, unincorporated organization or any similar entity or combination of entities;

G. "securityholder" means the owner of any security of a person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing;

H. "subsidiary" means an affiliate of a person controlled by the person either directly or indirectly through one or more intermediaries;

I. "voting security" means a certificate evidencing the ownership or indebtedness of a person, to which is attached a right to vote on the management or policymaking of that person and includes any security convertible into or evidencing a right to acquire such a voting security; and

J. "health maintenance organization" means any person that undertakes to provide or arrange for the delivery of basic health care services to enrollees on a prepaid basis, except for enrollee responsibility for co-payments or deductibles."

Section 2

Section 2. Section 59A-46-30 NMSA 1978 (being Laws 1993, Chapter 266, Section 29) is amended to read:

"59A-46-30. STATUTORY CONSTRUCTION AND RELATIONSHIP TO OTHER LAWS.--

A. The provisions of the Insurance Code other than Chapter 59A, Article 46 NMSA 1978 shall not apply to health maintenance organizations except as expressly provided in the Insurance Code and that article. To the extent reasonable and not inconsistent with the provisions of that article, the following articles and provisions of the Insurance Code shall also apply to health maintenance organizations and their promoters, sponsors, directors, officers, employees, agents, solicitors and other representatives. For the purposes of such applicability, a health maintenance organization may therein be referred to as an "insurer":

(1) Chapter 59A, Article 1 NMSA 1978;

(2) Chapter 59A, Article 2 NMSA 1978;

(3) Chapter 59A, Article 3 NMSA 1978;

(4) Chapter 59A, Article 4 NMSA 1978;

(5) Subsection C of Section 59A-5-22 NMSA 1978;

(6) Sections 59A-6-2 through 59A-6-4 and 59A-6-6 NMSA 1978;

(7) Chapter 59A, Article 8 NMSA 1978;

(8) Chapter 59A, Article 10 NMSA 1978;

(9) Section 59A-12-22 NMSA 1978;

(10) Chapter 59A, Article 16 NMSA 1978;

(11) Chapter 59A, Article 18 NMSA 1978;

(12) Chapter 59A, Article 19 NMSA 1978;

(13) Chapter 59A, Article 23B NMSA 1978;

(14) Sections 59A-34-9 through 59A-34-13, 59A-34-17, 59A-34-23, 59A-34-36 and 59A-34-37 NMSA 1978; and

(15) Chapter 59A, Article 37 NMSA 1978.

B. Solicitation of enrollees by a health maintenance organization granted a certificate of authority, or its representatives, shall not be construed as violating any provision of law relating to solicitation or advertising by health professionals, but health professionals shall be individually subject to the laws, rules, regulations and ethical provisions governing their individual professions.

C. Any health maintenance organization authorized under the provisions of the Health Maintenance Organization Law shall not be deemed to be practicing medicine and shall be exempt from the provisions of laws relating to the practice of medicine."

Section 3

Section 3. Section 59A-47-33 NMSA 1978 (being Laws 1984, Chapter 127, Section 879.32, as amended by Laws 1994, Chapter 64, Section 10 and also by Laws 1994, Chapter 75, Section 34) is amended to read:

"59A-47-33. OTHER PROVISIONS APPLICABLE.--The provisions of the Insurance Code other than Chapter 59A, Article 47 NMSA 1978 shall not apply to health care plans except as expressly provided in the Insurance Code and that article. To the extent reasonable and not inconsistent with the provisions of that article, the following articles and provisions of the Insurance Code shall also apply to health care plans, their promoters, sponsors, directors, officers, employees, agents, solicitors and other representatives; and, for the purposes of such applicability, a health care plan may therein be referred to as an "insurer":

A. Chapter 59A, Article 1 NMSA 1978;

B. Chapter 59A, Article 2 NMSA 1978;

C. Chapter 59A, Article 4 NMSA 1978;

D. Subsection C of Section 59A-5-22 NMSA 1978;

E. Sections 59A-6-2 through 59A-6-4 and 59A-6-6 NMSA 1978;

F. Section 59A-7-11 NMSA 1978;

G. Chapter 59A, Article 8 NMSA 1978;

H. Chapter 59A, Article 10 NMSA 1978;

I. Section 59A-12-22 NMSA 1978;

J. Chapter 59A, Article 16 NMSA 1978;

K. Chapter 59A, Article 18 NMSA 1978;

L. Chapter 59A, Article 19 NMSA 1978;

M. Subsections B through E of Section 59A-22-5 NMSA 1978;

N. Section 59A-22-34.1 NMSA 1978;

O. Section 59A-22-39 NMSA 1978;

P. Section 59A-22-40 NMSA 1978;

Q. Sections 59A-34-9 through 59A-34-13, 59A-34-17 and 59A-34-23 NMSA 1978;

R. Chapter 59A, Article 37 NMSA 1978, except Section 59A-37-7 NMSA 1978; and

S. Section 59A-46-15 NMSA 1978."

SENATE BILL 503

Approved April 11, 1997

CHAPTER 249

RELATING TO INSURANCE; REQUIRING COVERAGE FOR MINIMUM HOSPITAL STAYS FOR MASTECTOMIES AND LYMPH NODE DISSECTIONS FOR THE TREATMENT OF BREAST CANCER; 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 59A-22-39.1 NMSA 1978 is enacted to read:

"59A-22-39.1. MASTECTOMIES AND LYMPH NODE DISSECTION--MINIMUM HOSPITAL STAY COVERAGE REQUIRED.--

A. Each individual and group health insurance policy, health care plan and certificate of health insurance delivered or issued for delivery in this state shall provide coverage for not less than forty-eight hours of inpatient care following a mastectomy and not less than twenty-four hours of inpatient care following a lymph node dissection for the treatment of breast cancer.

B. Nothing in this section shall be construed as requiring the provision of inpatient coverage where the attending physician and patient determine that a shorter period of hospital stay is appropriate.

C. The provisions of this section shall not apply to short-term travel, accident-only or limited or specified disease policies.

D. Coverage for minimum inpatient hospital stays for mastectomies and lymph node dissections for the treatment of breast cancer may be subject to deductibles and co-insurance consistent with those imposed on other benefits under the same policy, plan or certificate."

Section 2

Section 2. Section 59A-23-4 NMSA 1978 (being Laws 1984, Chapter 127, Section 463, as amended) is amended to read:

"59A-23-4. OTHER PROVISIONS APPLICABLE.--

A. No blanket or group health insurance policy or contract shall contain any provision relative to notice or proof of loss or the time for paying benefits or the time within which suit may be brought upon the policy that in the superintendent's opinion is less favorable to the insured than would be permitted in the required or optional provisions for individual health insurance policies as set forth in Chapter 59A, Article 22 NMSA 1978.

B. The following provisions of Chapter 59A, Article 22 NMSA 1978 shall also apply as to Chapter 59A, Article 23 NMSA 1978 and blanket and group health insurance contracts:

(1) Section 59A-22-1 NMSA 1978, except Subsection C thereof; and

(2) Section 59A-22-32 NMSA 1978.

C. The following provisions of Chapter 59A, Article 22 NMSA 1978 shall also apply as to group health insurance contracts:

(1) Section 59A-22-33 NMSA 1978;

(2) Section 59A-22-34 NMSA 1978;

(3) Section 59A-22-34.1 NMSA 1978;

(4) Section 59A-22-35 NMSA 1978;

(5) Section 59A-22-36 NMSA 1978;

(6) Section 59A-22-39 NMSA 1978;

(7) Section 59A-22-39.1 NMSA 1978; and

(8) Section 59A-22-40 NMSA 1978."

Section 3

Section 3. Section 59A-23B-3 NMSA 1978 (being Laws 1991, Chapter 111, Section 3, as amended) is amended to read:

"59A-23B-3. POLICY OR PLAN--DEFINITION--CRITERIA.--

A. For purposes of the Minimum Healthcare Protection Act, "policy or plan" means a healthcare benefit policy or healthcare benefit

plan that the insurer, fraternal benefit society, health maintenance organization or nonprofit healthcare plan chooses to offer to individuals, families or groups of fewer than twenty members formed for purposes other than obtaining insurance coverage and that meets the requirements of Subsection B of this section. For purposes of the Minimum Healthcare Protection Act, "policy or plan" shall not mean a healthcare policy or healthcare benefit plan that an insurer, health maintenance organization, fraternal benefit society or nonprofit healthcare plan chooses to offer outside the authority of the Minimum Healthcare Protection Act.

B. A policy or plan shall meet the following criteria:

(1) the individual, family or group obtaining coverage under the policy or plan has been without healthcare insurance, a health services plan or employer-sponsored healthcare coverage for the six-month period immediately preceding the effective date of its coverage under a policy or plan, provided that the six-month period shall not apply to:

(a) a group that has been in existence for less than six months and has been without healthcare coverage since the formation of the group;

(b) an employee whose healthcare coverage has been terminated by an employer;

(c) a dependent who no longer qualifies as a dependent under the terms of the contract; or

(d) an individual and an individual's dependents who no longer have healthcare coverage as a result of termination or change in employment of the individual or by reason of death of a spouse or dissolution of a marriage, notwithstanding rights the individual or individual's dependents may have to continue healthcare coverage on a self-pay basis pursuant to the provisions of the federal Consolidated Omnibus Budget Reconciliation Act of 1985;

(2) the policy or plan includes the following managed care provisions to control costs:

(a) an exclusion for services that are not medically necessary or are not covered by preventive health services; and

(b) a procedure for preauthorization of elective hospital admissions by the insurer, fraternal benefit society, health maintenance organization or nonprofit healthcare plan; and

(3) subject to a maximum limit on the cost of healthcare services covered in any calendar year of not less than fifty thousand dollars ($50,000), the policy or plan provides the following minimum healthcare services to covered individuals:

(a) inpatient hospitalization coverage or home care coverage in lieu of hospitalization or a combination of both, not to exceed twenty-five days of coverage inclusive of any deductibles, co-payments or co-insurance, provided that a period of inpatient hospitalization coverage shall precede any home care coverage;

(b) prenatal care, including a minimum of one prenatal office visit per month during the first two trimesters of pregnancy, two office visits per month during the seventh and eighth months of pregnancy and one office visit per week during the ninth month and until term, provided that coverage for each office visit shall also include prenatal counseling and education and necessary and appropriate screening, including history, physical examination and the laboratory and diagnostic procedures deemed appropriate by the physician based upon recognized medical criteria for the risk group of which the patient is a member;

(c) obstetrical care, including physicians' and certified nurse midwives' services, delivery room and other medically necessary services directly associated with delivery;

(d) well-baby and well-child care, including periodic evaluation of a child's physical and emotional status, a history, a complete physical examination, a developmental assessment, anticipatory guidance, appropriate immunizations and laboratory tests in keeping with prevailing medical standards, provided that such evaluation and care shall be covered when performed at approximately the age intervals of birth, two weeks, two months, four months, six months, nine months, twelve months, fifteen months, eighteen months, two years, three years, four years, five years and six years;

(e) coverage for low-dose screening mammograms for determining the presence of breast cancer, provided that the mammogram coverage shall include one baseline mammogram for persons age thirty-five through thirty-nine years, one biennial mammogram for persons age forty through forty-nine years and one annual mammogram for persons age fifty years and over, and further

provided that the mammogram coverage shall only be subject to deductibles and co-insurance requirements consistent with those imposed on other benefits under the same policy or plan;

(f) coverage for cytologic screening, to include a Papanicolaou test and pelvic exam for asymptomatic as well as symptomatic women;

(g) a basic level of primary and preventive care, including, but not limited to, no less than seven physician, nurse practitioner, nurse midwife or physician assistant office visits per calendar year, including any ancillary diagnostic or laboratory tests related to the office visit; and

(h) coverage for not less than forty-eight hours of inpatient care following a mastectomy and not less than twenty-four hours of inpatient care following a lymph node dissection for the treatment of breast cancer, provided that nothing in this subparagraph shall be construed as requiring the provision of inpatient coverage where the attending physician and patient determine that a shorter period of hospital stay is appropriate and further provided that coverage for minimum inpatient hospital stays for mastectomies and lymph node dissections for the treatment of breast cancer may be subject to deductibles and co-insurance consistent with those imposed on other benefits under the same policy or plan.

C. A policy or plan may include the following managed care and cost control features to control costs:

(1) a panel of providers who have entered into written agreements with the insurer, fraternal benefit society, health maintenance organization or nonprofit healthcare plan to provide covered healthcare services at specified levels of reimbursement, provided that any such written agreement shall contain a provision relieving the individual, family or group covered by the policy or plan from any obligation to pay for any healthcare service performed by the provider that is determined by the insurer, fraternal benefit society, health maintenance organization or nonprofit healthcare plan not to be medically necessary;

(2) a requirement for obtaining a second opinion before elective surgery is performed;

(3) a procedure for utilization review by the insurer, fraternal benefit society, health maintenance organization or nonprofit healthcare plan; and

(4) a maximum limit on the cost of healthcare services covered in any calendar year of not less than fifty thousand dollars ($50,000).

D. Nothing contained in Subsection C of this section shall prohibit an insurer, fraternal benefit society, health maintenance organization or nonprofit healthcare plan from including in the policy or plan additional managed care and cost control provisions that the superintendent of insurance determines to have the potential for controlling costs in a manner that does not cause discriminatory treatment of individuals, families or groups covered by the policy or plan.

E. Notwithstanding any other provisions of law, a policy or plan shall not exclude coverage for losses incurred for a preexisting condition more than six months from the effective date of coverage. The policy or plan shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment recommended by or received from a physician within six months before the effective date of coverage.

F. No medical group, independent practice association or health professional employed by or contracting with an insurer, fraternal benefit society, health maintenance organization or nonprofit healthcare plan shall maintain any action against any insured person, family or group member for sums owed by an insurer, fraternal benefit society, health maintenance organization or nonprofit healthcare plan, for sums higher than those agreed to pursuant to a policy or plan."

Section 4

Section 4. A new Section 59A-46-41.1 NMSA 1978 is enacted to read:

"59A-46-41.1. MASTECTOMIES AND LYMPH NODE DISSECTION--MINIMUM HOSPITAL STAY COVERAGE REQUIRED.--

A. Each individual and group health maintenance contract delivered or issued for delivery in this state shall provide coverage for not less than forty-eight hours of inpatient care following a mastectomy and not less than twenty-four hours of inpatient care following a lymph node dissection for the treatment of breast cancer.

B. Nothing in this section shall be construed as requiring the provision of inpatient coverage where the attending physician and patient determine that a shorter period of hospital stay is appropriate.

C. Coverage for minimum inpatient hospital stays for mastectomies and lymph node dissections for the treatment of breast cancer may be subject to deductibles and co-insurance consistent with those imposed on other benefits under the same contract."

SENATE BILL 964

Approved April 11, 1997

CHAPTER 250

RELATING TO INSURANCE; REQUIRING COVERAGE FOR CHILDHOOD IMMUNIZATIONS; 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 59A-22-34.3 NMSA 1978 is enacted to read:

"59A-22-34.3. CHILDHOOD IMMUNIZATION COVERAGE REQUIRED.--

A. Each individual and group health insurance policy, health care plan and certificate of health insurance delivered or issued for delivery in this state shall provide coverage for childhood immunizations, as well as coverage for medically necessary booster doses of all immunizing agents used in child immunizations, in accordance with the current schedule of immunizations recommended by the American academy of pediatrics.

B. The provisions of this section shall not apply to short-term travel, accident-only or limited or specified disease policies.

C. Coverage for childhood immunizations and necessary booster doses may be subject to deductibles and co-insurance consistent with those imposed on other benefits under the same policy, plan or certificate."

Section 2

Section 2. Section 59A-23-4 NMSA 1978 (being Laws 1984, Chapter 127, Section 463, as amended) is amended to read:

"59A-23-4. OTHER PROVISIONS APPLICABLE.--

A. No blanket or group health insurance policy or contract shall contain any provision relative to notice or proof of loss or the time for paying benefits or the time within which suit may be brought upon the policy that in the superintendent's opinion is less favorable to the insured than would be permitted in the required or optional provisions for individual health insurance policies as set forth in Chapter 59A, Article 22 NMSA 1978.

B. The following provisions of Chapter 59A, Article 22 NMSA 1978 shall also apply as to Chapter 59A, Article 23 NMSA 1978 and blanket and group health insurance contracts:

(1) Section 59A-22-1 NMSA 1978, except Subsection C thereof; and

(2) Section 59A-22-32 NMSA 1978.

C. The following provisions of Chapter 59A, Article 22 NMSA 1978 shall also apply as to group health insurance contracts:

(1) Section 59A-22-33 NMSA 1978;

(2) Section 59A-22-34 NMSA 1978;

(3) Section 59A-22-34.1 NMSA 1978;

(4) Section 59A-22-35 NMSA 1978;

(5) Section 59A-22-36 NMSA 1978;

(6) Section 59A-22-39 NMSA 1978;

(7) Section 59A-22-34.3 NMSA 1978; and

(8) Section 59A-22-40 NMSA 1978."

Section 3

Section 3. Section 59A-23B-3 NMSA 1978 (being Laws 1991, Chapter 111, Section 3, as amended) is amended to read:

"59A-23B-3. POLICY OR PLAN--DEFINITION--CRITERIA.--

A. For purposes of the Minimum Healthcare Protection Act, "policy or plan" means a healthcare benefit policy or healthcare benefit plan that the insurer, fraternal benefit society, health maintenance organization or nonprofit healthcare plan chooses to offer to individuals, families or groups of fewer than twenty members formed for purposes other than obtaining insurance coverage and that meets the requirements of Subsection B of this section. For purposes of the Minimum Healthcare Protection Act, "policy or plan" shall not mean a healthcare policy or healthcare benefit plan that an insurer, health maintenance organization, fraternal benefit society or nonprofit healthcare plan chooses to offer outside the authority of the Minimum Healthcare Protection Act.

B. A policy or plan shall meet the following criteria:

(1) the individual, family or group obtaining coverage under the policy or plan has been without healthcare insurance, a health services plan or employer-sponsored healthcare coverage for the six-month period immediately preceding the effective date of its coverage under a policy or plan, provided that the six-month period shall not apply to:

(a) a group that has been in existence for less than six months and has been without healthcare coverage since the formation of the group;

(b) an employee whose healthcare coverage has been terminated by an employer;

(c) a dependent who no longer qualifies as a dependent under the terms of the contract; or

(d) an individual and an individual's dependents who no longer have healthcare coverage as a result of termination or change in employment of the individual or by reason of death of a spouse or dissolution of a marriage, notwithstanding rights the individual or individual's dependents may have to continue

healthcare coverage on a self-pay basis pursuant to the provisions of the federal Consolidated Omnibus Budget Reconciliation Act of 1985;

(2) the policy or plan includes the following managed care provisions to control costs:

(a) an exclusion for services that are not medically necessary or are not covered by preventive health services; and

(b) a procedure for preauthorization of elective hospital admissions by the insurer, fraternal benefit society, health maintenance organization or nonprofit healthcare plan; and

(3) subject to a maximum limit on the cost of healthcare services covered in any calendar year of not less than fifty thousand dollars ($50,000), the policy or plan provides the following minimum healthcare services to covered individuals:

(a) inpatient hospitalization coverage or home care coverage in lieu of hospitalization or a combination of both, not to exceed twenty-five days of coverage inclusive of any deductibles, co-payments or co-insurance, provided that a period of inpatient hospitalization coverage shall precede any home care coverage;

(b) prenatal care, including a minimum of one prenatal office visit per month during the first two trimesters of pregnancy, two office visits per month during the seventh and eighth months of pregnancy and one office visit per week during the ninth month and until term, provided that coverage for each office visit shall also include prenatal counseling and education and necessary and appropriate screening, including history, physical examination and the laboratory and diagnostic procedures deemed appropriate by the physician based upon recognized medical criteria for the risk group of which the patient is a member;

(c) obstetrical care, including physicians' and certified nurse midwives' services, delivery room and other medically necessary services directly associated with delivery;

(d) well-baby and well-child care, including periodic evaluation of a child's physical and emotional status, a history, a complete physical examination, a developmental assessment, anticipatory guidance, appropriate immunizations and laboratory tests in keeping with prevailing medical standards, provided that such evaluation and care shall be covered when performed at approximately

the age intervals of birth, two weeks, two months, four months, six months, nine months, twelve months, fifteen months, eighteen months, two years, three years, four years, five years and six years;

(e) coverage for low-dose screening mammograms for determining the presence of breast cancer, provided that the mammogram coverage shall include one baseline mammogram for persons age thirty-five through thirty-nine years, one biennial mammogram for persons age forty through forty-nine years and one annual mammogram for persons age fifty years and over, and further provided that the mammogram coverage shall only be subject to deductibles and co-insurance requirements consistent with those imposed on other benefits under the same policy or plan;

(f) coverage for cytologic screening, to include a Papanicolaou test and pelvic exam for asymptomatic as well as symptomatic women;

(g) a basic level of primary and preventive care, including, but not limited to, no less than seven physician, nurse practitioner, nurse midwife or physician assistant office visits per calendar year, including any ancillary diagnostic or laboratory tests related to the office visit; and

(h) coverage for childhood immunizations, in accordance with the current schedule of immunizations recommended by the American academy of pediatrics, including coverage for all medically necessary booster doses of all immunizing agents used in childhood immunizations, provided that coverage for childhood immunizations and necessary booster doses may be subject to deductibles and co-insurance consistent with those imposed on other benefits under the same policy or plan.

C. A policy or plan may include the following managed care and cost control features to control costs:

(1) a panel of providers who have entered into written agreements with the insurer, fraternal benefit society, health maintenance organization or nonprofit healthcare plan to provide covered healthcare services at specified levels of reimbursement, provided that any such written agreement shall contain a provision relieving the individual, family or group covered by the policy or plan from any obligation to pay for any healthcare service performed by the provider that is determined by the insurer, fraternal benefit society, health maintenance organization or nonprofit healthcare plan not to be medically necessary;

(2) a requirement for obtaining a second opinion before elective surgery is performed;

(3) a procedure for utilization review by the insurer, fraternal benefit society, health maintenance organization or nonprofit healthcare plan; and

(4) a maximum limit on the cost of healthcare services covered in any calendar year of not less than fifty thousand dollars ($50,000).

D. Nothing contained in Subsection C of this section shall prohibit an insurer, fraternal benefit society, health maintenance organization or nonprofit healthcare plan from including in the policy or plan additional managed care and cost control provisions that the superintendent of insurance determines to have the potential for controlling costs in a manner that does not cause discriminatory treatment of individuals, families or groups covered by the policy or plan.

E. Notwithstanding any other provisions of law, a policy or plan shall not exclude coverage for losses incurred for a preexisting condition more than six months from the effective date of coverage. The policy or plan shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment recommended by or received from a physician within six months before the effective date of coverage.

F. No medical group, independent practice association or health professional employed by or contracting with an insurer, fraternal benefit society, health maintenance organization or nonprofit healthcare plan shall maintain any action against any insured person, family or group member for sums owed by an insurer, fraternal benefit society, health maintenance organization or nonprofit healthcare plan, for sums higher than those agreed to pursuant to a policy or plan."

Section 4

Section 4. A new Section 59A-46-38.2 NMSA 1978 is enacted to read:

"59A-46-38.2. CHILDHOOD IMMUNIZATION COVERAGE REQUIRED.--

A. Each individual and group health maintenance contract delivered or issued for delivery in this state shall provide coverage for childhood immunizations, in accordance with the current schedule of immunizations recommended by the American academy of pediatrics,

including coverage for all medically necessary booster doses of all immunizing agents used in childhood immunizations.

B. Coverage for childhood immunizations and necessary booster doses may be subject to deductibles and coinsurance consistent with those imposed on other benefits under the same contract."

HOUSE BILL 979, AS AMENDED

Approved April 11, 1997

CHAPTER 251

RELATING TO CRIMINAL OFFENDERS; PROVIDING THAT CERTAIN CRIMINAL OFFENDERS NOT BE LICENSED TO OPERATE A CHILD-CARE FACILITY OR BE EMPLOYED AT A CHILD-CARE FACILITY; AMENDING A SECTION OF THE CRIMINAL OFFENDER EMPLOYMENT ACT.

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

Section 1

Section 1. Section 28-2-4 NMSA 1978 (being Laws 1974, Chapter 78, Section 4, as amended) is amended to read:

"28-2-4. POWER TO REFUSE, RENEW, SUSPEND OR REVOKE PUBLIC EMPLOYMENT OR LICENSE.--

A. Any board or other agency having jurisdiction over employment by the state or any of its political subdivisions or the practice of any trade, business or profession may refuse to grant or renew or may suspend or revoke any public employment or license or other authority to engage in the public employment, trade, business or profession for any one or any combination of the following causes:

(1) where the applicant, employee or licensee has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction directly relates to the particular employment, trade, business or profession;

(2) where the applicant, employee or licensee has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction does not directly relate to the particular

employment, trade, business or profession, if the board or other agency determines after investigation that the person so convicted has not been sufficiently rehabilitated to warrant the public trust; or

(3) where the applicant, employee or licensee has been convicted of trafficking in controlled substances, criminal sexual penetration or related sexual offenses or child abuse and the applicant, employee or licensee has applied for reinstatement or issuance of a teaching certificate, a license to operate a child-care facility or employment at a child-care facility, regardless of rehabilitation.

B. The board or other agency shall explicitly state in writing the reasons for a decision which prohibits the person from engaging in the employment, trade, business or profession if the decision is based in whole or in part on conviction of any crime described in Paragraphs (1) and (3) of Subsection A of this section. Completion of probation or parole supervision or expiration of a period of three years after final discharge or release from any term of imprisonment without any subsequent conviction shall create a presumption of sufficient rehabilitation for purposes of Paragraph (2) of Subsection A of this section."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 278

Approved April 11, 1997

CHAPTER 252

RELATING TO ELECTIONS; REQUIRING A SCHOOL BOARD CANDIDATE TO PHYSICALLY RESIDE IN THE DISTRICT FOR WHICH HE IS A CANDIDATE; AMENDING SECTIONS OF THE SCHOOL ELECTION LAW.

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

Section 1

Section 1. Section 1-22-3 NMSA 1978 (being Laws 1985, Chapter 168, Section 5) is amended to read:

"1-22-3. SCHOOL DISTRICT ELECTIONS--QUALIFICATIONS OF CANDIDATES.--

A. A school district election shall be held in each school district to elect qualified persons to membership on a local school board. No person shall become a candidate for membership on a board unless his record of voter registration shows that he is a qualified elector of the state, physically resides in the school district in which he is a candidate and physically resided in the district on the date of the school board's proclamation calling a regular school district election.

B. A regular school district election shall be held in each school district on the first Tuesday in February of each odd-numbered year.

C. A school district election held at any time other than the date for the regular school district election shall be a special school district election.

D. Except as otherwise provided in the School Election Law, school district elections shall be called, conducted and canvassed as provided in the Election Code."

Section 2

Section 2. Section 1-22-8 NMSA 1978 (being Laws 1985, Chapter 168, Section 10, as amended by Laws 1993, Chapter 314, Section 63 and also by Laws 1993, Chapter 316, Section 61) is amended to read:

"1-22-8. DECLARATION OF CANDIDACY--SWORN STATEMENT OF INTENT--FORM.--In making a declaration of candidacy, the candidate shall submit a sworn statement of intent in substantially the following form:

"DECLARATION OF CANDIDACY--STATEMENT OF INTENT

I, _____, (candidate's name on certificate of registration) being first duly sworn, say that I am a voter of Precinct No. _____ of the county of _____, State of New Mexico. I reside at _____ and was a resident at that place on the date of the school board's proclamation calling the election for which I am a candidate;

I am a qualified elector of the State of New Mexico residing within _____ school district;

I desire to become a candidate for the office of _____, Position No. _____ at the school district election to be held on the date set by law; I will be eligible and legally qualified to hold this office at the beginning of its term; and

I make the foregoing affidavit under oath, knowing that any false statement herein constitutes a felony punishable under the criminal laws of New Mexico.

_____

(Declarant)

_____

(Mailing Address)

_____

(Residence Address)

Subscribed and sworn to before me this _____ day of _____, 19_____._____.

(Notary Public)

My commission expires:

_____"."

HOUSE BILL 290

Approved April 11, 1997

CHAPTER 253

RELATING TO HEALTH; PROVIDING FOR PRESCRIPTIVE, DISTRIBUTING AND ADMINISTERING AUTHORITY FOR DRUGS AND CONTROLLED SUBSTANCES TO CERTIFIED NURSE-MIDWIVES.

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

Section 1

Section 1. A new section of the Public Health Act is enacted to read:

"CERTIFIED NURSE-MIDWIVES--PRESCRIPTIVE, DISTRIBUTING AND ADMINISTERING AUTHORITY.--

A. Certified nurse-midwives who have fulfilled requirements for prescriptive authority may prescribe in accordance with rules, regulations, guidelines and formularies for individual certified nurse-midwives promulgated by the department of health.

B. As used in this section, "prescriptive authority" means the ability of the certified nurse-midwife to practice independently, serve as a primary care provider and as necessary collaborate with licensed medical doctors or osteopathic physicians. Certified nurse-midwives who have fulfilled requirements for prescribing drugs may prescribe, distribute and administer to their patients dangerous drugs, including controlled substances included in Schedules II through V of the Controlled Substances Act, that have been prepared, packaged or fabricated by a licensed pharmacist or doses of drugs that have been prepackaged by a pharmaceutical manufacturer in accordance with the Pharmacy Act and New Mexico Drug, Device and Cosmetic Act."

Section 2

Section 2. Section 26-1-2 NMSA 1978 (being Laws 1967, Chapter 23, Section 2, as amended) is amended to read:

"26-1-2. DEFINITIONS.--As used in the New Mexico Drug, Device and Cosmetic Act:

A. "board" means the board of pharmacy or its duly authorized agent;

B. "person" includes individual, partnership, corporation, association, institution or establishment;

C. "biological product" means any virus, therapeutic serum, toxin, antitoxin or analogous product applicable to the prevention, treatment or cure of diseases or injuries of man and domestic animals, and, as used within the meaning of this definition:

(1) a "virus" is interpreted to be a product containing the minute living cause of an infectious disease and includes but is not limited to filterable viruses, bacteria, rickettsia, fungi and protozoa;

(2) a "therapeutic serum" is a product obtained from blood by removing the clot or clot components and the blood cells;

(3) a "toxin" is a product containing a soluble substance poisonous to laboratory animals or man in doses of one milliliter or less of the product and having the property, following the injection of nonfatal doses into an animal, or causing to be produced therein another soluble substance which specifically neutralizes the poisonous substance and which is demonstrable in the serum of the animal thus immunized; and

(4) an "antitoxin" is a product containing the soluble substance in serum or other body fluid of an immunized animal which specifically neutralizes the toxin against which the animal is immune;

D. "controlled substance" means any drug, substance or immediate precursor enumerated in Schedules I through V of the Controlled Substances Act;

E. "drug" means:

(1) articles recognized in an official compendium;

(2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals and includes the domestic animal biological products regulated under the federal Virus-Serum-Toxin Act, 37 Stat 832-833, 21 U.S.C. 151-158 and the biological products applicable to man regulated under Federal 58 Stat 690, as amended, 42 U.S.C. 216, Section 351, and 58 Stat 702, as amended, 42 U.S.C. 262;

(3) articles other than food which affect the structure or any function of the body of man or other animals; and

(4) articles intended for use as a component of Paragraph (1), (2) or (3) of this subsection, but does not include devices or their component parts or accessories;

F. "dangerous drug" means a drug, other than a controlled substance enumerated in Schedule I of the Controlled Substances Act, which because of any potentiality for harmful effect or the method 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 hence for which adequate directions for use cannot be prepared. "Adequate directions for use" means directions under which the layman can use a drug or device safely and for the purposes for

which it is intended. A drug shall be dispensed only upon the prescription of a practitioner licensed by law to administer or prescribe such drug if it:

(1) is a habit-forming drug and contains any quantity of a narcotic or hypnotic substance, or any chemical derivative of such substance, which has been found under the federal act and the board to be habit-forming;

(2) because of its toxicity or other potential for harmful effect or the method of its use or the collateral measures necessary to its use is not safe for use except under the supervision of a practitioner licensed by law to administer or prescribe such drug;

(3) is limited by an approved application by Section 505 of the federal act to the use under the professional supervision of a practitioner licensed by law to administer or prescribe such drug;

(4) bears the legend: "Caution: federal law prohibits dispensing without prescription."; or

(5) bears the legend: "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian.";

G. "counterfeit drug" means a drug other than a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint or device, or any likeness, of a drug manufacturer, processor, packer or distributor other than the person who in fact manufactured, processed, packed or distributed such drug and which falsely purports or is represented to be the product of or to have been packed or distributed by such other drug manufacturer, processor, packer or distributor;

H. "device", except when used in Subsection P of this section and in Subsection G of Section 26-1-3, Subsection L and Paragraph (4) of Subsection A of Section 26-1-11 and Subsection C of Section 26-1-24 NMSA 1978, means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component, part or accessory, which is:

(1) recognized in an official compendium;

(2) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment or prevention of disease, in man or other animals; or

(3) intended to affect the structure or any function of the body of man or other animals and which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for achievement of any of its principal intended purposes;

I. "prescription" means 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 bearing 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. No person other than a practitioner shall prescribe or write a prescription;

J. "practitioner" means a physician, dentist, veterinarian, certified nurse-midwife or other person licensed or certified, to prescribe and administer drugs that are subject to the New Mexico Drug, Device and Cosmetic Act;

K. "cosmetic" means:

(1) articles intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance; and

(2) articles intended for use as a component of any articles enumerated in Paragraph (1) of this subsection, except that the term shall not include soap;

L. "official compendium" means the official United States pharmacopoeia national formulary or the official homeopathic pharmacopoeia of the United States or any supplement to either of them;

M. "label" means a display of written, printed or graphic matter upon the immediate container of any article. A requirement made by or under the authority of the New Mexico Drug, Device and Cosmetic Act that any word, statement or other information appear on the label shall not be considered to be complied with unless the word, statement or other information also appears on the outside container or wrapper, if

any, of the retail package of the article or is easily legible through the outside container or wrapper;

N. "immediate container" does not include package liners;

O. "labeling" means all labels and other written, printed or graphic matter:

(1) upon any article or any of its containers or wrappers; or

(2) accompanying any article;

P. "misbranded" means a label to an article which is misleading. In determining whether the label is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device or any combination of the foregoing, but also the extent to which the label fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the label relates under the conditions of use prescribed in the label or under such conditions of use as are customary or usual;

Q. "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of drugs, devices or cosmetics;

R. "antiseptic", when used in the labeling or advertisement of an antiseptic, shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be or represented as an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder or such other use as involves prolonged contact with the body;

S. "new drug" means:

(1) any drug, the composition of which is such that the drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and efficacy of drugs, as safe and effective for use under the conditions prescribed, recommended or suggested in the labeling thereof; or

(2) any drug, the composition of which is such that the drug, as a result of investigation to determine its safety and efficacy for use under such conditions, has become so recognized, but which

has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions;

T. "contaminated with filth" applies to any drug, device or cosmetic not securely protected from dirt, dust and, as far as may be necessary by all reasonable means, from all foreign or injurious contaminations, or any drug, device or cosmetic found to contain any dirt, dust, foreign or injurious contamination or infestation;

U. "selling of drugs, devices or cosmetics" shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession and holding of any such article for sale and the sale and the supplying or applying of any such article in the conduct of any drug or cosmetic establishment;

V. "color additive" means a material which:

(1) is a dye, pigment or other substance made by a process of synthesis or similar artifice or extracted, isolated or otherwise derived, with or without intermediate or final change of identity, from a vegetable, mineral, animal or other source; or

(2) when added or applied to a drug or cosmetic or to the human body or any part thereof, is capable, alone or through reaction with other substances, of imparting color thereto; except that such term does not include any material which has been or hereafter is exempted under the federal act;

W. "federal act" means the Federal Food, Drug and Cosmetic Act;

X. "restricted device" means a device for which the sale, distribution or use is lawful only upon the written or oral authorization of a practitioner licensed by law to administer, prescribe or use the device and for which the federal food and drug administration requires special training or skills of the practitioner to use or prescribe. This definition does not include custom devices defined in the federal act and exempt from performance standards or premarket approval requirements under Section 520 (b) of the federal act; and

Y. "prescription device" means a device which, because of its potential for harm, the method of its use or the collateral measures necessary to its use, is not safe except under the supervision of a practitioner licensed in this state to direct the use of such device and for which "adequate directions for use" cannot be prepared, but which bears the label: "Caution: federal law restricts this device to sale by or

on the order of a ", the blank to be filled with the word "physician", "dentist", "veterinarian", "certified nurse-midwife" or with the descriptive designation of any other practitioner licensed in this state to use or order the use of the device."

Section 3

Section 3. Section 30-31-2 NMSA 1978 (being Laws 1972, Chapter 84, Section 2, as amended) is amended to read:

"30-31-2. DEFINITIONS.--As used in the Controlled Substances Act:

A. "administer" means the direct application of a controlled substance by any means to the body of a patient or research subject by a practitioner or his agent;

B. "agent" includes an authorized person who acts on behalf of a manufacturer, distributor or dispenser. It does not include a common or contract carrier, public warehouseman or employee of the carrier or warehouseman;

C. "board" means the board of pharmacy;

D. "bureau" means the bureau of narcotics and dangerous drugs, United States department of justice, or its successor agency;

E. "controlled substance" means a drug or substance listed in Schedules I through V of the Controlled Substances Act or regulations adopted thereto;

F. "counterfeit substance" means a controlled substance that bears the unauthorized trademark, trade name, imprint, number, device or other identifying mark or likeness of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the controlled substance;

G. "deliver" means the actual, constructive or attempted transfer from one person to another of a controlled substance or controlled substance analog, whether or not there is an agency relationship;

H. "dispense" means to deliver a controlled substance to an ultimate user or research subject pursuant to the lawful order of a practitioner, including the administering, prescribing, packaging, labeling

or compounding necessary to prepare the controlled substance for that delivery;

I. "dispenser" means a practitioner who dispenses and includes hospitals, pharmacies and clinics where controlled substances are dispensed;

J. "distribute" means to deliver other than by administering or dispensing a controlled substance or controlled substance analog;

K. "drug" or "substance" means substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any respective supplement to those publications. It does not include devices or their components, parts or accessories;

L. "hashish" means the resin extracted from any part of marijuana, whether growing or not, and every compound, manufacture, salt, derivative, mixture or preparation of such resins;

M. "manufacture" means the production, preparation, compounding, conversion or processing of a controlled substance or controlled substance analog by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance:

(1) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(2) by a practitioner, or by his agent under his supervision, for the purpose of or as an incident to research, teaching or chemical analysis and not for sale;

N. "marijuana" means all parts of the plant Cannabis, including any and all varieties, species and subspecies of the genus Cannabis, whether growing or not, the seeds thereof and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds. It does not include the mature stalks of the plant, hashish, tetrahydrocannabinols extracted or isolated from marijuana, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or

preparation of the mature stalks, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination;

O. "narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

(1) opium and opiate and any salt, compound, derivative or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative or preparation that is a chemical equivalent of any of the substances referred to in Paragraph (1) of this subsection, except the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw, including all parts of the plant of the species Papaver somniferum L. except its seeds; or

(4) coca leaves and any salt, compound, derivative or preparation of coca leaves, any salt, compound, isomer, derivative or preparation that is a chemical equivalent of any of these substances except decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine;

P. "opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. "Opiate" does not include, unless specifically designated as controlled under Section 30-31-5 NMSA 1978, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). "Opiate" does include its racemic and levorotatory forms;

Q. "person" includes a partnership, corporation, association, institution, political subdivision, government agency or other legal entity;

R. "practitioner" means a physician, dentist, certified nurse-midwife, veterinarian or other person licensed or certified to prescribe and administer drugs that are subject to the Controlled Substances Act;

S. "prescription" means an order given individually for the person for whom is prescribed a controlled substance, either directly from the prescriber to the pharmacist or indirectly by means of a written

order signed by the prescriber, in accordance with the Controlled Substances Act or regulations adopted thereto;

T. "scientific investigator" means a person registered to conduct research with controlled substances in the course of his professional practice or research and includes analytical laboratories;

U. "ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal under the care, custody and control of the person or by a member of his household;

V. "drug paraphernalia" means all equipment, products and materials of any kind that are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance or controlled substance analog in violation of the Controlled Substances Act. It includes:

(1) kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting any species of plant that is a controlled substance or controlled substance analog or from which a controlled substance can be derived;

(2) kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances or controlled substance analogs;

(3) isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant that is a controlled substance;

(4) testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances or controlled substance analogs;

(5) scales or balances used, intended for use or designed for use in weighing or measuring controlled substances or controlled substance analogs;

(6) diluents and adulterants, such as quinine hydrochloride, mannitol, mannite dextrose and lactose, used, intended for use or designed for use in cutting controlled substances or controlled substance analogs;

(7) separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from or in otherwise cleaning and refining marijuana;

(8) blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances or controlled substance analogs;

(9) capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances or controlled substance analogs;

(10) containers and other objects used, intended for use or designed for use in storing or concealing controlled substances or controlled substance analogs;

(11) hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances or controlled substance analogs into the human body;

(12) objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

(a) metal, wooden, acrylic, glass, stone, plastic or ceramic pipes, with or without screens, permanent screens, hashish heads or punctured metal bowls;

(b) water pipes;

(c) carburetion tubes and devices;

(d) smoking and carburetion masks;

(e) roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small to hold in the hand;

(f) miniature cocaine spoons and cocaine vials;

(g) chamber pipes;

(h) carburetor pipes;

(i) electric pipes;

(j) air-driven pipes;

(k) chilams;

(l) bongs; or

(m) ice pipes or chillers; and

(13) in determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(a) statements by the owner or by anyone in control of the object concerning its use;

(b) the proximity of the object, in time and space, to a direct violation of the Controlled Substances Act or any other law relating to controlled substances or controlled substance analogs;

(c) the proximity of the object to controlled substances or controlled substance analogs;

(d) the existence of any residue of a controlled substance or controlled substance analog on the object;

(e) instructions, written or oral, provided with the object concerning its use;

(f) descriptive materials accompanying the object that explain or depict its use;

(g) the manner in which the object is displayed for sale; and

(h) expert testimony concerning its use;

W. "controlled substance analog" means a substance other than a controlled substance that has a chemical structure substantially similar to that of a controlled substance in Schedule I, II, III, IV or V or that was specifically designed to produce effects substantially similar to that of controlled substances in Schedule I, II, III, IV or V. Examples of chemical classes in which controlled substance analogs are found include the following:

(1) phenethylamines;

(2) N-substituted piperidines;

(3) morphinans;

(4) ecgonines;

(5) quinazolinones;

(6) substituted indoles; and

(7) arylcycloalkylamines.

Specifically excluded from the definition of "controlled substance analog" are those substances that are generally recognized as safe and effective within the meaning of the Federal Food, Drug and Cosmetic Act or have been manufactured, distributed or possessed in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of Section 505 of the Federal Food, Drug and Cosmetic Act;

X. "human consumption" includes application, injection, inhalation, ingestion or any other manner of introduction whatsoever; and

Y. "drug-free school zone" means any public school or property that is used for public school purposes and the area within one thousand feet of the school property line, but it does not mean any post-secondary school."

HOUSE BILL 320

Approved April 11, 1997

CHAPTER 254

RELATING TO INSURANCE; AMENDING THE MEDICAL CARE SAVINGS ACCOUNT ACT TO COMPLY WITH FEDERAL LAW REQUIREMENTS; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 59A-23D-1 NMSA 1978 (being Laws 1995, Chapter 93, Section 1) is amended to read:

"59A-23D-1. SHORT TITLE.--Chapter 59A, Article 23D NMSA 1978 may be cited as the "Medical Care Savings Account Act"."

Section 2

Section 2. Section 59A-23D-2 NMSA 1978 (being Laws 1995, Chapter 93, Section 2) is amended to read:

"59A-23D-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 Insurance Code; or

(4) a person approved by the federal health and human services secretary;

B. "deductible" means the total covered medical expense an employee or his dependents must pay prior to any payment by a 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 individual" means an individual who with respect to any month:

(1) is covered under a qualified higher deductible health plan as of the first day of that month;

(2) is not, while covered under a qualified higher deductible health plan, covered under any health plan that:

(a) is not a qualified higher deductible health plan; and

(b) provides coverage for any benefit that is covered under the qualified higher deductible health plan; and

(3) is covered by a qualified higher deductible health plan that is established and maintained by the employer of the individual or of the spouse of the individual;

F. "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 to the extent that those amounts are not compensated for by insurance or otherwise;

G. "employee" includes a self-employed individual;

H. "employer" includes a self-employed individual;

I. "medical care savings account" or "savings account" means an account established by an employer in the United States exclusively for the purpose of paying the eligible medical expenses of the employee or dependent, but only if the written governing instrument creating the trust meets the following requirements:

(1) except in the case of a rollover contribution, no contribution will be accepted:

(a) unless it is in cash; or

(b) to the extent the contribution, when added to previous contributions to the trust for the calendar year, exceeds seventy-five percent of the highest annual limit deductible permitted pursuant to the Medical Care Savings Account Act;

(2) no part of the trust assets will be invested in life insurance contracts;

(3) the assets of the trust will not be commingled with other property except in a common trust fund or common investment fund; and

(4) the interest of an individual in the balance in his account is nonforfeitable;

J. "program" means the medical care savings account program established by an employer for his employees; and

K. "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, that is purchased by an employer for the benefit of an employee and that has the following deductible provisions:

(1) self only coverage with an annual deductible of not less than one thousand five hundred dollars ($1,500) or more than two thousand two hundred fifty dollars ($2,250) and a maximum annual out-of-pocket expense requirement of three thousand dollars ($3,000), not including premiums;

(2) family coverage with an annual deductible of not less than three thousand dollars ($3,000) or more than four thousand five hundred dollars ($4,500) and a maximum annual out-of-pocket expense requirement of five thousand five hundred dollars ($5,500), not including premiums; and

(3) preventive care coverage may be provided within the policies without the preventive care being subjected to the qualified higher deductibles."

Section 3

Section 3. Section 59A-23D-3 NMSA 1978 (being Laws 1995, Chapter 93, Section 3) is amended to read:

"59A-23D-3. ACCOUNT ADMINISTRATOR--REGISTRATION WITH DEPARTMENT--DEPARTMENT POWERS AND DUTIES.--

A. An account administrator shall register annually with the department and pay an annual 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, beginning January 1, 1998, shall adjust annually the deductible for qualified higher deductible health plans to reflect the adjustment allowed by the Internal Revenue Code of 1986 for medical savings accounts."

Section 4

Section 4. Section 59A-23D-5 NMSA 1978 (being Laws 1995, Chapter 93, Section 5) is amended to read:

"59A-23D-5. ACCOUNT ADMINISTRATOR--EMPLOYER AND EMPLOYEE RESPONSIBILITIES.--

A. An employer, in conjunction with an 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 59A-23D-6 NMSA 1978, money in a savings account shall be used solely for the purpose of paying the eligible medical expenses of an 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 5

Section 5. Section 59A-23D-6 NMSA 1978 (being Laws 1995, Chapter 93, Section 6) is amended to read:

"59A-23D-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 the employee attains the age specified in Section 1811 of the Social Security Act. An employee may also withdraw money without penalty for payment of coverage for:

(1) a health plan during any period of continuation coverage required under any federal law;

(2) a qualified long-term care insurance contract as defined by Section 7702B(6) of the Internal Revenue Code of 1986; or

(3) a health plan during a period in which the individual is receiving unemployment compensation under any federal or state law.

B. Except as provided in Subsection A of this section, if an employee withdraws money from the employee's medical care savings account that is not used exclusively to pay eligible medical expenses of the employee or a dependent, it shall be included in the gross income of the employee for taxation purposes.

C. Except as provided in Subsection A of this section, if an employee withdraws money from the employee's medical care savings account for a purpose other than a rollover to a new account administrator:

(1) the amount of the withdrawal shall be considered gross income to the employee and subject to taxation; and

(2) the administrator shall also consider as a withdrawal on behalf of the employee a penalty equal to fifteen percent of the amount of the withdrawal and shall consider this as gross income to the employee for taxation purposes.

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 rollover 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 subject to the provisions of Subsection C of this section, if the withdrawal is not for the purpose of a rollover when within sixty days of the receipt of the funds they are placed with a new account administrator.

E. No more than sixty days after the date of notification by the employee 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 .

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 6

Section 6. Section 59A-23D-7 NMSA 1978 (being Laws 1995, Chapter 93, Section 7) is amended to read:

"59A-23D-7. REPORT.--

A. The superintendent 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.

B. The superintendent shall adopt and promulgate regulations for enforcing and administering the provisions of the Medical Care Savings Account Act."

Section 7

Section 7. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 820

Approved April 11, 1997

CHAPTER 255

RELATING TO HEALTH INSURANCE; REQUIRING COVERAGE FOR INDIVIDUALS WITH DIABETES; 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 New Mexico Insurance Code, Section 59A-22-41 NMSA 1978, is enacted to read:

"59A-22-41. COVERAGE FOR INDIVIDUALS WITH DIABETES.--

A. Each individual and group health insurance policy, health care plan, certificate of health insurance and managed health care plan delivered or issued for delivery in this state shall provide coverage for individuals with insulin-using diabetes, with non-insulin-using diabetes and with elevated blood glucose levels induced by pregnancy. This coverage shall be a basic health care benefit and shall entitle each individual to the medically accepted standard of medical care for diabetes and benefits for diabetes treatment as well as diabetes supplies, and this coverage shall not be reduced or eliminated.

B. Coverage for individuals with diabetes may be subject to deductibles and coinsurance consistent with those imposed on other benefits under the same policy, plan or certificate, as long as the annual deductibles or coinsurance for benefits are no greater than the annual deductibles or coinsurance established for similar benefits within a given policy.

C. When prescribed or diagnosed by a health care practitioner with prescribing authority, all individuals with diabetes as described in Subsection A of this section enrolled in health policies

described in that subsection shall be entitled to the following equipment, supplies and appliances to treat diabetes:

(1) blood glucose monitors, including those for the legally blind;

(2) test strips for blood glucose monitors;

(3) visual reading urine and ketone strips;

(4) lancets and lancet devices;

(5) insulin;

(6) injection aids, including those adaptable to meet the needs of the legally blind;

(7) syringes;

(8) prescriptive oral agents for controlling blood sugar levels;

(9) medically necessary podiatric appliances for prevention of feet complications associated with diabetes, including therapeutic molded or depth-inlay shoes, functional orthotics, custom molded inserts, replacement inserts, preventive devices and shoe modifications for prevention and treatment; and

(10) glucagon emergency kits.

D. When prescribed or diagnosed by a health care practitioner with prescribing authority, all individuals with diabetes as described in Subsection A of this section enrolled in health policies described in that subsection shall be entitled to the following basic health care benefits:

(1) diabetes self-management training that shall be provided by a certified, registered or licensed health care professional with recent education in diabetes management, which shall be limited to:

(a) medically necessary visits upon the diagnosis of diabetes;

(b) visits following a physician diagnosis that represents a significant change in the patient's symptoms or condition that warrants changes in the patient's self-management; and

(c) visits when re-education or refresher training is prescribed by a health care practitioner with prescribing authority; and

(2) medical nutrition therapy related to diabetes management.

E. When new or improved equipment, appliances, prescription drugs for the treatment of diabetes, insulin or supplies for the treatment of diabetes are approved by the food and drug administration, all individual or group health insurance policies as described in Subsection A of this section shall:

(1) maintain an adequate formulary to provide these resources to individuals with diabetes; and

(2) guarantee reimbursement or coverage for the equipment, appliances, prescription drug, insulin or supplies described in this subsection within the limits of the health care plan, policy or certificate.

F. The provisions of Subsections A through E of this section shall be enforced by the superintendent.

G. The provisions of this section shall not apply to short-term travel, accident-only or limited or specified disease policies.

H. For purposes of this section:

(1) "basic health care benefits":

(a) means benefits for medically necessary services consisting of preventive care, emergency care, inpatient and outpatient hospital and physician care, diagnostic laboratory and diagnostic and therapeutic radiological services; and

(b) does not include mental health services or services for alcohol or drug abuse, dental or vision services or long-term rehabilitation treatment; and

(2) "managed health care plan" means a health benefit plan offered by a health care insurer that provides for the

delivery of comprehensive basic health care services and medically necessary services to individuals enrolled in the plan through its own employed health care providers or by contracting with selected or participating health care providers. A managed health care plan includes only those plans that provide comprehensive basic health care services to enrollees on a prepaid, capitated basis, including the following:

(a) health maintenance organizations;

(b) preferred provider organizations;

(c) individual practice associations;

(d) competitive medical plans;

(e) exclusive provider organizations;

(f) integrated delivery systems;

(g) independent physician-provider organizations;

(h) physician hospital-provider organizations; and

(i) managed care services organizations."

Section 2

Section 2. Section 59A-23-4 NMSA 1978 (being Laws 1984, Chapter 127, Section 463, as amended) is amended to read:

"59A-23-4. OTHER PROVISIONS APPLICABLE.--

A. No blanket or group health insurance policy or contract shall contain any provision relative to notice or proof of loss or the time for paying benefits or the time within which suit may be brought upon the policy that in the superintendent's opinion is less favorable to the insured than would be permitted in the required or optional provisions for individual health insurance policies as set forth in Chapter 59A, Article 22 NMSA 1978.

B. The following provisions of Chapter 59A, Article 22 NMSA 1978 shall also apply as to Chapter 59A, Article 23 NMSA 1978 and blanket

and group health insurance contracts:

(1) Section 59A-22-1 NMSA 1978, except Subsection C of that section; and

(2) Section 59A-22-32 NMSA 1978.

C. The following provisions of Chapter 59A, Article 22 NMSA 1978 shall also apply as to group health insurance contracts:

(1) Section 59A-22-33 NMSA 1978;

(2) Section 59A-22-34 NMSA 1978;

(3) Section 59A-22-34.1 NMSA 1978;

(4) Section 59A-22-35 NMSA 1978;

(5) Section 59A-22-36 NMSA 1978;

(6) Section 59A-22-39 NMSA 1978;

(7) Section 59A-22-40 NMSA 1978; and

(8) Section 59A-22-41 NMSA 1978."

Section 3

Section 3. A new section of the Health Maintenance Organization Law, Section 59A-46-43 NMSA 1978, is enacted to read:

"59A-46-43. COVERAGE FOR INDIVIDUALS WITH DIABETES.--

A. Each individual and group health maintenance organization contract delivered or issued for delivery in this state shall provide coverage for individuals with insulin-using diabetes, with non-insulin-using diabetes and with elevated blood glucose levels induced by pregnancy. This coverage shall be a basic health care service and shall entitle each individual to the medically accepted standard of medical care for diabetes and benefits for diabetes treatment as well as diabetes supplies, and this coverage shall not be reduced or eliminated.

B. Coverage for individuals with diabetes may be subject to deductibles and coinsurance consistent with those imposed on other benefits under the same contract, as long as the annual deductibles or coinsurance for benefits are no greater than the annual deductibles or coinsurance established for similar benefits within a given contract.

C. When prescribed or diagnosed by a health care practitioner with prescribing authority, all individuals with diabetes as described in Subsection A of this section enrolled under an individual or group health maintenance organization contract shall be entitled to the following equipment, supplies and appliances to treat diabetes:

(1) blood glucose monitors, including those for the legally blind;

(2) test strips for blood glucose monitors;

(3) visual reading urine and ketone strips;

(4) lancets and lancet devices;

(5) insulin;

(6) injection aids, including those adaptable to meet the needs of the legally blind;

(7) syringes;

(8) prescriptive oral agents for controlling blood sugar levels;

(9) medically necessary podiatric appliances for prevention of feet complications associated with diabetes, including therapeutic molded or depth-inlay shoes, functional orthotics, custom molded inserts, replacement inserts, preventive devices and shoe modifications for prevention and treatment; and

(10) glucagon emergency kits.

D. When prescribed or diagnosed by a health care practitioner with prescribing authority, all individuals with diabetes as described in Subsection A of this section enrolled under an individual or group health maintenance contract shall be entitled to the following basic health care services:

(1) diabetes self-management training that shall be provided by a certified, registered or licensed health care professional with recent education in diabetes management, which shall be limited to:

(a) medically necessary visits upon the diagnosis of diabetes;

(b) visits following a physician diagnosis that represents a significant change in the patient's symptoms or condition that warrants changes in the patient's self-management; and

(c) visits when re-education or refresher training is prescribed by a health care practitioner with prescribing authority; and

(2) medical nutrition therapy related to diabetes management.

E. When new or improved equipment, appliances, prescription drugs for the treatment of diabetes, insulin or supplies for the treatment of diabetes are approved by the food and drug administration, each individual or group health maintenance organization contract shall:

(1) maintain an adequate formulary to provide these resources to individuals with diabetes; and

(2) guarantee reimbursement or coverage for the equipment, appliances, prescription drug, insulin or supplies described in this subsection within the limits of the health care plan, policy or certificate.

F. The provisions of Subsections A through E of this section shall be enforced by the superintendent.

G. The provisions of this section shall not apply to short-term travel, accident-only or limited or specified disease policies."

Section 4

Section 4. Section 59A-47-33 NMSA 1978 (being Laws 1984, Chapter 127, Section 879.32, as amended by Laws 1994, Chapter 64, Section 10 and also by Laws 1994, Chapter 75, Section 34) is amended to read:

"59A-47-33. OTHER PROVISIONS APPLICABLE.--The provisions of the Insurance Code other than Chapter 59A, Article 47 NMSA 1978 shall not apply to health care plans except as expressly provided in the Insurance Code and that article. To the extent reasonable and not inconsistent with the provisions of that article, the following articles and provisions of the Insurance Code shall also apply to health care plans, their promoters, sponsors, directors, officers, employees, agents, solicitors and other representatives; and, for the purposes of such applicability, a health care plan may therein be referred to as an "insurer":

A. Chapter 59A, Article 1 NMSA 1978;

B. Chapter 59A, Article 2 NMSA 1978;

C. Chapter 59A, Article 4 NMSA 1978;

D. Subsection C of Section 59A-5-22 NMSA 1978;

E. Sections 59A-6-2 through 59A-6-4 and 59A-6-6 NMSA 1978;

F. Section 59A-7-11 NMSA 1978;

G. Chapter 59A, Article 8 NMSA 1978;

H. Chapter 59A, Article 10 NMSA 1978;

I. Section 59A-12-22 NMSA 1978;

J. Chapter 59A, Article 16 NMSA 1978;

K. Chapter 59A, Article 18 NMSA 1978;

L. Chapter 59A, Article 19 NMSA 1978;

M. Subsections B through E of Section 59A-22-5 NMSA 1978;

N. Section 59A-22-34.1 NMSA 1978;

O. Section 59A-22-39 NMSA 1978;

P. Section 59A-22-40 NMSA 1978;

Q. Section 59A-22-41 NMSA 1978;

R. Sections 59A-34-9 through 59A-34-13 and 59A-34-23 NMSA 1978;

S. Chapter 59A, Article 37 NMSA 1978, except Section 59A-37-7 NMSA 1978; and

T. Section 59A-46-15 NMSA 1978."

Section 5

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 1998.

SENATE BILL 682, AS AMENDED
Approved April 11, 1997

CHAPTER 256

RELATING TO HEALTH; CREATING THE HARM REDUCTION ACT TO REDUCE THE SPREAD OF BLOOD-BORNE DISEASES; 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. SHORT TITLE.--Sections 1 through 6 of this act may be cited as the "Harm Reduction Act".

Section 2

Section 2. PURPOSE.--The purpose of the Harm Reduction Act is to:

A. prevent the transmission of the human immunodeficiency virus, hepatitis B and C viruses and other blood-borne diseases; and

B. encourage intravenous drug users to seek substance abuse treatment and ensure that participants receive individual

counseling and education to decrease the risk of transmission of blood-borne diseases.

Section 3

Section 3. DEFINITIONS.--As used in the Harm Reduction Act:

A. "department" means the department of health;

B. "participant" or "client" means an intravenous drug user who exchanges a used hypodermic syringe, needle or other object used to inject controlled substances or controlled substance analogs into the human body for a sterile hypodermic syringe and needle in compliance with the procedures of the program; and

C. "program" means a harm reduction program for the purpose of sterile hypodermic syringe and needle exchange.

Section 4

Section 4. PROGRAM CREATED--DEPARTMENT RESPONSIBILITIES.--

A. The department shall:

(1) establish and administer a harm reduction program for the purpose of sterile hypodermic syringe and needle exchange;

(2) compile data to assist in planning and evaluating efforts to combat the spread of blood-borne diseases; and

(3) make an annual report, including legislative recommendations, to the legislative health and human services committee by October 1 each year.

B. Within thirty days of the effective date of the Harm Reduction Act, the department shall appoint an advisory committee, to include representation from:

(1) the office of the attorney general;

(2) the New Mexico state police division of the department of public safety;

(3) the human immunodeficiency virus sexually transmitted disease bureau of the department;

(4) the director of the epidemiology division of the department or his designee;

(5) a medical officer of the public health division of the department; and

(6) other persons or representatives as chosen by the secretary of health to ensure a thorough and unbiased evaluation of the program established under the Harm Reduction Act.

C. The advisory committee shall:

(1) develop policies and procedures for evaluation of the harm reduction program;

(2) develop criteria for data collection and program evaluation; and

(3) meet as necessary to analyze data and monitor and produce a report on the harm reduction program.

D. The department may contract with private providers to operate the program.

Section 5

Section 5. PROGRAM.--The program shall provide:

A. sterile hypodermic syringes and needles in exchange for used hypodermic syringes, needles or other objects used to inject controlled substances or controlled substance analogs into the human body;

B. education to participants on the transmission of the human immunodeficiency virus, hepatitis B and C and prevention measures; and

C. referral to substance abuse treatment services for participants.

Section 6

Section 6. IMMUNITY FROM CRIMINAL LIABILITY.--Exchange or possession of hypodermic syringes and needles in compliance with the procedures of the program shall not constitute a violation of the Controlled Substances Act for a participant in the

program, an employee of the department administering the program or a private provider whom the department contracts with to operate the program.

Section 7

Section 7. Section 30-31-25.1 NMSA 1978 (being Laws 1981, Chapter 31, Section 2) is amended to read:

"30-31-25.1. POSSESSION, DELIVERY, MANUFACTURE OR DELIVERY TO A MINOR OF DRUG PARAPHERNALIA PROHIBITED.--

A. It is unlawful for any person to use or possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Controlled Substances Act. The provisions of this subsection do not apply to a person who is in possession of hypodermic syringes or needles at the time he is directly and immediately engaged in a harm reduction program, as provided in the Harm Reduction Act.

B. It is unlawful for any person to deliver, possess with intent to deliver or manufacture with the intent to deliver drug paraphernalia with knowledge, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Controlled Substances Act. The provisions of this subsection do not apply to department of health employees or their designees while they are directly and immediately engaged in activities related to the harm reduction program authorized by the Harm Reduction Act.

C. Any person who violates this section with respect to Subsection A of this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars ($50.00) nor more than one hundred dollars ($100) or by imprisonment for a definite term less than one year, or both. Any person who violates this section with respect to Subsection B of this section is guilty of a misdemeanor.

D. Any person eighteen years of age or over who violates the provisions of Subsection B of this section by delivering drug paraphernalia to a person under eighteen years of age and who is at least three years his junior is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978."

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR SENATE BILL 220, AS AMENDED

Approved April 11, 1997

CHAPTER 257

RELATING TO LONG-TERM CARE; AMENDING THE LONG-TERM CARE OMBUDSMAN ACT; CONFIRMING POWERS OF THE STATE AGENCY ON AGING TO CONDUCT EVALUATIONS.

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

Section 1

Section 1. Section 28-4-6 NMSA 1978 (being Laws 1979, Chapter 203, Section 3, as amended) is amended to read:

"28-4-6. AGENCY POWERS.--

A. The state agency on aging:

(1) may receive on behalf of the state any gifts, donations or bequests from any source to be used in carrying out its duties; and

(2) is designated as the state agency for handling all programs of the federal government related to the aged, except those designated by law as the responsibility of another state agency, and may enter into agreements and contracts with agencies of the federal government for this purpose.

B. The state agency on aging may adopt and promulgate such reasonable rules and regulations as are deemed necessary to carry out its duties. Unless otherwise provided by law, no rule or regulation affecting any person or agency outside the state agency on aging shall be adopted, amended or repealed without a public hearing on the proposed action before the director of the state agency on aging

or a hearing officer designated by him. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule or regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed rule or regulation or proposed amendment or repeal of an existing rule or regulation may be obtained shall be published once at least thirty days prior to the hearing in a newspaper of general circulation 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. The director of the state agency on aging shall also provide such notice to the director of each senior citizen center no later than forty days prior to the public hearing. All rules and regulations shall be filed in accordance with the State Rules Act.

C. To ensure that the health and safety needs of the state's aged population are being met, the state agency on aging may conduct unannounced quality care evaluations of health and long-term care facilities that provide services to the aged, including the use of undercover patients or employees. Any employee or contractor of the state agency on aging who participates in such an evaluation shall be immune from liability in any civil action related to the evaluation, provided it is conducted in good faith. The purpose of this subsection is to confirm and clarify the authority of the state agency on aging to conduct quality care evaluations to protect the interests of the state's aged population."

Section 2

Section 2. Section 28-17-3 NMSA 1978 (being Laws 1989, Chapter 208, Section 3) is amended to read:

"28-17-3. DEFINITIONS.--As used in the Long-Term Care Ombudsman Act:

A. "adult protective services" means the children, youth and families department pursuant to the Adult Protective Services Act;

B. "agency" means the state agency on aging;

C. "care" means assistance with the activities of daily living, including eating, dressing, oral hygiene, bathing, mobility, toileting,

grooming, taking medications, transferring from a bed or chair and walking;

D. "director" means the director of the state agency on aging;

E. "licensing and certification" means the licensing and certification bureau of the public health division of the department of health;

F. "long-term care facility" means any residential facility that provides care to one or more persons unrelated to the owner or operator of the facility, including:

(1) a skilled nursing facility;

(2) an intermediate care nursing facility, including an intermediate care facility for the mentally retarded;

(3) a nursing facility;

(4) an adult residential shelter care home;

(5) a boarding home;

(6) any other adult care home or adult residential care facility;

(7) a continuing care community;

(8) any swing bed in an acute care facility or extended care facility; and

(9) any adult day care facility;

G. "office" means the office of the state long-term care ombudsman;

H. "Older Americans Act" means the federal Older Americans Act;

I. "ombudsman" means an individual trained and certified to act as a representative of the office of the state long-term care ombudsman;

J. "ombudsman coordinator" means the coordinator of a regional or local ombudsman program designated by the office of the state ombudsman;

K. "program" means the New Mexico long-term care ombudsman program;

L. "resident" means any patient, client or person residing in and receiving care in a long-term care facility;

M. "state ombudsman" means the state long-term care ombudsman; and

N. "surrogate decision maker" means a legally appointed agent, guardian or surrogate who is authorized to act on behalf of a resident."

Section 3

Section 3. Section 28-17-4 NMSA 1978 (being Laws 1989, Chapter 208, Section 4) is amended to read:

"28-17-4. ESTABLISHMENT OF THE OFFICE OF THE STATE LONG-TERM CARE OMBUDSMAN--GENERAL DUTIES OF THE OFFICE.--

A. Pursuant to the Older Americans Act, the agency shall establish and operate an "office of the state long-term care ombudsman" either directly or by contract or other arrangement with any public agency or nonprofit private organization; except that no contract or arrangement may be made with any entity that is responsible for licensing or certifying long-term care services or an association or association affiliate of long-term care facilities or of any other residential facilities.

B. The director shall designate the state ombudsman.

C. The ombudsman shall serve on a full-time basis, and shall, personally or through representatives of the office:

(1) identify, investigate and resolve complaints that are made by, or on behalf of, residents and that relate to action, inaction

or decisions that may adversely affect the health, safety, welfare or rights of the residents, including the welfare and rights of the residents with respect to the appointment and activities of guardians and representative payees, of:

(a) providers, or representatives of providers, of long-term care services;

(b) public agencies; or

(c) health and social service agencies;

(2) provide services to assist the residents in protecting the health, safety, welfare and rights of the residents;

(3) inform the residents about means of obtaining services;

(4) ensure that the residents have regular and timely access to the services provided through the office and that the residents and complainants receive timely responses from representatives of the office;

(5) represent the interests of the residents before governmental agencies and seek administrative, legal and other remedies on behalf of residents to protect the health, safety, welfare and rights of the residents;

(6) provide administrative and technical assistance to designated regional and local ombudsman programs and assist the programs in participating in the program;

(7) analyze, comment on and monitor the development and implementation of federal, state and local laws, regulations and other governmental policies and actions that pertain to the health, safety, welfare and rights of the residents, with respect to the adequacy of long-term care facilities and services in the state and recommend any changes in such laws, regulations, policies and actions as the office determines to be appropriate; and facilitate public comment on the laws, regulations, policies and actions;

(8) provide for training representatives of the office, promote the development of citizen organizations to participate in the program and provide technical support for the development of resident and family councils to protect the well-being and rights of residents;

(9) prepare an annual report:

(a) describing the activities carried out by the office in the year for which the report is prepared;

(b) containing and analyzing the data collected;

(c) evaluating the problems experienced by, and the complaints made by or on behalf of, residents;

(d) containing recommendations for improving quality of the care and life of the residents, and protecting the health, safety, welfare and rights of the residents;

(e) analyzing the success of the program, including success in providing services to residents of board and care facilities and other similar adult care facilities;

(f) identifying barriers that prevent the optimal operation of the program; and

(g) providing policy, regulatory and legislative recommendations to solve identified problems, to resolve complaints, to improve the quality of care and life of residents, to protect the health, safety, welfare and rights of residents and to remove the barriers;

(10) coordinate ombudsman services with the protection and advocacy systems for individuals with developmental disabilities and mental illness;

(11) provide such information as the office determines to be necessary to public and private agencies, legislators and other persons regarding the problems and concerns of older individuals residing in long-term care facilities; and recommendations related to the problems and concerns; and

(12) carry out such other activities as the state ombudsman determines to be appropriate."

Section 4

Section 4. Section 28-17-6 NMSA 1978 (being Laws 1989, Chapter 208, Section 6) is amended to read:

"28-17-6. REGIONAL AND LOCAL LONG-TERM CARE OMBUDSMAN PROGRAMS.--

A. In carrying out the duties of the office, the state ombudsman may designate an entity as a regional or local ombudsman entity, and may designate an employee or volunteer to represent the entity. An individual so designated shall, in accordance with the policies and procedures established by the office and the agency:

(1) provide services to protect the health, safety, welfare and rights of residents;

(2) ensure that residents in the service area of the entity have regular, timely access to representatives of the program and timely responses to complaints and requests for assistance;

(3) identify, investigate and resolve complaints made by or on behalf of residents that relate to action, inaction or decisions that may adversely affect the health, safety, welfare or rights of the residents;

(4) represent the interests of residents before government agencies and seek administrative, legal and other remedies to protect the health, safety, welfare and rights of the residents;

(5) review and, if necessary, comment on any existing and proposed laws, regulations and other government policies and actions, that pertain to the rights and well-being of residents;

(6) facilitate the ability of the public to comment on the laws, regulations, policies and actions;

(7) support the development of resident and family councils; and

(8) carry out other activities that the ombudsman determines to be appropriate.

B. To be eligible to be designated as regional or local ombudsman entities, and individuals eligible to be designated as representatives of such entities, the entities shall:

(1) have demonstrated capability to carry out the responsibilities of the office;

(2) be free of conflicts of interest;

(3) in the case of the entities, be public or nonprofit private entities; and

(4) meet such additional requirements as the state ombudsman may

specify."

Section 5

Section 5. Section 28-17-9 NMSA 1978 (being Laws 1989, Chapter 208, Section 9) is amended to read:

"28-17-9. REFERRALS.--

A. When abuse, neglect or exploitation of a patient, resident or client of a long-term care facility is suspected, the office shall make a referral to adult protective services and licensing and certification, where appropriate. The office shall coordinate with adult protective services and licensing and certification pursuant to any investigation of abuse, neglect or exploitation undertaken by those agencies.

B. The following state agencies or boards shall endeavor to give priority to any complaint referred to them by the office:

(1) licensing and certification;

(2) the children, youth and families department;

(3) the New Mexico board of medical examiners;

(4) the board of nursing;

(5) the board of nursing home administrators; or

(6) the board of pharmacy.The office shall coordinate its efforts with those of any state agency or board to which it makes investigation referrals.

C. Any state agency or board which responds to a complaint against a long-term care facility or licensed individual that was referred to the agency by the office shall forward to the office copies of

related inspection reports and plans of correction, notice of any citations and sanctions levied against the long-term care facility or the licensed individual."

Section 6

Section 6. Section 28-17-11 NMSA 1978 (being Laws 1989, Chapter 208, Section 11) is amended to read:

"28-17-11. ACCESS TO AGENCY RECORDS.--Upon request, the office shall have access to records of any state or local government agency, including copies of all licensing and certification records relating to long-term care facilities as necessary to carry out its responsibilities under the Long-Term Care Ombudsman Act and which records are available to the patient, resident or client, except for records and information unavailable pursuant to Section 7-1-8 NMSA 1978."

Section 7

Section 7. Section 28-17-13 NMSA 1978 (being Laws 1989, Chapter 208, Section 13) is amended to read:

"28-17-13. ACCESS TO RECORDS OF PATIENTS, RESIDENTS OR CLIENTS.--

A. In order for the office to carry out its responsibilities under the Long-Term Care Ombudsman Act, the office shall have access to the medical and personal records of a patient, resident or client of a long-term care facility that are retained by the facility. If the patient, resident or client:

(1) has the ability to consent in writing, access may only be obtained by the written consent of the patient, resident or client;

(2) is unable to consent in writing, oral consent may be given in the presence of a third party as witness;

(3) has a legally appointed surrogate decision maker authorized to approve review of records, the office shall obtain the

permission of the surrogate decision maker for review of the records, unless any of the following apply:

(a) the existence of the surrogate decision maker is unknown to the office or the facility;

(b) the surrogate decision maker cannot be reached within five working days; or

(c) access to the records is necessary to investigate a complaint and the surrogate decision maker refuses to give the permission and a representative of the office has reasonable cause to believe that the surrogate decision maker is not following the wishes of the resident; and

(4) is unable to express written or oral consent and there is no surrogate decision maker or the notification of the surrogate decision maker is not applicable for reasons set forth in Paragraph (3) of this subsection or the patient, resident or client is deceased, inspection of records may be made by employees of the office, ombudsman coordinators and by ombudsmen approved by the ombudsman coordinator or the state ombudsman.

B. Copies of records may be reproduced by the office. If investigation of records is sought pursuant to this section, the ombudsman shall upon request produce a statement signed by the ombudsman coordinator or state ombudsman authorizing the ombudsman to review the records. Facilities providing copies of records pursuant to this section may charge the office for the actual copying cost for each page copied.

C. Upon request by the office, a long-term care facility shall provide to the office the name, address and telephone number of the guardian, conservator, attorney-in-fact, legal representative or next-of-kin of any patient, resident or client and a copy of any document granting legal decision-making power over a resident.

D. The long-term care facility and personnel who disclose records pursuant to this section shall not be liable for the disclosure.

E. The office shall establish procedures to protect the confidentiality of records obtained pursuant to this section."

Section 8

Section 8. Section 28-17-14 NMSA 1978 (being Laws 1989, Chapter 208, Section 14) is amended to read:

"28-17-14. CONFIDENTIALITY OF INFORMATION.--

A. The files and records of the office may be disclosed only for purposes of fulfilling the duties of the office of the ombudsman pursuant to Subsection C of Section 28-17-4 NMSA 1978 at the discretion of the state ombudsman or person designated by him. The state ombudsman shall not disclose the identity of any complainant or resident about whom the office maintains files or records unless:

(1) the complainant or resident or his legal representative consents in writing to the disclosure;

(2) the complainant or resident gives oral consent that is documented immediately in writing by a representative of the office;

(3) disclosure is necessary for the provision of ombudsman services to the patient, resident or client and the patient, resident or client is unable to express written or oral consent; or

(4) disclosure is ordered by the court.

B. The director shall have access to the records and files of the office to verify the effectiveness and quality of the ombudsman program where the identity of any complainant, witness, patient, resident or client is not disclosed."

Section 9

Section 9. Section 28-17-15 NMSA 1978 (being Laws 1989, Chapter 208, Section 15) is amended to read:

"28-17-15. CONFLICT OF INTEREST.--The agency shall ensure that:

A. no individual or a member of the immediate family of an individual involved in the designation of the ombudsman or the

designation of a regional or local ombudsman is subject to a conflict of interest;

B. no officer or employee of the office, ombudsman coordinator or representative, or a member of their immediate family, is subject to a conflict of interest; and

C. any ombudsman:

(1) does not have a direct involvement in the licensing or certification of a long-term care facility or of a provider of a long-term care service;

(2) does not have an ownership or investment interest, represented by equity, debt or other financial relationship, in a long-term care facility or a long-term care service;

(3) is not employed by, or participating in the management of, a long-term care facility; and

(4) does not receive, or have the right to receive, directly or indirectly, remuneration in cash or in kind under a compensation arrangement with an owner or operator of a long-term care facility."

Section 10

Section 10. Section 28-17-18 NMSA 1978 (being Laws 1989, Chapter 208, Section 18) is amended to read:

"28-17-18. AVAILABILITY OF LEGAL COUNSEL.--The agency shall ensure that:

A. adequate legal counsel is available and is able, without conflict of interest, to:

(1) provide advice and consultation needed to protect the health, safety, welfare and rights to residents; and

(2) assist the ombudsman and representatives of the office in the performance of the official duties of the ombudsman and representatives;

B. representation is provided to any representative of the office against whom suit or other legal action is brought or threatened to be brought in connection with the performance of the official duties of the ombudsman or such a representative; and

C. the office pursues administrative, legal and other appropriate remedies on behalf of residents."

Section 11

Section 11. Section 28-17-19 NMSA 1978 (being Laws 1989, Chapter 208, Section 19) is amended to read:

"28-17-19. INTERFERENCE WITH THE OFFICE AND RETALIATION PROHIBITED--PENALTY--CIVIL.--

A. No person shall willfully interfere with the lawful actions of the office, including the request for immediate entry into a long-term care facility.

B. No person shall institute discriminatory, disciplinary or retaliatory action against any resident, employee or other person for filing a complaint, providing information to or otherwise cooperating with any representative of the office.

C. Any person who violates Subsection A of this section shall be subject to a civil penalty of up to five thousand dollars ($5,000) per occurrence. Any person who violates Subsection B of this section shall be subject to a civil penalty of up to ten thousand dollars ($10,000) per occurrence. The agency may assess and collect the penalty after notice and an opportunity for hearing, before a hearing officer designated by the agency to hear the matter, upon a determination that a person willfully interfered with the office or discriminated, disciplined or retaliated against an individual who communicated or disclosed information to the office in good faith pursuant to Subsections A and B of this section. The hearing officer has the power to administer oaths on request of any party and issue subpoenas and subpoenas duces tecum. However, if the violation is against a person covered by the Personnel Act, the office shall refer the matter to the agency employing the person for disciplinary action.

D. Any party may appeal to the court of appeals on the record within thirty days after the final decision of the agency."

Section 12

Section 12. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

SENATE BILL 1237, AS AMENDED
Approved April 11, 1997

CHAPTER 258

RELATING TO PUBLIC SCHOOLS; AMENDING A PROVISION OF LAW REGARDING EXCUSAL OF STUDENTS FROM SCHOOL FOR THE PURPOSE OF PARTICIPATING IN RELIGIOUS INSTRUCTION.

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

Section 1

Section 1. Section 22-12-3 NMSA 1978 (being Laws 1971, Chapter 238, Section 1) is amended to read:

"22-12-3. RELIGIOUS INSTRUCTION EXCUSAL.--Any student may, subject to the approval of the local school board, be excused from school to participate in religious instruction for not more than one class period each school day with the written consent of his parents at a time period not in conflict with the academic program of the school. The local school board and its employees shall not assume responsibility for the religious instruction or permit it to be conducted on school property."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

HOUSE BILL 107

Approved April 11, 1997

CHAPTER 259

RELATING TO EDUCATION; ENACTING THE EDUCATION TRUST ACT; CREATING A FUND; ENACTING SECTIONS OF THE INCOME TAX ACT.

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 "Education Trust Act".

Section 2

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

A. "beneficiary" means a person who is entitled to receive benefits under a college investment agreement or a prepaid tuition contract;

B. "board" means the education trust board;

C. "commission" means the commission on higher education;

D. "college investment agreement" means an agreement entered into by the board and an investor, pursuant to the provisions of the Education Trust Act, to defray the costs of attendance of a beneficiary at an institution of higher education;

E. "council" means the state investment council;

F. "fund" means the education trust fund;

G. "institution of higher education" means a state public post-secondary educational institution as defined in Section 6-17-1.1 NMSA 1978, a branch college, an independent community college or a technical and vocational institute;

H. "investor" means a person who has entered into a college investment agreement with the board;

I. "prepaid tuition contract" means a contract entered into by the board and a purchaser, pursuant to the provisions of the Education Trust Act, to provide for the payment of higher education tuition and required fees of a beneficiary; and

J. "purchaser" means a person who is obligated to make payments under a prepaid tuition contract.

Section 3

Section 3. EDUCATION TRUST FUND--CREATION.--

A. The "education trust fund" is created in the state treasury. The board shall deposit all money received pursuant to college investment agreements and prepaid tuition contracts into the fund. Money in the fund shall consist of appropriations, investments, payments, gifts, bequests or donations. All money invested in the fund is appropriated to the board. Money in the fund shall not revert to the general fund at the end of the fiscal year. The board shall account for each payment from an investor or purchaser on behalf of a beneficiary pursuant to a college investment agreement or prepaid tuition contract. All money in the fund shall be invested by the state investment officer according to rules and regulations promulgated by the council, subject to the approval of the board, for the investment of funds pursuant to the Education Trust Act. The board shall review investments made pursuant to this subsection at least quarterly.

B. Expenditures from the fund shall be for payments to institutions of higher education on behalf of beneficiaries or for refunds, in accordance with the provisions of the Education Trust Act, and for costs of administering that act.

C. If, prior to the end of fiscal year 2003, the assets of the fund are sufficiently in excess of those required to meet the obligations of the fund, the fund shall refund to the general fund the non-reverted portion of the appropriation provided for in Section 10 of the Education Trust Act.

D. In no event shall any liability of, or contractual obligation incurred by, the program established pursuant to the provisions of the Education Trust Act obligate or encumber any of the states land grant permanent funds, the severance tax permanent fund or any money that is a part of a state-funded financial aid program.

Section 4

Section 4. BOARD CREATED--MEMBERS--APPOINTMENT--TERMS OF OFFICE--POWERS AND DUTIES.--

A. There is created the "education trust board". The board is administratively attached to the commission, and the commission shall provide administrative support for the board in carrying out its duties pursuant to the Education Trust Act. The board shall consist of the following voting members:

(1) the executive director of the commission, or his designee, who shall be the ex-officio chair of the board;

(2) the state investment officer, or his designee;

(3) one member appointed by the governor;

(4) one member representing institutions of higher education appointed by the speaker of the house of representatives; and

(5) one member representing students at institutions of higher education appointed by the president pro tempore of the senate.

B. The appointed members must possess knowledge, skill and experience in higher education, business or finance.

C. The appointed members shall serve six-year terms, with the exception of the member representing students, who shall be appointed for a two-year term. Vacancies on the board shall be filled by the respective appointing authority for the remainder of the vacating member's term.

D. Members of the board shall be subject to the provisions of the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance for their service on the board.

E. The board is authorized to adopt and promulgate rules and regulations as necessary to carry out the provisions of the Education Trust Act, protect the financial integrity of the fund, preserve the program's benefits and assure the appropriate use of the tax benefits. The board shall also determine and adopt by regulation the cost of attendance at institutions of higher education, provided that the cost of attendance shall include the same components and allowances as are used to determine cost of attendance for the federal student financial assistance programs."

Section 5

Section 5. COLLEGE INVESTMENT AGREEMENT.--

A. An investor may enter into a college investment agreement with the board under which the investor agrees to make investments into the fund from time to time for the purpose of defraying the costs of attendance billed by institutions of higher education. An

investor may enter into a college investment agreement on behalf of any beneficiary under the age of nineteen. The board shall adopt a form of the college investment agreement to be used by the board and investors.

B. The beneficiary under a college investment agreement must be younger than nineteen years of age at the time the investor enters into the agreement and must be:

(1) a resident of this state at the time the investor enters into the agreement; or

(2) a nonresident who is the child of a parent who is a resident of this state at the time that parent enters into the agreement.

C. The board shall provide for the direct payment of principal, investment earnings and capital appreciation accrued pursuant to a college investment agreement to the institution of higher education that the beneficiary actually attends.

D. The board may require a reasonable period of residence in this state, together with other related criteria, for a beneficiary or an investor. A beneficiary is considered a resident for purposes of tuition regardless of the beneficiary's residence on the date of enrollment.

E. The college investment agreement may be terminated by the investor at any time. The investor may modify the college investment agreement to designate a new beneficiary or beneficiaries instead of the original beneficiary if the new beneficiary or beneficiaries meet the requirements of the original beneficiary on the date the designation is changed and if the original beneficiary:

(1) dies;

(2) is not admitted to the institution of higher education following proper application;

(3) elects not to attend the institution of higher education or, if attending, elects to discontinue higher education; or

(4) for any other circumstance approved by the board, does not exercise his rights under the college investment agreement.

F. If the college investment agreement is terminated pursuant to the provisions of this section, the board shall refund to the

investor an amount equal to all the principal contributed or paid in by the investor plus interest not to exceed four percent annually. The balance of the accrued investment earnings and capital appreciation less administrative costs shall be credited to the fund.

G. The board shall establish a refund policy if a beneficiary receives additional student financial aid.

H. A college investment agreement terminates on the tenth anniversary of the date the beneficiary is projected to graduate from high school, not counting time spent by the beneficiary as an active-duty member of the United States armed services.

I. Gifts and bequests to the fund may be made in the name of a specific beneficiary or in the name of the fund in general. Gifts and bequests given for the benefit of a specific beneficiary shall be credited to that beneficiary, and gifts and bequests given to the fund in general shall be credited equally to each beneficiary of a college investment agreement.

J. Principal paid into the fund, together with accrued investment earnings and capital appreciation, shall be excluded from any calculation of a beneficiary's state student financial aid eligibility.

K. The board shall annually notify each investor of the balance of his college savings agreement principal, accrued investment earnings and capital appreciation.

Section 6

Section 6. PREPAID HIGHER EDUCATION TUITION PROGRAM--RULES AND REGULATIONS.--

A. The board is authorized to adopt and promulgate rules and regulations in order to establish a prepaid higher education tuition program. Prior to the establishment of the program, the board will contract for a thorough feasibility study of the proposed prepaid higher education tuition program, including an actuarial analysis of the assumptions underlying the proposed program, and report to the appropriate interim committee of the legislature prior to November 1, 1997. The report shall include a recommendation from the board regarding whether it is feasible to proceed with the adoption of the proposed program based on the findings of the feasibility study.

B. The rules and regulations regarding the prepaid higher education tuition program shall specify at least the following:

(1) that prepaid tuition contracts, once paid, will cover all tuition and required fees of state public institutions of higher education;

(2) that payments for prepaid tuition contracts may be made either in a lump sum or in installments;

(3) that the prepaid tuition contracts shall include at least the following:

(a) provisions that allow purchasers to choose from payment plans that pay the tuition and required fees for state public institutions of higher education;

(b) provisions that allow for rollover of prepaid higher education tuition benefits from one plan to another, and that provide that benefits may be used at any state public institution of higher education;

(c) penalties for termination of the contract or default on any of the contract's terms or conditions; and

(d) provisions that allow purchasers to change or switch beneficiaries;

(4) that beneficiaries must meet certain minimum eligibility requirements as determined by the board;

(5) that the board shall consider at least the following variables when setting contract prices:

(a) the amount and estimated rate of increase of tuition and fees at state public institutions of higher education;

(b) estimated investment returns;

(c) estimated administrative costs; and

(d) the period between the date the contract is entered into and the date the beneficiary is projected to graduate from high school;

(6) that gifts or bequests may be made to the fund, either on behalf of a beneficiary or to the fund generally;

(7) that state public institutions of higher education are either required to participate or that the board may specify how and when state public institutions of higher education become eligible to participate in the program;

(8) that benefits under a prepaid tuition contract are excluded from any calculation of a beneficiary's state student financial aid eligibility; and

(9) that the board shall annually provide for audited statements and actuarial studies on the condition of the fund.

Section 7

Section 7. REPORTS.--

A. Not later than November 1 of each year, the board shall submit to the governor and to the appropriate interim legislative committee a report including:

(1) the board's fiscal transactions during the preceding fiscal year;

(2) the market and book value of the fund as of the end of the preceding fiscal year;

(3) the asset allocations of the fund expressed in percentages of stocks, fixed income securities, cash or other financial assets;

(4) the rate of return on the investment of the fund's assets during the preceding fiscal year;

(5) an actuarial valuation of the assets and liabilities of the program, including the extent to which the program's liabilities are unfunded; and

(6) complete prepaid tuition contract sales information, including projected enrollments of beneficiaries at institutions of higher education.

B. The board shall make the report described by Subsection A available to purchasers of prepaid tuition contracts and investments under college investment agreements.

Section 8

Section 8. A new section of the Income Tax Act is enacted to read:

"DEDUCTION-PAYMENTS INTO EDUCATION TRUST FUND.--A taxpayer may claim a deduction from net income in an amount equal to the payments made by the taxpayer into the education trust fund pursuant to a college investment agreement or prepaid tuition contract under the Education Trust Act in the taxable year for which the deduction is being claimed. The amount of payments made on behalf of any one beneficiary that may be deducted shall not exceed in the aggregate the cost of attendance at the applicable institution of higher education, as determined by the education trust board. A husband and wife who file separate returns for the taxable year in which they could have filed a joint return may each claim only one-half of the deduction that would have been allowed on the joint return. Individuals having income both within and without this state shall apportion this deduction in accordance with regulations of the secretary."

Section 9

Section 9. A new section of the Income Tax Act is enacted to read:

EDUCATION TRUST FUND--EARNINGS TAX EXEMPT--WITHDRAWALS ARE TAXABLE INCOME--AUTHORITY TO WITHHOLD TAX.--

A. All earnings of an investor, purchaser or beneficiary from investment of money paid by the investor or purchaser or on behalf of the beneficiary into the education trust fund pursuant to a college investment agreement or prepaid tuition contract authorized in the Education Trust Act are exempt from the income tax pursuant to the Income Tax Act.

B. All amounts refunded to an investor upon termination of a college investment agreement or to a purchaser upon termination of a prepaid tuition contract pursuant to the Education Trust Act are taxable in the year in which they are received.

C. Upon payment of a refund to an investor or purchaser pursuant to the provisions of the Education Trust Act, the education trust board shall deduct and withhold from that refund a tax in an amount equal to six percent of the refund. The amount withheld shall be transmitted to the taxation and revenue department for disposition pursuant to regulations of the secretary.

Approved April 11, 1997

CHAPTER 260

RELATING TO LAW ENFORCEMENT; AUTHORIZING UNITED STATES PROBATION OFFICERS AND UNITED STATES PRETRIAL SERVICES OFFICERS TO ACT AS NEW MEXICO PEACE OFFICERS; AUTHORIZING COUNTY SHERIFFS TO DESIGNATE CERTAIN FEDERAL LAW ENFORCEMENT OFFICERS AS NEW MEXICO PEACE OFFICERS; AMENDING A SECTION OF THE NMSA 1978.

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 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; United States probation department; United States pretrial services agency; and other appropriate federal officers whose primary duty is law enforcement related, who are assigned in New Mexico and who are required to be designated by the county sheriff on a case-by-case basis in the county in which they are working,

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. The department of public safety shall maintain a registry that lists the name and affiliated federal agency of every federal law enforcement officer recognized and authorized to act as a New Mexico peace officer pursuant to the provisions of this subsection. 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.

F. The provisions of Subsection E of this section regarding designation of federal law enforcement officers by a county sheriff do not apply to federal law enforcement officers who are duly commissioned officers of a police or sheriff's department for an Indian tribe or pueblo in New Mexico or who are federal law enforcement officers employed by the bureau of Indian affairs."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

SENATE BILL 4, AS AMENDED

Approved April 11, 1997

CHAPTER 261

RELATING TO PUBLIC SCHOOLS; CREATING A FRAMEWORK FOR PUBLIC SCHOOL ACCOUNTABILITY; AMENDING SECTION 22-1-6 NMSA 1978 (BEING LAWS 1989, CHAPTER 308, SECTION 1, AS AMENDED).

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

Section 1

Section 1. Section 22-1-6 NMSA 1978 (being Laws 1989, Chapter 308, Section 1, as amended) is amended to read:

"22-1-6. ANNUAL SCHOOL DISTRICT ACCOUNTABILITY REPORT REQUIRED.--

A. School districts shall be required to publish an annual school district accountability report to provide district-wide data for the previous school year. The state board shall establish the format for the accountability reports and ensure that the relevant data is provided annually to parents, students, educators, policymakers, legislators, the governor and business and economic development organizations. The department of education shall establish the following five indices through which public school performance shall be measured and reported to school districts:

(1) student achievement as measured by a nationally norm-referenced test approved by the department of education or through a performance-based instrument to measure proficiency;

(2) school safety;

(3) the drop-out rate;

(4) attendance; and

(5) parent and community involvement.

The department of education shall establish the methodology for measuring each of the five indices.

B. School districts shall set two-, four- and six-year benchmarks in each of the five indices for each public school. Local school boards may establish additional indices, if reviewed by the department of education, through which to measure the school district's performance in other areas.

C. The annual accountability report shall also include the results of a survey of parents' views of the quality of their children's school. The survey shall be conducted each year in time to include the results in the annual accountability report. The survey shall compile the results of a written questionnaire that shall be sent home with the students to be given to their parents. The survey may be completed

anonymously. The survey shall be no more than one page, shall be clearly and concisely written and shall include not more than twenty questions that shall be answered with options of a simple sliding scale ranging from "strongly agree" to "strongly disagree" and shall include the optional response "don't know". The survey shall also include a request for optional written comments, which may be written on the back of the questionnaire form. The questionnaire shall include questions in the following areas:

(1) parent-teacher-school relationship and communication;

(2) quality of educational and extracurricular programs;

(3) instructional practices and techniques;

(4) resources;

(5) school personnel, including the school principal; and

(6) parents' view of teaching staff expectations for the students.

The state board shall develop no more than ten of the questions which shall be reviewed by the legislative education study committee prior to implementation. No more than five questions shall be developed by the local school board and no more than five questions shall be developed by the staffs of each individual school site, provided that at least half of those questions are developed by teachers rather than administrators, in order to gather information that is specific to the particular community surveyed. The questionnaires shall indicate the public school site and shall be tabulated by the department of education

within thirty days of receipt and shall be returned to the respective schools to be disseminated to all parents.

D. The annual accountability report for each school district shall be adopted by the local school board, may be published no later than November 15 of each year and may be published at least once each school year in a newspaper of general circulation in the county where the school district is located. In publication, the report shall be titled "the school district report card" and disseminated in accordance with guidelines established by the state board to ensure effective communication with parents, students, educators, local policymakers and business and community organizations.

E. The department of education shall create an accountability data system through which data from each public school and each school district may be compiled and reviewed. The department of education shall provide the resources to train school district personnel in the use of the accountability data system.

F. The department of education shall verify data submitted by the school districts.

G. The state board shall measure the performance of every public school in New Mexico. Public schools achieving the highest level of performance shall be eligible for supplemental incentive funding. The state board shall establish the corrective actions and interventions necessary for public schools whose performance level is low."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1998.

SENATE FINANCE COMMITTEE SUBSTITUTE FOR SENATE BILL 997

Approved April 11, 1997

CHAPTER 262

RELATING TO THE PUBLIC REGULATION COMMISSION; PROVIDING FOR THE APPORTIONMENT OF DISTRICTS.

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 "Public Regulation Commission Apportionment Act".

Section 2

Section 2. MEMBERSHIP.--The public regulation commission is composed of five members to be elected from districts established by law.

Section 3

Section 3. RESIDENCE.--At the time of filing a declaration of candidacy for the office of public regulation commission member, a candidate shall reside in the district for which he files. If any elected member of the public regulation commission permanently removes his residence from or maintains no residence in the district from which he was elected, he shall be deemed to have resigned and his successor shall be selected as provided in the Public Regulation Commission Apportionment Act.

Section 4

Section 4. ELECTION--VACANCY.--

A. Members of the public regulation commission shall be elected for staggered four-year terms; provided that commission members elected at the 1998 general election shall classify themselves by lot so that two commission members shall initially serve terms of two years and three commission members shall serve terms of four years. Thereafter, all commission members shall serve four-year terms. After serving two terms, a commission member shall be ineligible to hold office as a commission member until one full term has intervened.

B. The governor shall by appointment fill vacancies on the public regulation commission. All appointments to fill vacancies on the public regulation commission shall be for a term ending on January 1 subsequent to the next general election at which election a person shall be elected to fill any remainder of the unexpired term.

Section 5

Section 5. PRECINCTS.--

A. Designations and boundaries used in the Public Regulation Commission Apportionment Act are those precinct designations and boundaries established pursuant to the Precinct Boundary Adjustment Act and revised and approved by the secretary of state as of November 5, 1996.

B. A board of county commissioners shall not create any precinct that lies in more than one public regulation commission district, nor shall any board of county commissioners divide any precinct so that the divided parts of the precinct are situated in two or more public regulation commission districts. Votes cast in any general, primary or other statewide election from precincts created or divided in violation of this subsection are invalid and shall not be counted or canvassed.

Section 6

Section 6. PUBLIC REGULATION COMMISSION DISTRICT ONE.--Public regulation commission district one is composed of Bernalillo county precincts 4 through 18, 86, 150, 180 through 185, 191 through 197, 214 through 217, 244, 251 through 256, 257 and 258, 271 through 274, 275, 278, 281 through 287, 289 through 308, 311 through 318, 321 through 323, 326 through 333, 341 through 347, 351 through 358, 371 through 375, 381 through 387, 400 through 446, 450 through 454, 461 through 466, 471 through 478, 480 through 500, 502 through 540, 542 through 550, 560 through 569, 601 and 602.

Section 7

Section 7. PUBLIC REGULATION COMMISSION DISTRICT TWO.--Public regulation commission district two is composed of Colfax county precincts 4, 5, 7 and 10 through 22, Union, Harding, Quay, Curry, De Baca, Roosevelt, Chaves, Lea, Eddy and Otero counties.

Section 8

Section 8. PUBLIC REGULATION COMMISSION DISTRICT THREE.--Public regulation commission district three is composed of Colfax county precincts 1 through 3, Rio Arriba county precincts 1 through 20, 22, 23, 26, 27 and 30 through 41; Taos county; Sandoval county precincts 1 through 7, 11 through 13, 16 through 18, 21 through 23 and 28 through 52; Mora; Los Alamos county; San Miguel and Guadalupe counties; Santa Fe county precincts 1 through 14, 16, 17, 19 through 28, 30 through 33, 36, 38, 39, 41 through 62, 64, 66 through 72, 74 through 79; and Bernalillo county precincts 1 through 3, 20 through 22, 24 through 29, 30, 39, 80 through 83, 85, 87, 111, 112 and 120.

Section 9

Section 9. PUBLIC REGULATION COMMISSION DISTRICT FOUR.-- Public regulation commission district four is composed of Cibola, McKinley and San Juan counties; and Bernalillo county precincts 31 through 38, 40 through 55, 61 through 67, 71 through 77, 88, 88A, 90 through 99, 101 through 107, 121 through 125, 131 through 133, 135, 135A, 151 through 154, 161 through 166, 186 and 187, 211 and 212, 221, 223 through 226, 241 through 243, 245, 246; Sandoval county precincts 8 through 10, 14, 15, 19, 20 and 24 through 27; Rio Arriba county precincts 24, 25, 28 and 29; Socorro county precinct 15; and Valencia county precinct 13.

Section 10

Section 10. PUBLIC REGULATION COMMISSION DISTRICT FIVE.--Public regulation commission district five is composed of Valencia county precincts 1 through 12, 14 through 16 and 18 through 37; Torrance, Lincoln, Socorro county precincts 1 through 14, 16 and 17; Sierra, Dona Ana, Luna, Grant, Catron and Hidalgo counties; Bernalillo county precincts 551 through 559; and Santa Fe county precincts 18 and 73.

SENATE BILL 1158, AS AMENDED WITH CERTIFICATE OF CORRECTION

Approved April 11, 1997

CHAPTER 263

RELATING TO RADIO COMMUNICATIONS; PROVIDING FOR LEASE OF EXCESS CAPACITY ON THE STATE-OWNED RADIO SYSTEM; ESTABLISHING REQUIREMENTS AND LIMITATIONS; DECLARING AN EMERGENCY.

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

Section 1

Section 1. A new Section 15-2-2.1 NMSA 1978 is enacted to read:

"15-2-2.1. LEASE OF RADIO COMMUNICATIONS NETWORK-CONDITIONS AND REQUIREMENTS.--In exercising supervisory control pursuant to Section 15-2-2 NMSA 1978, the radio communications bureau of the communications division of the general services department may lease to a private entity excess capacity on its radio communications property, including buildings, towers or antennas, provided that:

A. the lease conforms with competitive procurement requirements of the Procurement Code;

B. the lease is for an equal value exchange of money or property;

C. the secretary of general services certifies that the excess capacity will be available for at least the duration of the lease;

D. if the lease exceeds ten years, the lease is first approved by the state board of finance;

E. the radio communications bureau has submitted to the legislative finance committee a detailed plan for the use of excess capacity being leased and an assessment of how the lease will affect public sector uses; and

F. income from the leases shall be deposited to the credit of the radio communications bureau and used to carry out the duties of the bureau."

Section 2

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

SENATE BILL 1014, AS AMENDED WITH EMERGENCY CLAUSE SIGNED APRIL 11, 1997

CHAPTER 264

RELATING TO HEALTH CARE; REQUIRING MAMMOGRAMS FOR MEDICAID RECIPIENTS TO CONFORM TO CERTAIN STANDARDS; ENACTING A NEW SECTION OF THE PUBLIC ASSISTANCE ACT.

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

Section 1

Section 1. A new section of the Public Assistance Act is enacted to read:

"MAMMOGRAMS FOR MEDICAID RECIPIENTS.--In providing coverage for mammograms under the medicaid program, the department shall ensure that:

A. patients will not be routinely solicited for mammograms; and that mammograms will only be performed based on nationally recognized standards; and

B. any fee for service payment that shall be made on behalf of the medicaid program for a mammogram of a medicaid recipient shall be consistent with and not exceed the usual and customary charge that reflects the reasonable fair market value of the cost of a mammogram."

SENATE BILL 1166, AS AMENDED WITH CERTIFICATE OF CORRECTION

Approved April 11, 1997

CHAPTER 265

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; AMENDING A SECTION OF THE LIQUOR CONTROL ACT TO AUTHORIZE A LICENSEE DISPENSING ALCOHOLIC BEVERAGES AT A CHURCH'S PUBLIC CELEBRATION TO DONATE PROFITS FROM THOSE SALES TO THE CHURCH AND TO ALLOW SERVERS OF ALCOHOLIC BEVERAGES

TO DONATE TO THE CHURCH THEIR SERVICES AT THAT CELEBRATION.

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

Section 1

Section 1. Section 60-6A-12 NMSA 1978 (being Laws 1981, Chapter 39, Section 29, as amended) is amended to read:

"60-6A-12. SPECIAL DISPENSER'S PERMITS--STATE AND LOCAL FEES.--

A. Any person holding a dispenser's license in any local option district where a public celebration is to be held may dispense alcoholic beverages at the public celebration upon receiving written approval from the board or other governing body in charge of the public

celebration and upon the payment of fifty dollars ($50.00) to the department for a special dispenser's permit.

B. As used in this section, "public celebration" includes any state fair, county fair, community fiesta, cultural or artistic performance or professional athletic competition of a seasonal nature or activities held on an intermittent basis.

C. In addition to the state fee and if previously provided for by ordinance, the governing body of the local option district in which the public celebration is held may charge an additional fee not to exceed twenty-five dollars ($25.00) per day for each day the permittee dispenses alcoholic beverages. The permittee shall be subject to all state laws and regulations and all local regulations regulating dispenser's privileges and disabilities. All fees collected by the governing body of the local option district may be used to fund free-ride home programs.

D. Any person holding a dispenser's license may be issued a special dispenser's permit by the director allowing the dispensing of alcoholic beverages at a function catered by that business, provided the governing body of the local option district has given the person seeking the permit written approval to dispense alcoholic beverages at the catered function. The permit shall be valid for no more than twelve hours. To apply for the permit, the holder of a dispenser's license shall submit a fee of twenty-five dollars ($25.00), together with such information as the director may require. The permittee shall be subject to all state laws and regulations and all local regulations except that the permittee shall not be required to suspend the dispensing of alcoholic beverages at the licensed premises solely because of the issuance of the special dispenser's permit.

E. A special dispenser's permit shall not be issued if the application for the permit was received by the department less than ten days prior to the function for which the permit was sought. The person holding a dispenser's license and his employees shall be the only persons permitted to dispense alcohol during the function. Issuance of the special dispenser's permit is within the director's discretion and is subject to any reasonable requirements imposed by the director.

F. Any person holding a dispenser's license in a local option district in which Sunday sales of alcoholic beverages are not otherwise permitted under the Liquor Control Act may dispense beer and wine on Sunday at any public celebration for which it has received a concession from the board or other governing body in charge of the public celebration, provided the governing body of that local option district has by resolution expressly permitted such beer and wine sales on Sunday at that public celebration in accordance with the provisions of this section.

G. Any person holding a dispenser's license who dispenses alcoholic beverages at a church's public celebration under a special dispenser's permit pursuant to this section may donate to the church holding the public celebration any portion of the profits from the sale of alcoholic beverages at that public celebration. Employees of that dispenser or other individuals who have completed a certified alcohol server training program may donate to the church holding a public celebration their services as servers of alcoholic beverages at that public celebration."

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR SENATE BILL 1264

Approved April 11, 1997

CHAPTER 266

RELATING TO ELECTIONS; AMENDING AND ENACTING SECTIONS OF THE MUNICIPAL ELECTION CODE.

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

Section 1

Section 1. A new section of the Municipal Election Code is enacted to read:

"ABSENTEE BALLOT--CONDUCT OF ELECTION--WHEN NOT TIMELY RECEIVED--EMERGENCY PROCEDURE FOR VOTING AND COUNTING.--

A. Any

applicant for an absentee ballot who has not received the absentee ballot by mail as of the date of the election may present himself at his assigned precinct polling place and, after executing an affidavit of nonreceipt of absentee ballot, shall be permitted to vote on an emergency paper ballot or a marksense ballot.

B. The completed ballot shall be placed in an official inner envelope substantially as prescribed by Section 3-9-6 NMSA 1978 and sealed. The official inner envelope shall then be placed in an official envelope substantially as prescribed for a transmittal envelope or mailing envelope in Section 3-9-6 NMSA 1978. This envelope shall contain a form on its back that identifies the voter by name and signature roster number and the printed statement to the effect that the voter made application for an absentee ballot but had not received it as of the date of the election and is permitted to vote by emergency paper ballot or a marksense ballot.

C. The presiding judge shall put all such ballots in a special envelope provided for that purpose by the municipal clerk, seal it and return it to the municipal clerk along with the machine tally sheets. The sealed envelope shall not be put in the locked ballot box.

D. Upon receipt of the envelope containing such ballots, the municipal clerk, no later than forty-eight hours after the close of the election, shall remove the transmittal envelopes and without removing or opening the inner envelopes, determine that:

(1) such voter did in fact make application for an absentee ballot; and

(2) no such absentee ballot was received by the municipal clerk from the voter by 7:00 p.m. on election day.

E. Upon making such determination, the municipal clerk shall remove the inner envelope without opening it, destroy the transmittal envelope and place the inner envelope in a secure place to be transmitted to the municipal canvassing board to be tallied and included in the canvass of that municipality for the appropriate precinct.

F. The municipal clerk shall prescribe and furnish the necessary envelopes for purposes of this section and shall adopt rules and regulations deemed necessary to preserve the secrecy of the ballot."

Section 2

Section 2. A new section of the Municipal Election Code is enacted to read:

"ADDITIONAL EMERGENCY PROCEDURE FOR VOTING.--

A. After the close of the period for requesting absentee voter ballots by mail, any voter unable to go to the polls due to unforeseen illness or disability resulting in his confinement in a hospital, sanitarium, nursing home or residence who is unable to vote at his polling place, voting booth or voting apparatus or machinery may request in writing that an alternative ballot be made to be made available to him. The written request shall be signed by the voter and a health care provider under penalty of perjury.

B. The alternative ballot shall be made available by the municipal clerk where the voter resides to any authorized voter who has presented the written request to the office of the clerk.

C. Before releasing the alternative ballot, the municipal clerk shall compare the signature on the written request with the signature on the voter's affidavit of registration. If the municipal clerk determines that the signature on the written request is not the signature of the voter, the request for the alternative ballot shall be rejected.

D. The voter shall mark the alternative ballot, place it in an identification envelope similar to that used for absentee ballots, fill out and sign the envelope and return the ballot to the office of the municipal clerk where the voter resides no later than the time of closing of the polls on election day. The voter's name shall be compared to the roster of voters and the ballot shall be counted only if there is no signature for that voter on the roster of the precinct where the voter's name appears.

E. Alternative ballots shall be processed and counted in the same manner as absentee ballots.

F. The municipal clerk shall prescribe the form of alternative ballots."

Section 3

Section 3. Section 3-8-2 NMSA 1978 (being Laws 1985, Chapter 208, Section 10) is amended to read:

"3-8-2. DEFINITIONS.--

A. The definitions in Section 3-1-2 NMSA 1978 shall apply to the Municipal Election Code in addition to those definitions set forth in the Municipal Election Code.

B. As used in the Municipal Election Code:

(1) "absentee voter list" means the list prepared by the municipal and county clerks of those persons who have been issued an absentee ballot;

(2) "ballot" means a system for arranging and designating for the voter the names of candidates and other questions to be voted on and for the marking, casting or otherwise recording of such votes, and the term includes absentee ballots, ballot labels, emergency paper ballots and paper ballots used in lieu of voting machines;

(3) "ballot label" means that portion of cardboard, paper or other material placed on the front of the voting machine containing the names of the candidates, the offices the candidates are seeking and a statement of the proposed questions to be voted upon;

(4) "clerk" or "municipal clerk" means the municipal clerk or any deputy or assistant municipal clerk;

(5) "county clerk" means the clerk of the county or his designee within which the municipality is located;

(6) "election returns" means all certificates of the precinct board, including but not limited to the certificate showing the

total number of votes cast for each candidate, if any, and for or against each question, if any, and shall include statements of canvass, signature rosters, registered voter lists, machine printed returns, emergency paper ballots, paper ballots used in lieu of voting machines, absentee ballots, absentee ballot registers and absentee voter lists or absent voter machine printed returns;

(7) "emergency paper ballot" means the paper ballot used when a voting machine becomes disabled so that a voter is unable to cast a vote for all of the candidates and questions of the voter's choice and have such vote correctly recorded by the voting machine, and when no substitute voting machine is available;

(8) "precinct" means a portion of a county situated entirely in or partly in a municipality which has been designated by the county as a precinct for election purposes and which is entitled to a polling place and a precinct board. If a precinct includes territory both inside and outside the boundaries of a municipality, then "precinct", for municipal elections, shall mean only that portion of the precinct lying within the boundaries of the municipality;

(9) "consolidated precinct" means the combination of two or more precincts pursuant to the Municipal Election Code;

(10) "precinct board" means the appointed election officials serving a single or consolidated precinct;

(11) "recheck" pertains to voting machines and means a verification procedure where the counter compartment of the voting machine is opened and the results of the balloting as shown on the counters of the machine are compared with the results shown on the official returns; and

(12) "recount" pertains to emergency paper ballots, paper ballots used in lieu of voting machines and absentee ballots and means a retabulation and retallying of individual ballots."

Section 4

Section 4. 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:

(l) 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;

(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 except as otherwise provided by law. 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 5

Section 5. Section 3-8-10 NMSA 1978 (being Laws 1985, Chapter 208, Section 18) is amended to read:

"3-8-10. CONSOLIDATION OF PRECINCTS.--

A. Any precinct may be combined with one or more adjacent and contiguous precincts by the governing body when the municipal clerk determines that consolidation is in the best interest of those precincts and will not compromise the orderly and efficient conduct of the election.

B. Precincts may be consolidated in any regular or special municipal election, including bond elections, except when prohibited by law."

Section 6

Section 6. Section 3-8-14 NMSA 1978 (being Laws 1985, Chapter 208, Section 22, as amended) is amended to read:

"3-8-14. VOTING MACHINES--ORDERING--PREPARATION--CERTIFICATION--DELIVERY.--

A. If voting machines are to be used, the municipal clerk shall order the machines from the county clerk within fifteen days of the adoption of the election resolution, and the county clerk shall supply such voting machines pursuant to Section 1-9-6 NMSA 1978. The county shall provide voting machine technicians, voting machine programming and voting machine transportation and the municipality shall pay the reasonable fee charged by the county for such services and the use of the voting machines, but in no case in an amount which exceeds the actual cost to the county pursuant to Section 1-9-12 NMSA 1978.

B. If voting machines are to be used, the municipal clerk shall order at least one voting machine for every polling place; provided that the clerk shall order a sufficient number of voting machines to assure that the eligible voters in that polling place shall be able to vote in a timely manner.

C. Programming of electronic machines shall be performed under the supervision of the municipal clerk and the county clerk. The machines shall be programmed so that votes will be counted in accordance with specification for electronic voting machine adopted by the secretary of state.

D. Immediately upon receipt of the notice of date, time and place of inspection and certification, the municipal clerk shall post such notice in the office of the municipal clerk and attempt to telephone the candidates at the phone number listed on the declaration of candidacy to give each candidate notice of the date, time and place of inspection and certification.

E. Inspection and certification shall occur not later than seven days prior to the election and shall be open to the public.

F. At the date, time and place for inspection and certification, in the presence of the county clerk and those municipal candidates present, if any, the municipal clerk shall:

(1) test each counter for accuracy by casting votes upon it until it correctly registers each vote cast;

(2) test each voting machine to assure that it has been correctly programmed; and

(3) inform the county clerk when each machine is satisfactory and ready to be certified.

G. If the municipal clerk informs the county clerk that a machine is satisfactory and ready to be certified, then:

(1) the county clerk shall reset each counter at zero;

(2) the county clerk shall insert the printer pack into the machine;

(3) the voting machine shall be immediately sealed with a numbered metal seal so as to prevent operation of the machine or its registering counters without breaking the seal;

(4) the municipal clerk shall prepare a certificate in triplicate for each machine that shall:

(a) show the serial number of the voting machine;

(b) state that the voting machine has all of its resettable registering counters set at zero;

(c) state that the machine has been tested by voting on each registered counter to prove the counter is in perfect condition;

(d) show the number of the metal seal that has sealed the machine; and

(e) show the number registered on the protective counter;

(5) a copy of the certificate shall be delivered to the county clerk, the original certificate shall be filed in the office of the municipal clerk and one copy shall be posted on the voting machine; and

(6) if the voting machine requires keys, the keys to the voting machine shall be enclosed in a sealed envelope on which shall be written:

(a) the number of the precinct and polling place to which the machine is assigned;

(b) the serial number of that voting machine;

(c) the number of the metal seal that has sealed the voting machine;

(d) the number registered on the protective counter; and

(e) across the seal of the envelope, the signatures of the county clerk, the municipal clerk and all candidates present, if any, at the inspection and certification.

H. After certification of the voting machines, if the voting machines require keys, the county clerk shall keep the keys to the voting machines in his custody and shall deliver the keys to the municipal clerk when the voting machines are delivered for election. The municipal clerk shall secure in the office of the municipal clerk all the envelopes containing the keys to the voting machines until delivered to the presiding judge of the election.

I. An objection to the use of a particular voting machine shall be filed in the district court within two days after the machine has been certified. Any objection so filed shall specify the number of the voting machine objected to and the reason for the objection. Each voting machine shall be conclusively presumed to be properly prepared for the election if it has been certified, unless a timely objection has been filed.

J. Voting machines certified in accordance with this section shall be delivered to the assigned precinct polling place no earlier than five days prior to the election and no later than noon on the day prior to the election.

K. The municipal clerk shall refuse to certify any voting machine that the municipal clerk determines is not programmed properly, is not working properly or will not fairly or accurately record votes. Only voting machines that have been certified by the municipal clerk shall be used in the election."

Section 7

Section 7. Section 3-8-16 NMSA 1978 (being Laws 1985, Chapter 208, Section 24) is amended to read:

"3-8-16. PAPER BALLOTS IN LIEU OF VOTING MACHINES--EMERGENCY PAPER BALLOTS--FORM--GENERAL REQUIREMENTS.--As used in this section, "paper ballots" means paper ballots used in lieu of voting machines and emergency paper ballots. Paper ballots shall be in the form prescribed by the municipal clerk, which shall conform to the following rules.

A. Paper ballots shall:

(1) be numbered consecutively beginning with number one. The number shall be printed in the upper right-hand corner of the ballot with a diagonal perforated line appropriately placed so that the portion of the ballot bearing the number in the upper right-hand corner may be readily and easily detached from the ballot;

(2) be uniform in size;

(3) be printed on good quality paper;

(4) be printed in plain black type;

(5) have all words and phrases printed correctly and in their proper places;

and

(6) have district and precinct, if applicable.

B. The following heading shall be printed on each paper ballot used in all municipal elections:

"OFFICIAL ELECTION BALLOT

Election held . . . . . (insert date)".

C. If the election is a regular municipal election, then the paper ballot shall be prepared consistent with the requirements of Section 3-8-29 NMSA 1978. In addition, next to each candidate's name shall appear an empty box to be used when voting for that candidate. Where space is allowed on a paper ballot for entering the name of a declared write-in candidate, that space shall be clearly designated by the use of the heading "Write-in Candidate". Below the heading shall appear one line, with a box to the right of the line, for each individual office holder to be elected. Below the last candidate's name shall appear any question presented, in the order designated by the governing body.

D. If the election is a special municipal election, then questions presented shall be placed on the paper ballot in the order designated by the governing body.

E. Next to each question presented on a paper ballot shall appear two empty boxes, one labeled "FOR" and the other labeled "AGAINST".

F. At the bottom of all paper ballots shall be printed: "OFFICIAL ELECTION BALLOT", followed by a facsimile signature of the municipal clerk."

Section 8

Section 8. Section 3-8-19 NMSA 1978 (being Laws 1971, Chapter 306, Section 8, as amended) is amended to read:

"3-8-19. PRECINCT BOARDS--APPOINTMENTS--COMPENSATION.--

A. In order to qualify as a member of the precinct board, a person shall:

(1) be a resident qualified elector of the municipality and a resident of the precinct or consolidated precinct within the jurisdiction of the precinct board. However, if there is a shortage or absence of precinct board members in certain precincts or consolidated precincts, then a person who is a resident qualified elector of the municipality and a nonresident of the precinct or consolidated precinct may be appointed;

(2) be able to read and write;

(3) have the necessary capacity to carry out the functions of the office with acceptable skill and dispatch; and

(4) execute the precinct board member's oath of office.

B. No person shall be qualifed for appointment or service on a precinct board if that person is a:

(1) candidate for any municipal office;

(2) spouse, parent, child, brother or sister of any candidate to be voted for at the election;

(3) sheriff, deputy sheriff, marshal, deputy marshal, state or municipal policeman;

(4) spouse, parent, child, brother or sister of the municipal clerk or any deputy or assistant municipal clerk; or

(5) municipal clerk or deputy or assistant municipal clerk.

C. Not less than thirty-five days before the day of the municipal election, the governing body shall appoint a precinct board for each polling place. The precinct board shall consist of no fewer than three and no more than five members. Each board shall have no fewer than three election judges and no fewer than two election clerks. Election judges may also be appointed as election clerks. Not less than two alternates shall be appointed who shall become either election judges or election clerks or both as the need arises. On the thirty-fifth day before the day of the election, the municipal clerk shall post and maintain in the clerk's office until the day of the election the names of the election judges, election clerks and alternates for each polling place. The posting of the names of the election judges, election clerks and alternates for each polling place may be proved by an affidavit signed by the municipal clerk. The municipal clerk shall, by mail, notify each person appointed, request a written acceptance and keep a record of all notifications and acceptances. The notice shall state the date by which the person must accept the appointment. If any person appointed to a

precinct board, or as an alternate, fails to accept an appointment within seven days after the notice is sent, the position shall be deemed vacant and the position shall be filled as provided in this section.

D. The county clerk shall furnish upon request of the municipal clerk the names and addresses of qualified precinct board members for general elections, and such precinct board members may be appointed as precinct board members for municipal elections.

E. The municipal clerk shall appoint a qualified elector as a precinct board member to fill any vacancy which may occur between the day when the list of precinct board members is posted and the day of the election. If a vacancy occurs on the day of the election, the precinct board members present at the polling place may appoint by a majority vote a qualified elector to fill the vacancy. If the vacancy was filled after the date of the election school, then that person need not attend an election school in order to validly serve on the precinct board.

F. Members of a precinct board shall be compensated for their services at the rate provided in Section 1-2-16 NMSA 1978 for the day of the election. The governing body may authorize payment to alternates who are required by the precinct board or municipal clerk to stand by on election day at the rate of not more than twenty dollars ($20.00) for the day of the election.

G. Compensation shall be paid within thirty days following the date of election."

Section 9

Section 9. Section 3-8-26 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-8-4, as amended) is amended to read:

"3-8-26. REGULAR MUNICIPAL ELECTION--PUBLICATION OF RESOLUTION--CHOICE OF BALLOTS OR VOTING MACHINES.--

A. Not earlier than one hundred and twelve days or later than eighty-four days prior to the date of a regular municipal election, the governing body shall adopt an election resolution calling for the regular municipal election. The election resolution shall be published in both English and Spanish and once within fifteen days of adoption and again not less than sixty days prior to the election or more than seventy-five days prior to the election, as provided in Subsection J of Section 3-1-2 NMSA 1978. In addition, the election resolution shall be posted in the office of the municipal clerk within twenty-four hours from the date of adoption until the date of the election. For information purposes and coordination, one copy of the election resolution shall be mailed within fifteen days of adoption to the secretary of state and the county clerk of the county in which the municipality is located.

B. The resolution shall state the date when the election will be held, the offices to be filled, the questions to be submitted to the voters, the date and time of the closing of the registration books by the county clerk as required by law, the date and time for filing the declaration of candidacy, the location of polling places and the consolidation of precincts, if any, notwithstanding any conflicting provisions of Section 1-3-5 NMSA 1978. Any question to be submitted to the voters in addition to the election of municipal officers may be included in the election resolution, but such inclusion shall not substitute for any additional or separate resolution or publication thereof as required by law.

C. In those municipalities allowed by law to use paper ballots, the election resolution shall also state whether paper ballots or voting machines will be used in the election."

Section 10

Section 10. Section 3-8-27 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-8-8, as amended) is amended to read:

"3-8-27. REGULAR MUNICIPAL ELECTION--DECLARATION OF CANDIDACY--WITHDRAWING NAME FROM BALLOT--PENALTY FOR FALSE STATEMENT.--

A. Candidate filing day shall be between the hours of 8:00 a.m. and 5:00 p.m. on the fifty-sixth day preceding the day of election. On candidate filing day, a candidate for municipal office shall personally appear at the office of the municipal clerk to file all documents required by law in order to cause a person to be certified as a candidate. Alternatively, on candidate filing day, a person acting solely on the candidate's behalf, by virtue of a written affidavit of authorization signed by the candidate, notarized and presented to the municipal clerk by such person, shall file in the office of the municipal clerk all documents required by law in order to cause a person to be certified as a candidate.

B. On candidate filing day, each candidate shall cause to be filed in the office of the municipal clerk a declaration of candidacy and a certified copy of the candidate's current affidavit of voter registration on file with the county clerk which has been certified by the office of the county clerk on a date not earlier than the adoption of the election resolution.

C. All candidates shall cause their affidavits of voter registration to show their address as a street address or rural route number and not as a post office box.

D. The municipal clerk shall provide a form for the declaration of candidacy and shall accept only those declarations of candidacy which contain:

(1) the identical name and the identical resident street address as shown on the affidavit of registration of the candidate submitted with the declaration of candidacy;

(2) the office and term to which the candidate seeks election and district designation, if appropriate;

(3) a statement that the candidate is eligible and legally qualified to hold the office for which the candidate is filing;

(4) a statement that the candidate has not been convicted of a felony or, if the candidate has been convicted of a felony, a statement that the candidate's elective franchise has been restored;

(5) a statement that the candidate or the candidate's authorized representative shall personally appear at the office of the municipal clerk during normal business hours on the fifty-fourth day before the election to ascertain whether the municipal clerk has certified the declaration of candidacy as valid;

(6) a telephone number at which the candidate or the candidate's authorized representative can be reached for purposes of giving telephone notice;

(7) a statement to the effect that the declaration of candidacy is an affidavit under oath and that any false statement knowingly made therein constitutes a fourth degree felony under the laws of New Mexico; and

(8) the notarized signature of the candidate on the declaration of candidacy.

E. The municipal clerk shall not accept a declaration of candidacy for more than one municipal elected office per candidate, so that each candidate declares for only one municipal elected office.

F. Once filed, the declaration of candidacy is a public record.

G. Not later than the fifty-fifth day preceding the day of the election, the municipal clerk shall determine whether the declaration of candidacy shall be certified. In order to be certified as a candidate, the documents submitted to the municipal clerk shall prove that the individual is a qualified elector as defined in Subsection K of Section 3-1-2 NMSA 1978 and, if appropriate, that the individual resides in and is registered to vote in the municipal election district from which the individual seeks election. In the event that an individual fails to submit to the municipal clerk on candidate filing day the documents listed in Subsection B of this section in the form and with the contents as required by this section, then the municipal clerk shall not certify that individual as a candidate for municipal office.

H. The municipal clerk shall post in the clerk's office a list of the names of those individuals who have been certified as candidates. The municipal clerk shall also post in the clerk's office the names of those individuals who have not been certified as candidates, along with all the reasons therefor. Such posting shall occur no later than 9:00 a.m. on the fifty-fourth day preceding the election.

I. Not later than 5:00 p.m. on the forty-ninth day before the day of the election, a candidate for municipal office may file an affidavit on the form provided by the municipal clerk in the office of the municipal clerk stating that he is no longer a candidate for municipal office. A municipal clerk shall not place on the ballot the name of any person who has filed an affidavit as provided in this subsection.

J. Not later than 10:00 a.m. on the forty-eighth day preceding the election, the municipal clerk shall confirm with the printer on contract with the municipality and the county clerk the names of the candidates and their position on the ballot.

K. Any person knowingly making a false statement in the declaration of candidacy is guilty of a fourth degree felony.

L. No person shall be elected to municipal office as a write-in candidate unless that person has been certified as a declared write-in candidate by the municipal clerk, as follows:

(1) write-in candidates filing day shall be on the forty-second day preceding the election between the hours of 8:00 a.m. and 5:00 p.m.;

(2) write-in candidates shall file a declaration of write-in candidacy with the same documents and satisfy the same requirements as established in this section for candidates;

(3) the municipal clerk shall, on the forty-first day preceding the election, certify those individuals who have satisfied the requirements of this section as declared write-in candidates;

(4) not later than 9:00 a.m. on the fortieth day preceding the election, the municipal clerk shall, in the office of the municipal clerk:

(a) post the names of those individuals who have been certified as declared write-in candidates; and

(b) post the names of those individuals who have not been certified as declared write-in candidates along with the reasons therefor; and

(5) not later than 5:00 p.m. on the twenty-eighth day preceding the election, a declared write-in candidate may file an affidavit that he is no longer a write-in candidate for municipal office. In the event that a declared write-in candidate files such an affidavit of withdrawal, any votes for such a candidate shall not be counted and canvassed."

Section 11

Section 11. Section 3-8-40 NMSA 1978 (being Laws 1985, Chapter 208, Section 48, as amended) is amended to read:

"3-8-40. CONDUCT OF ELECTION--PERSONS NOT PERMITTED TO VOTE--CERTIFICATE VOTING--FRAUDULENT AND DOUBLE VOTING.--

A. No person shall vote in a municipal special or regular election unless that person is a qualified elector and he has appeared to vote at the polling place in the precinct or consolidated precinct which encompasses his place of residence as shown on the signature roster.

B. No person shall vote whose name and affidavit of registration number appears on the list of voters purged from the rolls unless that person has again completed an affidavit of registration and his name also appears on the signature roster.

C. Notwithstanding the provisions of Subsections A and B of this section, a person shall be permitted to vote even though that person's name cannot be found in the signature roster, provided:

(1) his residence is within the boundaries of the municipality and within the boundaries of the precinct in which he offers to vote;

(2) his name is not on the purged list or his name has been incorrectly placed on the purged list;

(3) his name is not on the list of persons having been issued absentee ballots;

(4) he presents a certificate bearing the seal and signature of the county clerk stating that his duplicate affidavit of registration is on file at the county clerk's office, that he has not 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

(5) he executes a statement swearing or affirming to the best of his knowledge that he is a qualified elector resident of the municipality, currently registered and eligible to vote in that precinct and has not cast a ballot or voted in the election.

D. Upon compliance with the requirements of Subsection C of this section, the election judge shall cause the election clerks to:

(1) write the person's name and address, as shown on the certificate, in the signature roster under the heading for name and address in the first blank space immediately below the last name and address appearing in the signature roster;

(2) insert the person's ballot number or voter number as shown on the public counter of the voting machine on the certificate and on his executed sworn statement;

(3) retain the completed certificate and the executed sworn statement, which shall be returned to the municipal clerk with the election returns; and

(4) comply with all relevant requirements of Section 3-8-41 NMSA 1978.

E. After canvass, the municipal clerk shall in writing notify the county clerk of the names of all individuals voting on triplicate affidavits of registration or certificates.

F. A person who knowingly executes a false statement required by Paragraph (5) of Subsection C of this section is guilty of perjury as provided in the Criminal Code of this state, and voting on the basis of such falsely executed statement constitutes fraudulent voting.

G. A person not entitled to vote who fraudulently votes or a person who votes or offers to vote more than once at any election is guilty of a fourth degree felony."

Section 12

Section 12. Section 3-8-43 NMSA 1978 (being Laws 1985, Chapter 208, Section 51, as amended) is amended to read:

"3-8-43. CONDUCT OF ELECTION--CHALLENGES--REQUIRED CHALLENGES--ENTRIES--DISPOSITION.--

A. A challenge may be interposed by a member of the precinct board or by a challenger for the following reasons, which shall be stated in an audible tone by the person making the challenge:

(1) the person offering to vote is not registered;

(2) the person offering to vote is listed on the purge list or is listed among those persons in the precinct to whom an absentee ballot was issued;

(3) the person offering to vote is not a qualified elector;

(4) the person offering to vote is not listed on the signature roster or voter registration list;

(5) in the case of an absentee ballot, if the official mailing envelope containing an absentee ballot has been opened prior to delivery of absentee ballots to the absent voter precinct board; or

(6) the person offering to vote is a qualified elector of the municipality but does not reside in the district where he is offering to vote.

B. When a person has offered to vote and a challenge is interposed and the person's name appears in the signature roster or his name has been entered in the signature roster pursuant to Subsection D of Section 3-8-40 NMSA 1978, the election clerk shall write the word "challenged" above the person's signature in the signature roster.

(1) If the challenge is unanimously affirmed by the election judges, then:

(a) the election clerk shall write the word "affirmed" above the person's signature next to the challenge notation in the signature roster;

(b) the person shall nevertheless be furnished a paper ballot, whether or not voting machines are being used at the polling place, and the election clerk shall write the number of the ballot so furnished next to the person's signature in the signature roster;

(c) the person shall be allowed to mark and prepare the ballot. He shall return the paper ballot to an election judge who shall announce the person's name in an audible tone and in his presence place the challenged ballot in an envelope marked "rejected", which shall be sealed and the person's name shall be written on such envelope; and

(d) the envelope containing the rejected ballot shall then be deposited in the ballot box and shall not be counted.

(2) If the challenge is not unanimously affirmed by the election judges, then:

(a) the election clerks shall write the words "not affirmed" above the person's signature next to the challenge notation in the signature roster; and

(b) the person shall be allowed to vote in the manner allowed by law as if the challenge had not been interposed.

C. A required challenge shall be interposed by the precinct board when a person attempts to offer himself to vote and demands to vote and his name does not appear on the signature roster and cannot be entered pursuant to Subsection D of Section 3-8-40 NMSA 1978. A required challenge shall be interposed by the precinct board as follows:

(1) the election judge shall cause the election clerks to enter the person's name and address under the heading "name and address" in the signature roster in the first blank space immediately below the last name and address that appears in the signature roster;

(2) the election clerk shall immediately write the words "required challenge" above the space provided for the person's signature in the signature roster;

(3) the person shall sign his name in the signature roster;

(4) the person shall nevertheless be furnished a paper ballot, whether or not voting machines are being used at the polling place, and the election clerk shall write the number of the ballot so furnished next to the person's signature in the signature roster; and

(5) the person shall be allowed to mark and prepare the ballot. He shall return the paper ballot to an election judge who shall announce his name in an audible tone and in his presence place the required challenge ballot in an envelope marked "rejected--required challenge" which shall be sealed. The person's name shall be written on the envelope and the envelope containing the rejected ballot shall then be deposited in the ballot box and shall not be counted."

Section 13

Section 13. Section 3-8-47 NMSA 1978 (being Laws 1985, Chapter 208, Section 55) is amended to read:

"3-8-47. CONDUCT OF ELECTIONS--DISPOSITION OF SIGNATURE ROSTER--MACHINE-PRINTED RETURNS--BALLOT BOXES--ELECTION RETURN CERTIFICATE--AFFIDAVITS--AND OTHER ELECTION MATERIALS.--

A. After all certificates have been executed, the precinct board shall place one copy of the signature roster and one copy of the machine-printed returns in the stamped, addressed envelope provided for that purpose by the municipal clerk and immediately mail it to the district court.

B. The following election returns and materials shall not be placed in the ballot box and shall be returned by the precinct board to the municipal clerk in the envelope provided by the municipal clerk for such purpose:

(1) all ballot box keys;

(2) one signature roster;

(3) one voter registration list;

(4) the election returns certificate;

(5) one copy of the machine-printed returns;

(6) a machine cartridge for any electronic;

(7) voting machine permits; and

(8) all unused election supplies.

C. The locked ballot box containing any paper ballot cast in the election, election returns and all material listed in Subsection B of this section shall be returned by the precinct board to the municipal clerk within twenty-four hours after the polls close.

D. After receipt of ballot boxes and election returns and materials but not later than twenty-four hours after the polls close, the municipal clerk shall ascertain whether the locked ballot box and all the election returns and materials enumerated in Subsection B of this section have been returned to the municipal clerk as provided in Subsection C of this section. If the locked ballot box or all such election returns and materials are not timely returned by each precinct board, then the municipal clerk shall immediately issue a summons requiring the delinquent precinct board to appear and produce the missing ballot box or election returns or materials within twenty-four hours. The summons shall be served by a sheriff or state police officer without cost to the municipality, and the members of the precinct board shall not be paid for their service on election day unless the delay was unavoidable. If delivery pursuant to the summons is not timely made, then the vote in the precinct shall not be canvassed or made a part of the final election results except upon order of the district court after finding that the delay in the delivery of materials was due to forces beyond the control of the precinct board.

E. Once the ballot box is locked, it shall not be opened prior to canvassing by the municipal clerk."

Section 14

Section 14. Section 3-8-48 NMSA 1978 (being Laws 1985, Chapter 208, Section 56) is amended to read:

"3-8-48. CONDUCT OF ELECTIONS--EMERGENCY PAPER BALLOTS--PAPER BALLOTS--ONE TO A VOTER--RECEIPT OR DELIVERY--OCCUPATION OF VOTING MACHINES.--

A. Only one emergency paper ballot or paper ballot shall be given to each qualified elector entitled to vote. The ballots shall be delivered to qualified electors entitled to vote in consecutive order, beginning with the lowest numbered ballot.

B. No qualified elector entitled to vote shall receive a ballot from any person other than from an election judge at the polling place where the person is authorized to vote. No person other than an election judge shall deliver a ballot to any qualified elector entitled to vote.

C. Unless otherwise provided by law, when voting machines are used as voting booths to mark emergency paper ballots, they shall not be occupied by more than one person at a time. A person shall not remain in or occupy such voting machine longer than is necessary to mark and prepare his emergency paper ballot, which shall not exceed five minutes.

D. The ballot shall be used and completed in the manner prescribed in Section 1-12-25.1 NMSA 1978 and returned to the presiding judge who shall place it in a locked ballot box to be counted when the machine is repaired or replaced or at the time the polls close. Counting and handling marksense ballots in emergency situations shall be done as prescribed for emergency paper ballots."

Section 15

Section 15. Section 3-8-55 NMSA 1978 (being Laws 1985, Chapter 208, Section 63) is amended to read:

"3-8-55. POST-ELECTION DUTIES--CANVASS--DEFECTIVE RETURNS--CORRECTION.--

A. The municipal clerk shall immediately issue a summons directed to the precinct board, commanding it to appear and make the necessary corrections or supply omissions or any missing election returns if:

(1) it appears on the face of the election returns that any certificate has not been properly executed;

(2) it appears that there is a discrepancy within the election returns;

(3) it appears that there is a discrepancy between the number of votes set forth in the certificate for all candidates and the number of electors voting as shown by the election returns;

(4) it appears that there is any omission, informality, ambiguity, error or uncertainty on the face of the returns; or

(5) it appears that there are missing election returns.

B. If any member or members of the precinct board fail to appear as required, the municipal clerk shall immediately issue a summons commanding them to appear. The summons shall be served by a sheriff or state police officer as in the manner of civil cases, and for each service a sheriff or state police officer shall be allowed the same mileage as is paid in civil cases.

C. After issuing the necessary notifications or summonses, the canvass of all correct election returns shall proceed."

Section 16

Section 16. Section 3-8-71 NMSA 1978 (being Laws 1985, Chapter 208, Section 79, as amended) 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 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 17

Section 17. Section 3-8-77 NMSA 1978 (being Laws 1985, Chapter 208, Section 85) is amended to read:

"3-8-77. ELECTIONEERING TOO CLOSE TO POLLING PLACE--OBSTRUCTING POLLING PLACE--DISTURBING POLLING PLACE--PENALTY.--

A. Electioneering too close to the polling place consists of any form of campaigning on election day within one hundred feet of the building in which the polling place is located and includes but is not limited to the display of signs, bumper stickers or distribution of campaign literature.

B. A person who commits electioneering too close to the polling place is guilty of a petty misdemeanor.

C. Obstructing the polling place consists of:

(1) approaching nearer than fifty feet from any polling place during the conduct of the election with the intention of knowingly interfering with the legal conduct of the election; or

(2) willfully blocking an entrance to the polling place so as to prevent free ingress and egress.

D. A person who obstructs the polling place is guilty of a petty misdemeanor.

E. Disturbing the polling place consists of doing one or more of the following acts in the building in which the polling place is located or outside the building in which the polling place is located on election day:

(1) any act which knowingly interferes with or impedes the legal conduct of the election or the legal performance of any election official's duties or any act which unintentionally causes such result if such act is continued after an election judge orders a person to cease and desist such activity; or

(2) any act which knowingly interferes with or impedes a person's right to cast a vote in quiet, secret and orderly surroundings or any act which unintentionally causes such result if such act is continued after an election judge orders a person to cease and desist such activity.

F. A person who disturbs the polling place is guilty of a petty misdemeanor."

Section 18

Section 18. Section 3-8-78 NMSA 1978 (being Laws 1985, Chapter 208, Section 86) is amended to read:

"3-8-78. COERCION OF EMPLOYEES--PERMITTING PRISONERS TO VOTE--MALFEASANCE BY MESSENGERS--UNLAWFUL USE OR POSSESSION OF LIQUOR OR ILLEGAL DRUGS--PENALTY.--

A. Coercion of employees consists of any officer or agent of any corporation, company or association or any person having supervision over or employing persons entitled to vote at any election directly or indirectly discharging or penalizing or threatening to discharge or penalize such employee because of the employee's opinions or beliefs or because of such employee's intention to vote or to refrain from voting for any candidate or for or against any question.

B. A person who commits coercion of employees is guilty of a fourth degree felony.

C. Permitting prisoners to vote consists of any person who has custody of convicts or prisoners taking such convicts or prisoners or permitting them to be taken to any polling place for the purpose of voting in any election.

D. A person who permits prisoners to vote is guilty of a petty misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500), or by imprisonment for not less than thirty days nor more than ninety days, or both.

E. Subsection C and Subsection D of this section do not prohibit permitting prisoners who are legally qualified to vote to cast an absentee ballot pursuant to the provisions of the Municipal Election Code.

F. Malfeasance by messengers consists of the willful delay or failure of any official messenger to convey or deliver election supplies to the precinct board or municipal clerk, the willful delay or failure of any official messenger to convey or deliver the ballot box, key, election returns or other election materials, documents or supplies to the municipal clerk or precinct board or the willful delay or failure of any official messenger to perform as required by any precinct board member or the municipal clerk who makes a legal demand.

G. Any messenger committing such malfeasance is guilty of a petty misdemeanor.

H. Unlawful use or possession of alcoholic liquor or illegal drugs consists of the use or possession of any alcoholic liquor or illegal drug by any member of the precinct board, challengers, watchers or the municipal clerk prior to or while performing official duties on election day. Unlawful use or possession also consists of the use, possession or carrying of alcoholic liquor or illegal drugs within two hundred feet of the polling place during any election.

I. A person who commits unlawful possession of alcoholic liquor or illegal drugs is guilty of a petty misdemeanor."

Section 19

Section 19. 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 red 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 20

Section 20. Section 3-9-7 NMSA 1978 (being Laws 1973, Chapter 375, Section 8, as amended by Laws 1995, Chapter 98, Section 2 and also by Laws 1995, Chapter 200, Section 7) 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.

C. Any person voting on the marksense ballot shall secretly mark the ballot by completing the arrow in pencil directly to the right of the candidate's name or the proposed question. The voter shall then

place the marked ballot in the official inner envelope and securely seal the envelope and then place the official inner envelope inside the official mailing envelope and securely seal the envelope. The voter shall then complete the form on the reverse of the official mailing envelope."

SENATE BILL 1022, AS AMENDED

Approved April 11, 1997

CHAPTER 267

RELATING TO NURSING HOME ADMINISTRATION; CHANGING THE COMPOSITION OF THE BOARD OF NURSING HOME ADMINISTRATORS; PROVIDING FOR CRIMINAL RECORDS CHECKS.

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

Section 1

Section 1. Section 61-13-4 NMSA 1978 (being Laws 1970, Chapter 61, Section 3, as amended) is amended to read:

"61-13-4. BOARD OF NURSING HOME ADMINISTRATORS.--

A. There is created the "board of nursing home administrators", consisting of seven members appointed by the governor to three-year terms staggered so that no more than three terms expire in any one year. Three members of the board shall be nursing home administrators licensed and practicing under the Nursing Home Administrators Act for a minimum of five years and who have never been disciplined by the board, one member shall be a practicing physician licensed in this state and three members shall be from the public who have no significant financial interest, direct or indirect, in the nursing home industry.

B. Within ninety days of a vacancy, the governor shall appoint a person to fill the unexpired portion of the term. Board members shall be citizens of the United States and residents of the state, and not more than one member shall be an employee of any state or other public agency."

Section 2

Section 2. Section 61-13-8 NMSA 1978 (being Laws 1970, Chapter 61, Section 7, as amended) is amended to read:

"61-13-8. LICENSURE OF NURSING HOME ADMINISTRATORS.-- The board shall issue a license as a nursing home administrator to each applicant who files an application in the form and manner prescribed by the board, accompanied by the required fee, and who furnishes evidence, including a criminal records check, satisfactory to the board that he:

A. is of good moral character;

B. has successfully completed a course of study for a baccalaureate degree and has been awarded such degree from an accredited institution in a course of study approved by the board as being adequate preparation for nursing home administrators;

C. demonstrates professional competence by passing an examination in nursing home administration as prepared and published by the professional examination service or such other nationally recognized examination as the board shall prescribe in its rules and regulations;

D. demonstrates knowledge of state regulations governing the operation of nursing homes in a manner as the board shall prescribe in its rules and regulations; and

E. has successfully completed an internship or administrator-in-training program as prescribed by the board in its rules and regulations."

Section 3

Section 3. Section 61-13-11 NMSA 1978 (being Laws 1970, Chapter 61, Section 10, as amended) is amended to read:

"61-13-11. LICENSURE WITHOUT EXAMINATION.--The board shall issue a nursing home administrator's license, temporary or regular, without examination, to any person who holds a nursing home administrator's license current and in good standing in another jurisdiction, provided that the board finds that the standards of licensure in the other jurisdiction are at least the substantial equivalent of those prevailing in this state and that the applicant meets the qualifications of the Nursing Home Administrators Act."

Section 4

Section 4. Section 61-13-13 NMSA 1978 (being Laws 1970, Chapter 61, Section 12, as amended) is amended to read:

"61-13-13. REFUSAL, SUSPENSION OR REVOCATION OF LICENSE.--The board may refuse to issue or renew, or may suspend or revoke, any license in accordance with the procedures contained in the Uniform Licensing Act, on the grounds that the licensee or applicant:

A. is guilty of fraud or deceit in procuring or attempting to procure or renew a license to practice as a nursing home administrator;

B. is convicted of a felony;

C. is guilty of gross incompetence;

D. is habitually intemperate or is addicted to the use of habit-forming drugs or is addicted to any vice to such a degree as to render him unfit to practice as a nursing home administrator;

E. is guilty of failing to comply with any of the provisions of the Nursing Home Administrators Act or any rules or regulations of the board adopted and filed in accordance with the State Rules Act;

F. has been declared mentally incompetent by regularly constituted authorities; provided that the revocation shall only be in effect during the period of such incompetency; or

G. is guilty of conduct that substantially deviates from reasonable standards of acceptable practice of nursing home administration, including but not limited to the following:

(1) he has been convicted of a misdemeanor substantially relating to the practice of nursing home administration;

(2) he has been found by a court of law, the board, an agency responsible for the certification and licensure of nursing homes, a state medicaid fraud and abuse unit or any other duly recognized state agency to be responsible for the neglect or abuse of nursing home residents or the misappropriation of their personal funds or property;

(3) he has been found by a state nursing home licensing board, an agency responsible for the certification and licensure of nursing homes or any other duly recognized state agency as responsible for substandard care in a nursing home;

(4) he has been found to have falsified records related to the residents or employees of a nursing home on the basis of race, religion, color, national origin, sex, age or handicap in violation of federal or state laws; or

(5) he has had a license revoked, suspended or denied by another state for any of the reasons containedin this section."

SENATE BILL 1059, AS AMENDED
Approved April 11, 1997

CHAPTER 268

RELATING TO CRIME VICTIMS REPARATION; AMENDING ELIGIBILITY REQUIREMENTS FOR PERSONS WHO SEEK REPARATION AWARDS; AMENDING SECTIONS OF THE CRIME VICTIMS REPARATION ACT.

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

Section 1

Section 1. Section 31-22-3 NMSA 1978 (being Laws 1981, Chapter 325, Section 3, as amended) is amended to read:

"31-22-3. DEFINITIONS.--As used in the Crime Victims Reparation Act:

A. "child" means an unmarried person who is under the age of majority and includes a stepchild and an adopted child;

B. "collateral source" includes benefits for economic loss otherwise reparable under the Crime Victims Reparation Act which the victim or claimant has received or which are readily available to him from:

(1) the offender;

(2) social security, medicare and medicaid;

(3) workers' compensation;

(4) any program of any employer for continuation of wages in the event of the illness or injury of an employee;

(5) proceeds of a contract of insurance payable to the victim;

(6) a contract providing prepaid hospital and other health care services or benefits for disability, except for the benefits of any life insurance policy;

(7) applicable indigent funds; or

(8) cash donations;

C. "commission" means the crime victims reparation commission;

D. "dependents" means those relatives of the deceased or disabled victim who are more than fifty percent dependent upon the victim's income at the time of his death or disability and includes the child of a victim born after his death or disability;

E. "family relationship group" means any person related to another person within the fourth degree of consanguinity or affinity;

F. "injury" means actual bodily harm or disfigurement and includes pregnancy and extreme mental distress. For the purposes of this subsection, "extreme mental distress" means a substantial personal disorder of emotional processes, thought or cognition that impairs judgment, behavior or ability to cope with the ordinary demands of life;

G. "relative" means a person's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, minor brother, minor sister, minor half-brother, minor half-sister or spouse's parents; and

H. "victim" means:

(1) a person in New Mexico who is injured or killed by any act or omission of any other person that is a crime enumerated in Section 31-22-8 NMSA 1978;

(2) a resident of New Mexico who is injured or killed by such a crime occurring in a state other than New Mexico if that state does not have an eligible crime victims compensation program; or

(3) a resident of New Mexico who is injured or killed by an act of international terrorism, as provided in 18 U.S.C. Section 2331."

Section 2

Section 2. Section 31-22-8 NMSA 1978 (being Laws 1981, Chapter 325, Section 8, as amended) is amended to read:

"31-22-8. CRIMES ENUMERATED.--

A. The crimes to which the Crime Victims Reparation Act applies and for which reparation to victims may be made are the following enumerated offenses and all other offenses in which any enumerated offense is necessarily included:

(1) arson resulting in bodily injury;

(2) aggravated arson;

(3) aggravated assault or aggravated battery;

(4) dangerous use of explosives;

(5) negligent use of a deadly weapon;

(6) murder;

(7) voluntary manslaughter;

(8) involuntary manslaughter;

(9) kidnapping;

(10) criminal sexual penetration;

(11) criminal sexual contact of a minor;

(12) homicide by vehicle or great bodily injury by vehicle, as provided in Section 66-8-101 NMSA 1978;

(13) abandonment or abuse of a child;

(14) aggravated indecent exposure, as provided in Section 30-9-14.3 NMSA 1978; and

(15) stalking, as provided in Section 30-3A-3 NMSA 1978, when the offender has at least one prior conviction for stalking.

B. No award shall be made for any loss or damage to property."

Section 3

Section 3. Section 31-22-14 NMSA 1978 (being Laws 1981, Chapter 325, Section 14, as amended) is amended to read:

"31-22-14. LIMITATIONS ON AWARD--COLLATERAL RECOVERY--PRELIMINARY AWARD.--

A. No order for the payment of reparation shall be made unless application has been made within two years after the date of the injury or death and the injury or death was the result of a crime enumerated in Section 31-22-8 NMSA 1978 that had been reported to the police within thirty days after its occurrence. In no event shall reparation be given unless application has been made within two years after the injury or death, except for minors who are victims of criminal activity under the provisions of Section 30-6-1 NMSA 1978, regarding abandonment or abuse of a child, Section 30-9-11 NMSA 1978, regarding criminal sexual penetration, or Section 30-9-13 NMSA 1978, regarding criminal sexual contact of a minor. The date of incident for minors who are victims of these types of criminal activity shall be the date the victim attains the age of eighteen years or the date that the criminal activity is reported to a law enforcement agency, whichever occurs first.

B. No award of reparation shall be in excess of twenty thousand dollars ($20,000) per victim.

C. Except as provided by Subsection E of this section, the commission shall deduct from any reparation awarded any payments received from a collateral source or from the United States, the state or any of its political subdivisions for injury or death subject to reparation under the Crime Victims Reparation Act. If the claimant receives an award of reparation from the commission and also receives payment as set forth in the preceding sentence for which no deduction was made,

the claimant shall refund to the state the lesser of the amount of reparation paid or the sums not so deducted.

D. If the claimant receives an award of reparation from the commission and also receives an award pursuant to a civil judgment arising from a criminal occurrence for which a reparation award was paid, the claimant shall refund to the state the amount of the reparation paid to him. The commission may negotiate a reasonable settlement regarding repayment of the reparation award if special circumstances exist.

E. If it appears that a final award of reparation will be made by the commission, a preliminary award not to exceed three thousand five hundred dollars ($3,500) may be authorized by the director of the commission or the commission's designee when the commission chairman concurs. The amount of the preliminary award shall be deducted from any final award made by the commission."

Section 4

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997.

Approved April 11, 1997

SENATE BILL 1150

SENATE JOINT RESOLUTION 12

Approved April 11, 1997

HOUSE JOINT RESOLUTION 8

A JOINT RESOLUTION

PROPOSING TO TRANSFER STATE OWNERSHIP OF REAL PROPERTY AND IMPROVEMENTS IN ROSWELL, CHAVES COUNTY, TO CHAVES COUNTY.

WHEREAS, Section 13-6-3 NMSA 1978 requires ratification and approval of any sale, trade or lease of real property over one hundred thousand dollars ($100,000) belonging to any state agency; and

WHEREAS, the property control division of the general services department purchased land and a building for a primary care clinic in

Roswell with two hundred fifty thousand dollars ($250,000) in severance tax bond proceeds pursuant to legislative authorization; and

WHEREAS, the purchase has been completed and Chaves county has requested transfer of the property to the county; and

WHEREAS, the property control division proposes to transfer for no consideration the real property and improvements located at 1511 south Grand in Roswell, Chaves county, New Mexico, more particularly described as follows:

Lots 8, 9, 10 and 11, of Rice Subdivision, in the City of Roswell, County of Chaves and State of New Mexico, as shown on the Official Plat filed in the Chaves County Clerk's Office on January 26, 1948 and recorded in Book B of Plat Records, at Page 92.;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the proposed transfer of the real property and improvements be hereby ratified and approved; and

BE IT FURTHER RESOLVED that a copy of this resolution be transmitted to the property control division of the general services department.

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House Joint Resolution 8

HOUSE JOINT RESOLUTION 14

A JOINT RESOLUTION

PROPOSING TO LEASE ALL OR PART OF THE PROPERTIES KNOWN AS LOS LUNAS MEDICAL CENTER AND GRASSLANDS.

WHEREAS, Section 13-6-3 NMSA 1978 requires ratification and approval of any lease of state-owned real property for longer than twenty-five years; and

WHEREAS, the property control division of the general services department is desirous of leasing all or part of the property known as Los Lunas medical center, more particularly described as:

A certain tract of land within the San Clemente Land Grant in Valencia County, New Mexico. This tract comprises Tracts 60, 107-b, and 108, as shown on Map 69 of the surveys of the Middle Rio Grande Conservancy District, Tract 9-a-1-b and 107-b as shown on Maps 69 and 73 of the surveys of the Middle Rio Grande Conservancy District, and an unnumbered Tract within Section 20, Township 7 North, Range 2 East and all within Sections 20, 21, and 28, Township 7 North, Range 2 East of the New Mexico Principal Meridian and being more particularly described as follows:

BEGINNING at the Southwest Corner of Tract 108, M.R.G.C.D. Map 69, whence United States Coast and Geodetic Survey Triangulation Station "Luna-Gallup" nears N 48° 41' W, 192.50 feet distant and running as follows:

Thence S 52° 23' E, 2314.00 feet to a Point;

Thence S 53° 03' E, 22.00 feet to a Point;

Thence N 49° 37' E, 244.30 feet to a Point;

Thence S 52° 46' E, 156.36 feet to a Point;

Thence S 36° 57' W, 237.60 feet to a Point;

Thence S 53° 03' E, 36.24 feet to the Southeast Corner;

Thence N 49° 17' E, 64.40 feet to a Point;

Thence N 64° 49' E, 60.00 feet to a Point;

Thence N 54° 11' E, 102.62 feet to a Point;

Thence N 43° 31' E, 200.15 feet to a Point;

Thence N 52° 33' E, 101.97 feet to a Point;

Thence N 41° 49' E, 100.00 feet to a Point;

Thence N 33° 33' E, 201.48 feet to a Point;

Thence N 15° 52' E, 1024.46 feet to a Point;

Thence N 11° 00' E, 200.48 feet to a Point;

Thence N 16° 43' E, 200.10 feet to a Point;

Thence N 13° 17' E, 74.25 feet to the Northeast Corner;

Thence N 78° 10' E, 18.55 feet to a Point;

Thence N 79° 28' W, 540.49 feet to a Point;

Thence N 00° 37' E, 839.20 feet to a Point;

Thence N 85° 24' W, 1323.78 feet to a Point;

Thence N 38° 33' W, 391.58 feet to a Point;

Thence Northerly, along the arc of a curve whose radius is 355.22 feet, a distance of 160.20 feet to a Point;

Thence N 12° 03' W, 106.48 feet to a Point;

Thence West, 2052.60 feet to the Northwest Corner;

Thence South, 1874.20 feet to the Southwest Corner;

Thence S 88° 31' E, 100.00 feet to a Point;

Thence S 84° 48' E, 100.00 feet to a Point;

Thence S 81° 16' E, 100.00 feet to a Point;

Thence S 77° 30' E, 100.00 feet to a Point;

Thence S 74° 12' E, 100.00 feet to a Point;

Thence S 69° 34' E, 100.00 feet to a Point;

Thence S 65° 39' E, 100.00 feet to the Point of beginning.

AND ALSO:

A certain tract of land within the San Clemente Land Grant in Valencia County, New Mexico. The tract is bounded:

On the North by land owned by the Indians of Isleta Pueblo;

On the East by land of F.D. Huning Co.;

On the South by land of F.D. Huning Co.;

On the West by land of F.D. Huning Co.

The tract is more particularly described as follows:

BEGINNING at a point on the North boundary line of the tract, which boundary line is also the North boundary line of the San Clemente Land Grant, and which point is marked by United States Government Survey Monument and whence a United States Government Survey Monument marking the corner common to Sections 7, 8, 17, and 18, Township 7 North, Range 2 East of New Mexico Principal Meridian bears North a distance of 1806.42 feet and running

Thence West a distance of 1534.40 feet to the Northwest Corner of the tract;

Thence S 17° 10' W a distance of 2763.10 feet to the Southwest Corner of the tract;

Thence East a distance of 5280.00 feet to the Southeast Corner of the tract;

Thence N 17° 10 E a distance of 2763.10 feet to the Northeast Corner of the tract;

Thence West a distance of 3745.60 feet to the point of beginning, containing 320.00 acres, more or less.; and

WHEREAS, the property control division is desirous of leasing real property consisting of two hundred eighty-eight and forty-four hundredths acres, more or less located on the west side of Interstate 25 about one mile north of the Los Lunas interchange known as Grasslands, more particularly described as

A certain tract of land south of the Antonio Gutierrez and Joaquin Sedillo grant and west of Interstate 25 highway known as New Mexico Project No. I-025-3 (18) 194, and being within the San Clemente Grant and within Sections 17 & 18, Township 7N, Range 2E, N.M.P.M., the tract being more particularly described as follows: Being of U.S. Geological Survey Monument, a point making the intersection of the common line of Sections 17 & 18,

Township 7N, Range 2E, N.M.P.M. within boundary line of San Clemente Grant and running from said beginning point as follows:

West 270° 0' 1534.4 feet to northwest corner, thence south 197° 10' 2763.1 feet to the southwest corner, thence east 90° 0' 4706.63 feet to southeast corner, thence north 31° 68' to northeast corner, thence west 3267.68 feet to point of beginning. Containing 288.44 acres more or less.; and

WHEREAS, the property control division may lease all or part of the described real property for a period not exceeding forty years to the town of Los Lunas, Valencia county or the Los Lunas school district; and

WHEREAS, the property control division shall not lease any of the property described in this resolution without approving a master use plan, including uses for specific property proposed for lease and an evaluation of how specific uses will fit in with all uses of the Los Lunas medical center property and Grasslands; and

WHEREAS, the property control division shall not lease any of the Los Lunas medical center property without the approval of the department of health; and

WHEREAS, the property control division shall not lease any of the property that the legislature or the governor determines could best be used for state purposes;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the property control division be authorized to enter into long-term leases of not to exceed forty years after all conditions provided in this resolution are met; and

BE IT FURTHER RESOLVED that a copy of this resolution be transmitted to the property control division of the general services

department.

HOUSE JOINT RESOLUTION 14

HOUSE JOINT RESOLUTION 15

A JOINT RESOLUTION

PROPOSING TO LEASE STATE PROPERTY BOUNDED BY PASEO DE PERALTA, MANHATTAN STREET, GALISTEO STREET, SOUTH CAPITOL PLACE AND DEVARGAS STREET IN SANTA FE COUNTY TO SANTA FE COUNTY FOR A PARKING STRUCTURE.

WHEREAS, Section 13-6-3 NMSA 1978 requires ratification and approval of any lease of real property owned by the state for longer than twenty-five years; and

WHEREAS, the property control division of the general services department is desirous of leasing five parcels of land near the capitol to Santa Fe county for a parking structure; and

WHEREAS, the property is more particularly described as:

Parcel 1:

Commencing at the intersection of South Capitol Street and Galisteo Street, whence from the center of sewer manhole cover V3/3 bearing S36d 53' 28" E for a distance of 42.20' to the beginning point; thence from said beginning point along the south side of South Capitol Street bearing S 70d 53' 00" E for a distance of 76.19' to a point; thence S 19d 24' 48" W for a distance of 104.86' to a point; thence N 73d 00'15" W for a distance of 9.61' to a point; thence S 19d 41' 55" W for a distance of 51.27' to a point; thence S 68d 03' 33" E for a distance of 55.20' to a point; thence S 19d 17' 00" W for a distance of 37.85' to a point; thence S 69d 28' 55" E for a distance of 33.77' to a point; thence S 13d 32' 17" W for a distance of 199.99' to a point; thence N 73d 54' 32" W for a distance of 123.57' to a point; thence N 09d 52' 09" W for a distance of 19.67' to a point; thence N 13d 05' 00" E for a distance of 388.39' to the point and place of beginning. Being approximately 0.941 acres, as shown on Plat of Survey for the State of New Mexico by Southwest Mountain Surveys, Inc. dated 05-13-94, project no. C-1169B.

Parcel 2:

Commencing at the south side of South Capitol Street and, whence from the center of sewer manhole cover V3A/1 bearing S54d 30' 17" E

for a distance of 81.55' to the beginning point; thence from said beginning point along the south side of South Capitol Street bearing S 70d 46' 20" E for a distance of 103.21' to a point; thence S 13d 05' 47" W for a distance of 107.61' to a point; thence S 08d 43' 48" W for a distance of 74.70' to a point; thence S 79d 00' 16" E for a distance of 71.91' to a point; thence S 10d 59' 50" W for a distance of 20.39' to a point; thence S 10d 55' 47" W for a distance of 64.56' to a point; thence S 73d 59' 17" E for a distance of 89.80' to a point; thence S 09d 41' 43" W for a distance of 81.17' to a point; thence N 77d 31' 54" W for a distance of 81.04' to a point; thence along a radius equal to 269.19' with a delta of 24d 56' 12" with an arch length of 117.16' to a point; thence N 76d 58' 26" W for a distance of 29.39' to a point; thence N 09d 38' 24" E for a distance of 172.80' to a point; thence N 71d 19' 52" W for a distance of 48.08' to a point; thence N 15d 19' 35" E for a distance of 49.57' to a point; thence N 13d 56' 51" E for a distance of 160.36' to the point and place of beginning. Being approximately 1.216 acres, as shown on Plat of Survey for the State of New Mexico by Southwest Mountain Surveys, Inc. dated 05-13-94, project no. C-1169B.

Parcel 3:

Beginning at a point marked by a square headed bold set on the west side of Don Gaspar Avenue for the southeast corner of this tract of land, from which the center of the manhole of the sanitary sewer in the intersection of Manhattan Avenue with Don Gaspar Avenue, bears S. 0°17' E., 142.8 feet distant; thence from the said beginning point and running N. 73°39' W., 89.7 feet to an iron stake set for the southwest corner of this tract; thence running N. 10°47' E., 42.3 feet to an iron stake set for angle point number one on the west boundary; thence running N. 12°15' E., 22.1 feet to an iron stake set for the northwest corner of this tract; thence running S. 79°59' E., 22.5 feet to an iron stake set for angle point number one on the north boundary of this tract; thence running N. 11°15' E., 2.1 feet to an iron stake set for angle point number two on the north boundary of this tract; thence running S. 80°21' E., 47.8 feet to an iron stake set for angle point number three on the north boundary of this tract; thence running S. 74°07' E., 17.0 feet to an iron stake set on the west side of Don Gaspar Avenue for the northeast corner of this tract; thence running S. 09°44' W., 75.0 feet, along the west side of Don Gaspar Avenue to the southeast corner, the point and place of beginning.

All as shown upon that certain plat entitled "Lands surveyed for William E. Rutherford, Portion of Lot 2, Block 110, King's and 1924 Official Maps, Santa Fe, New Mexico," dated July 24, 1946,

by Walter G. Turley, registered professional engineer and land surveyor; with warranty covenants.; and

Parcel 4:

TRACT D

Beginning at a point being a manhole cover at intersection of Don Gaspar Avenue and South Capitol Street, bearing S. 61° 09' W., 33.2 feet; thence S. 09° 45' W., 135.03 feet to the point and place of beginning; thence S. 09° 45' W., 43.05 feet; thence N. 71° 07' W., 17.0 feet; thence N. 80° 21' W., 47.80 feet; thence S. 11° 15' W., 2.10 feet; thence N. 79° 59' W., 22.50 feet; thence N. 11° 25; E., 43.60 feet; thence S. 80° 05' E., 86.00 feet to the point and place of beginning containing .086 acres more or less.; and

Parcel 5:

A certain tract of land lying and being situate at 410 Don Gaspar, within the City and County of Santa Fe, State of New Mexico and being more particularly described as follows:

Beginning at the northeast corner of the property herein described from whence Sanitary Sewer Manhole located in the intersection of South Capitol Street and Don Gaspar Avenue bears:

N 9 deg. 45' E 92.63 feet;

N 61 deg. 09' E 33.2 feet;

thence from said point and place of beginning along the following bearings and distances:

S 9 deg. 45' W 42.40 feet;

N 80 deg. 05' W 86.00 feet;

N 11 deg. 25' E 42.48 feet;

S 80 deg. 04' E 84.80 feet,

to the point and place of beginning. Being Tract C of Lot 1, Block 110, Kings Map. All as shown upon plat of survey for Lands of the Estate of Florence S. Barto, dated August 20, 1960 by Walter

G. Turley, and recorded in the Santa Fe County Clerks Office in Plat Book 8, page 176, as Document No. 245,383.

WHEREAS, the property shall be leased for no longer than forty years;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the proposed lease of the property, on terms and conditions to be agreed upon by the general services department and Santa Fe county, be hereby ratified and approved pursuant to the provisions of Section 13-6-3 NMSA 1978; and

BE IT FURTHER RESOLVED that a copy of this resolution be transmitted to the property control division of the general services department.

HOUSE JOINT RESOLUTION 15, AS AMENDED

OFFICIAL ROSTER OF THE STATE OF NEW MEXICO

UNITED STATES SENATORS

Jeff Bingaman, Democrat, Santa Fe

Pete V. Domenici, Republican, Albuquerque

UNITED STATES REPRESENTATIVES

Steven H. Schiff, Republican, District No. 1, Albuquerque

Joseph R. Skeen, Republican, District No. 2, Picacho

Bill Richardson, Democrat, District No. 3, Santa Fe

STATE OFFICIALS

Gary Johnson, Republican	Governor
Walter D. Bradley, Republican	Lieutenant Governor
Stephanie Gonzales, Democrat	Secretary of State
Robert E. Vigil, Democrat	State Auditor
Michael A. Montoya, Democrat	State Treasurer

Tom Udall, Democrat	Attorney General
Ray Powell, Jr., Democrat	Commissioner of Public Lands
Gloria Tristani, Democrat	Corporation Commissioner
Eric P. Serna, Democrat	Corporation Commissioner
Jerome Block, Democrat	Corporation Commissioner

JUSTICES OF THE SUPREME COURT

Gene Franchini, Chief Justice

Joseph F. Baca

Dan A. McKinnon

Patricio M. Serna

Pamela B. Minzner

JUDGES OF THE COURT OF APPEALS

Harris L. Hartz, Chief Judge

Rudy S. Apodaca

Thomas A. Donnelly

A. Joseph Alarid

Lynn Pickard

M. Christina Armijo

Benny E. Flores

Richard C. Bosson

James J. Wechsler

Michael D. Bustamante

DISTRICT COURTS

DISTRICT JUDGES

FIRST JUDICIAL DISTRICT

SANTA FE, RIO ARRIBA, LOS ALAMOS COUNTIES

Division	I	Petra J. Maes	Santa Fe
Division	II	James A. Hall	Santa Fe
Division	III	Stephen D. Pfeffer	Santa Fe
Division	IV	Michael Vigil	Santa Fe
Division	V	Art Encinias	Santa Fe
Division	VI	Steve Herrera	Santa Fe

SECOND JUDICIAL DISTRICT

BERNALILLO COUNTY

Division	I	Michael E. Martinez	Albuquerque
Division	II	James F. Blackmer	Albuquerque
Division	III	Tommy Jewell	Albuquerque
Division	IV	Frank Allen, Jr.	Albuquerque
Division	V	Gerard W. Thompson	Albuquerque
Division	VI	W. C. "Woody" Smith	Albuquerque
Division	VII	W. Daniel Schneider	Albuquerque
Division	VIII	Ross C. Sanchez	Albuquerque
Division	IX	Mark A. Macaron	Albuquerque
Division	X	Theresa Baca	Albuquerque
Division	XI	Diane Dal Santo	Albuquerque

Division	XII	Gerald R. Cole	Albuquerque
Division	XIII	Robert Hayes Scott	Albuquerque
Division	XIV	W. John Brennan	Albuquerque
Division	XV	Richard J. Knowles	Albuquerque
Division	XVI	Robert L. Thompson	Albuquerque
Division	XVII	Ann M. Kass	Albuquerque
Division	XVIII	Susan M. Conway	Albuquerque
Division	XIX	Albert S. Murdoch	Albuquerque
Division	XX	William F. Land	Albuquerque
Division	XXI	Angela J. Jewell	Albuquerque

THIRD JUDICIAL DISTRICT

DONA ANA COUNTY

Division	I	Robert E. Robles	Las Cruces
Division	II	Graden W. Beal	Las Cruces
Division	III	Regina R. Sewell	Las Cruces
Division	IV	Jerald A. Valentine	Las Cruces
Division	V	Thomas G. Cornish, Jr.	Las Cruces
Division	VI	Grace Duran	Las Cruces

FOURTH JUDICIAL DISTRICT

GUADALUPE, MORA, SAN MIGUEL COUNTIES

Division	I	Eugenio S. Mathis	Las Vegas
Division	II	Jay Gwynne Harris	Las Vegas

FIFTH JUDICIAL DISTRICT

CHAVES, EDDY, LEA COUNTIES

Division	I	Jay W. Forbes	Carlsbad
Division	II	Alvin F. Jones	Roswell
Division	III	Ralph W. Gallini	Lovington
Division	IV	Patrick J. Francoeur	Lovington
Division	V	James L. Shuler	Carlsbad
Division	VI	William Patrick Lynch	Roswell
Division	VII	Larry Johnson	Hobbs
Division	VIII	William P. "Chip" Johnson	Roswell

SIXTH JUDICIAL DISTRICT

GRANT, HIDALGO, LUNA COUNTIES

Division	I	V. Lee Vesely	Silver City
Division	II	Gary Jeffreys	Deming

SEVENTH JUDICIAL DISTRICT

CATRON, SIERRA, TORRANCE, SOCORRO COUNTIES

Division	I	Edmund H. Kase, III	Socorro
Division	II	Thomas G. Fitch	Socorro
Division	III	Neil Mertz	Socorro

EIGHTH JUDICIAL DISTRICT

COLFAX, UNION, TAOS COUNTIES

Division	I	Peggy Jean Nelson	Raton

Division	II	Stanley Read	Taos

NINTH JUDICIAL DISTRICT

CURRY & ROOSEVELT COUNTIES

Division	I	Stephen Quinn	Clovis	
Division	II	Robert C. Brack	Clovis	
Division	III	David W. Bonem	Clovis,	Portales

TENTH JUDICIAL DISTRICT

QUAY, DEBACA, HARDING COUNTIES

Division	I	Ricky D. Purcell	Tucumcari

ELEVENTH JUDICIAL DISTRICT

McKINLEY, SAN JUAN COUNTIES

Division	I	Benjamin S. Eastburn	Aztec
Division	II	Joseph L. Rich	Gallup
Division	III	Wilfred Byron Caton	Aztec
Division	IV	Paul R. Onuska	Farmington
Division	V	Grant Foutz	Gallup
Division	VI	George A. Harrison	Aztec

TWELFTH JUDICIAL DISTRICT

LINCOLN, OTERO COUNTIES

Division	I	Jerry H. Ritter Jr.	Alamogordo
Division	II	Robert M. Doughty, II	Alamogordo

Division	III	Karen L. Parsons	Carrizozo
Division	IV	Frank K. Wilson	Alamogordo

THIRTEENTH JUDICIAL DISTRICT

SANDOVAL, VALENCIA, CIBOLA COUNTIES

Division	I	John W. Pope	Los Lunas
Division	II	Kenneth G. Brown	Bernalillo
Division	III	William (Bill) Sanchez	Los Lunas
Division	IV	Martin G. Pearl	Grants
Division	V	Louis P. McDonald	Bernalillo

DISTRICT ATTORNEYS

First Judicial District	Henry R. Valdez	Santa Fe
Second Judicial District	Jeff Romero	Albuquerque
Third Judicial District	Susana Martinez	Las Cruces
Fourth Judicial District	Matthew J. Sandoval	Las Vegas
Fifth Judicial District	Thomas A. Rutledge	Carlsbad
Sixth Judicial District	Jim Foy	Silver City
Seventh Judicial District	Ron P. Lopez	Socorro
Eighth Judicial District	John M. Paternoster	Taos
Ninth Judicial District	Randall M. Harris	Clovis
Tenth Judicial District	Patricia Parker, Sr.	Tucumcari
Eleventh Judicial District		
Division I	Sandra Price	Farmington
Division II	Forrest G. Buffington	Gallup

Twelfth Judicial District	Scot D. Key	Alamogordo
Thirteenth Judicial District	Michael Runnels	Los Lunas

STATE SENATORS SERVING IN THE FORTY-THIRD LEGISLATURE STATE OF NEW MEXICO FIRST SESSION CONVENED JANUARY 21, 1997

COUNTY	DISTRICT	NAME	CITY
San Juan	1	Raymond Kysar (R)	Farmington
San Juan	2	R.L. Stockard (R)	Bloomfield
McKinley & San Juan	3	John Pinto (D)	Tohatchi
Cibola & McKinley	4	Gloria Howes (D)	Gallup
Los Alamos, Rio Arriba & Sandoval	5	Arthur Rodarte (D)	Ojo Caliente
Mora, Santa Fe & Taos	6	Carlos R. Cisneros (D)	Questa
Colfax, Curry, Harding, Quay, San Miguel & Union	7	Patrick H. Lyons (R)	Cuervo
DeBaca, Guadalupe, Lincoln, & San Miguel	8	Pete Campos (D)	Las Vegas
Bernalillo & Sandoval	9	Pauline Eisenstadt (D)	Corrales
Bernalillo	10	Ramsay L. Gorham (D)	Albuquerque
Bernalillo	11	Linda M. Lopez (D)	Albuquerque
Bernalillo	12	Richard M. Romero (D)	Albuquerque
Bernalillo	13	Dede Feldman (D)	Albuquerque

Bernalillo & Valencia	14	Manny M. Aragon (D)	Albuquerque
Bernalillo	15	L. Skip Vernon (R)	Albuquerque
Bernalillo	16	Cisco McSorley (D)	Albuquerque
Bernalillo	17	Shannon Robinson (D)	Albuquerque
Bernalillo	18	Mark L. Boitano (R)	Albuquerque
Bernalillo, Santa Fe & Torrance	19	Sue F. Wilson (R)	Albuquerque
Bernalillo	20	William Payne (R)	Albuquerque
Bernalillo	21	William F. Davis (R)	Albuquerque
Bernalillo, Los Alamos, McKinley	22	Leonard Tsosie (D)	Crownpoint
Rio Arriba & Sandoval			
Bernalillo & Sandoval	23	Joseph J. Carraro (R)	Albuquerque
Santa Fe	24	Nancy Rodriguez (D)	Santa Fe
Santa Fe	25	Roman M. Maes III (D)	Santa Fe
Bernalillo	26	Phillip J. Maloof (D)	Albuquerque
Chaves, Curry & Roosevelt	27	Stuart Ingle (R)	Portales
Catron, Grant & Socorro	28	Ben D. Altamirano (D)	Silver City
Valencia	29	Michael S. Sanchez (D)	Belen
Cibola, Socorro & Valencia	30	Joseph A. Fidel (D)	Grants
Dona Ana	31	Cynthia Nava (D)	Las Cruces
Chaves, Eddy & Otero	32	Timothy Z. Jennings (D)	Roswell
Chaves & Eddy	33	Rod Adair (R)	Roswell
Eddy, Lea & Otero	34	Melvin D. (Don) Kidd (R)	Carlsbad
Dona Ana, Hidalgo, Luna & Sierra	35	John Arthur Smith (D)	Deming
Dona Ana	36	Mary Jane M. Garcia (D)	Dona Ana
Dona Ana, Otero & Sierra	37	Leonard Lee Rawson (R)	Las Cruces

Dona Ana	38	Fernando R. Macias (D)	Mesilla
Bernalillo, Los Alamos, Sandoval, San Miguel, Santa Fe & Torrance	39	Phil A. Griego (D)	San Jose
Otero	40	Dianna J. Duran (R)	Tularosa
Eddy & Lea	41	Carol H. Leavell (D)	Jal
Curry, Lea & Roosevelt	42	Billy J. McKibben (R)	Hobbs

STATE REPRESENTATIVES SERVING

IN THE FORTY-THIRD LEGISLATURE

STATE OF NEW MEXICO

FIRST SESSION

CONVENED JANUARY 21, 1997

COUNTY	DISTRICT	NAME	CITY
San Juan	1	Jerry W. Sandel (D)	Farmington
San Juan	2	Danny Carpenter (R)	Farmington
Rio Arriba & San Juan	3	Sandra L. Townsend (R)	Aztec
San Juan	4	Jimmie Garnenez, Sr. (R)	Shiprock
McKinley	5	Robert David Pederson (D)	Gallup
Cibola & McKinley	6	Eddie Corley (D)	Milan
Valencia	7	Ron Gentry (D)	Belen
Valencia	8	Fred Luna(D)	Los Lunas
McKinley & San Juan	9	Leo C. Watchman, Jr. (D)	Navajo
Bernalillo & Valencia	10	Henry "Kiki" Saavedra (D)	Albuquerque
Bernalillo	11	Rick Miera (D)	Albuquerque
Bernalillo	12	James G. Taylor (D)	Albuquerque

Bernalillo	13	Daniel P. Silva (D)	Albuquerque
Bernalillo	14	Miguel P. Garcia (D)	Albuquerque
Bernalillo	15	Raymond G. Sanchez (D)	Albuquerque
Bernalillo	16	Joe Nestor Chavez (D)	Albuquerque
Bernalillo	17	Edward C. Sandoval (D)	Albuquerque
Bernalillo	18	Gail C. Beam (D)	Albuquerque
Bernalillo	19	Sheryl M. Williams (D)	Albuquerque
Bernalillo	20	Ted Hobbs (R)	Albuquerque
Bernalillo	21	Mimi Stewart (D)	Albuquerque
Bernalillo	22	Jerry Lee Alwin (R)	Albuquerque
Bernalillo	23	Frank Bird (R)	Albuquerque
Bernalillo	24	George D. Buffett (R)	Albuquerque
Bernalillo	25	Danice R. Picraux (D)	Albuquerque
Bernalillo	26	Rita G. Getty (D)	Albuquerque
Bernalillo	27	Lorenzo A. Larranaga (R)	Albuquerque
Bernalillo	28	Gerald E. Weeks (R)	Albuquerque
Bernalillo	29	Timothy E. Macko (R)	Albuquerque
Bernalillo	30	Pauline K. Gubbels (R)	Albuquerque
Bernalillo	31	Kip W. Nicely (R)	Albuquerque
Dona Ana, Luna & Sierra	32	G.X. McSherry (D)	Deming
Dona Ana	33	J. Paul Taylor (D)	Mesilla
Dona Ana	34	Mary Helen Garcia (D)	Las Cruces
Dona Ana	35	Benjamin B. Rios (D)	Las Cruces
Dona Ana	36	William E. Porter (D)	las Cruces
Dona Ana	37	Jon "Andy" Kissner (R)	Las Cruces

Grant, Luna & Sierra	38	Murray Ryan (R)	Silver City
Hidalgo & Grant	39	Thomas P. Foy (D)	Bayard
Mora, Rio Arriba, San Miguel, Santa Fe & Taos	40	Nick L. Salazar (D)	San Juan Pueblo
Rio Arriba, Sandoval & Taos	41	Debbie A. Rodella (D)	San Juan Pueblo
Taos	42	Roberto "Bobby" J. Gonzales (D)	Taos
Los Alamos & Sandoval	43	Jeannette Wallace (R)	Los Alamos
Sandoval	44	Judy Vanderstar Russell (R)	Rio Rancho
Santa Fe	45	Patsy G. Trujillo (D)	Santa Fe
Santa Fe	46	Ben Lujan (D)	Santa Fe
Santa Fe	47	Max Coll (D)	Santa Fe
Santa Fe	48	Luciano "Lucky" Varela (D)	Santa Fe
Catron, Socorro, Sierra & Valencia	49	M. Michael Olguin (D)	Socorro
Torrance, Bernalillo & Santa Fe	50	Gary K. King (D)	Moriarty
Otero	51	Gloria Vaughn (R)	Alamogordo
Dona Ana	52	Delores C. Wright (D)	Chaparral
Otero	53	Terry T. Marquardt (R)	Alamogordo
Eddy	54	Joe M. Stell (D)	Carlsbad
Eddy	55	John A. Heaton (D)	Carlsbad
Lincoln, Chaves & Otero	56	W.C. "Dub" Williams (R)	Glencoe
Chaves, Eddy, Lea & Roosevelt	57	Richard T. (Dick) Knowles (R)	Roswell
Chaves & Eddy	58	Dara A. Dana (R)	Dexter
Chaves	59	David M. Parsons (R)	Roswell
Sandoval	60	Lisa L. Lutz (R)	Rio Rancho

Lea	61	Donald L. Whitaker (D)	Eunice
Lea	62	Stevan E. Pearce (R)	Hobbs
Curry & Roosevelt	63	Vincent Gallegos (D)	Clovis
Curry	64	Anna Marie Crook (R)	Clovis
Bernalillo, Cibola & Sandoval	65	James Roger Madalena (D)	Jemez Pueblo
Curry, Lea & Roosevelt	66	Earlene Roberts (R)	Lovington
DeBaca, Harding, Quay, Union, Curry & Roosevelt	67	Bobbie K. Mallory (R)	Tucumcari
Colfax, Guadalupe, Mora & San Miguel	68	Jose R. Abeyta (D)	Wagon Mound
Cibola, McKinley & Sandoval	69	Lynda M. Lovejoy (D)	Crownpoint
San Migue	70	Samuel F. Vigil Jr. (D)	Las Vegas